

RECEIVED

By Office of the Commission Secretary at 12:21 pm, Feb 10, 2022



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

AGENDA DOCUMENT NO. 22-04-A
AGENDA ITEM March 10, 2022
For meeting of

February 10, 2022

MEMORANDUM

To: The Commission

Through: Alec Palmer *AP*
Staff Director

From: Patricia C. Orrock *PCO*
Chief Compliance Officer

Dayna C. Brown *DCB*
Assistant Staff Director
Audit Division

Rickida Morcomb *RM*
Audit Manager

By: Ryan Krogen *RM for RK*
Lead Auditor

Subject: Resubmission: Audit Division Recommendation Memorandum on Mike Braun for Indiana (A19-02)

This office is resubmitting the subject Audit Division Recommendation Memorandum (ADRM). The original ADRM circulated to the Commission on January 10, 2022 and was withdrawn on January 19, 2022. The resubmitted ADRM recommends that in light of the potential impact that a decision by the U.S. Supreme Court in *Ted Cruz for Senate v. Federal Election Commission*, Civil No. 19-cv-908 (D.C. Dist. Ct., June 3, 2021) may have on certain proposed findings in this audit, the Commission refrain from acting on those proposed findings until the Court issues its decision.

Pursuant to Commission Directive No. 70 (FEC Directive on Processing Audit Reports), the Audit staff presented the Draft Final Audit Report (DFAR) to Mike Braun for Indiana (MBFI) on September 16, 2021 (see attachment). In response to the DFAR, MBFI requested an audit hearing on October 4, 2021. The Commission granted the audit hearing on October 12, 2021. The audit hearing was held on November 10, 2021.

This memorandum provides the Audit staff's recommendation for each finding outlined in the DFAR.

In response to the DFAR, MBFI provided additional information, as noted below.

Finding 1. Misstatement of Financial Activity

In response to the DFAR, MBFI filed amended disclosure reports that corrected the public record. This matter was not discussed at the audit hearing.

The Audit staff recommends that the Commission find that MBFI overstated its reported receipts and disbursements by \$6,293,350 and \$6,294,482, respectively, in calendar year 2018.

Finding 2. Failure to File 48-Hour Notices

In June 2021, MBFI filed, albeit late, three 48-Hour Notices totaling \$3,400, and in response to the DFAR, amended its disclosure reports to correct the receipt date for these contributions. Also, in response to the DFAR, MBFI amended its disclosure reports to correct the receipt date for four additional contributions totaling \$5,700. Additionally, MBFI provided a time-stamped FEC Form 6 (48-Hour Notice) to demonstrate that contributions totaling \$253,500 were previously disclosed; however, the original Form 6, timely filed in April 2018 was illegible due to a fax transmission issue.¹ The Audit staff notes the illegible fax transmission resulted in MUR 7490.² On April 7, 2019, the Commission used its prosecutorial discretion to dismiss MUR 7490. Given the Commission's dismissal of the MUR, the fact that MBFI provided a legible copy of the FEC Form 6 in August 2018, and after consultation with the Office of General Counsel and the Reports Analysis Division, the Audit staff accepts the explanation and documentation provided by MBFI. Given the resolution of the 48-Hour Notices totaling \$253,500 related to the fax transmission issue, the remaining errors for seven untimely filed 48-Hour Notices totaling \$9,100 (\$3,400 + \$5,700 noted above) are no longer material. This matter was not discussed at the audit hearing.

The Audit staff recommends that the Commission find that MBFI materially complied with the requirement to timely file 48-Hour Notices.

Finding 3. Disclosure of Occupation and/or Name of Employer

In response to the DFAR, MBFI filed amended disclosure reports that materially corrected the public record. This matter was not discussed at the audit hearing.

¹ On April 25, 2018, MBFI filed a 48-Hour Notice (FEC Form 6) via fax with the Secretary of the Senate for contributions received on April 23, 2018. On April 26, 2018, the Reports Processing Branch of the Commission's Reports Analysis Division contacted the Secretary of the Senate's office concerning the illegible FEC Form 6. The Secretary of the Senate's office confirmed the FEC Form 6 provided to the Commission was exactly what it received, and that it was unable to reach MBFI when it attempted to contact the Committee regarding the illegible FEC Form 6. On August 22, 2018, MBFI re-transmitted a fully legible FEC Form 6 for the contributions received on April 23, 2018.

² MUR 7490 was based on an external complaint related to MBFI appearing to have failed to file a 48-Hour Notice.

The Audit staff recommends that the Commission find that MBFI failed to disclose or inadequately disclosed occupation and name of employer information for contributions from 1,363 individuals, totaling \$1,464,449.

Finding 4. Receipt of Apparent Prohibited Contributions – Loans

A. Assurance of Repayment – Bank Loans

In response to the DFAR, MBFI objected to the DFAR’s assertion that MBFI received apparent prohibited loans and lines of credit totaling \$7,049,405 because they were not made on a basis that assured repayment and restated the response it provided to the Interim Audit Report.

During the audit hearing,³ MBFI stated that it wanted to request the hearing on the finding because the “Audit Division’s two conclusions in this finding are clearly erroneous and unsupported by the facts and the law.”

MBFI stated that the commercial bank loans and lines of credit, totaling \$7,049,405, were expressly permitted under regulations and precedents, and were not prohibited contributions as the Audit staff contends.

MBFI also stated that its previous treasurer left and, as a result of his departure, it was unable to obtain all the documents needed to address the findings. MBFI included a similar statement in its written DFAR response. The Audit staff notes that it did correspond with the former treasurer during the audit process, with the written permission of MBFI. The former treasurer stated all records, paper and electronic, were provided to the current treasurer upon his departure.

Additional documentation provided by MBFI after the DFAR response and hearing request, but prior to the audit hearing being held, included letters from bank vice presidents and previous years loan documentation addressing the following issues: (1) the length of the Candidate’s relationship with the bank; (2) the Candidate’s creditworthiness, net worth, assets and repayment history; (3) the bank’s underwriting criteria for unsecured loans of the type made to the Candidate; and (4) information demonstrating that the loan terms were not unduly favorable to the Candidate. Based on the documents provided, the Audit staff concludes that the bank loans and lines of credit were made on a basis that assured repayment and were not unduly favorable to the Candidate.

The Audit staff recommends that the Commission find that MBFI received loans and lines of credit totaling \$7,049,405 that were made in the ordinary course of business.

B. Corporate Contributions Reported as Candidate Loans

In response to the DFAR, MBFI objected to the DFAR’s assertion that MBFI received \$1,500,000 in corporate checks from an impermissible source. MBFI provided a letter from the Candidate’s CPA confirming that the funds were the Candidate’s personal funds obtained from proceeds from selling his shares of

³ <https://www.fec.gov/resources/cms-content/documents/AH20211110.txt>

stock and not from a corporate impermissible source. The same letter was also provided in response to the Interim Audit Report.

During the audit hearing, MBFI stated that the Candidate personally contributed \$1,500,000 in stock proceeds to the campaign and acknowledged that it would have been advisable to have first deposited these funds into his personal account prior to the campaign account. MBFI also stated that these were not prohibited corporate contributions as the Audit Division contends.

Additional documents provided after the DFAR response and hearing request, but prior to the audit hearing being held, included the stock valuation and stock redemption agreement demonstrating the stock sale supported by the CPA's letter. The Audit staff notes that income from the Candidate's stocks or other investments including interest, dividends or proceeds from the sale or liquidation of such stocks or investments fall under income per 11 CFR§100.33(b)(2) and therefore, would not be corporate checks from an impermissible source.

The Audit staff recommends that the Commission find that the \$1,500,000 was received from a permissible source.

Finding 5. Receipt of Contributions in Excess of the Limit

A. Contributions from Individuals

In response to the DFAR, MBFI provided copies of reattribution and redesignation letters which did not materially resolve excessive contributions from individuals. However, some of the reattribution and redesignation letters were timely, which reduced the finding total from \$985,345 to \$898,166.⁴ MBFI stated the current treasurer found some refund checks that had been prepared by the former treasurer but not sent to the contributors, and further stated that it is unknown the extent to which "normal and customary procedures" of preparing reattribution and redesignation tasks were completed by the former treasurer.

Additionally, MBFI stated the Audit Division should amend this finding since the district court decision in *Ted Cruz for Senate v. Federal Election Commission*, Civil No. 19-cv-908 (D.C. Dist. Ct., June 3, 2021) held unconstitutional the candidate loan repayment provision at 52 U.S.C. § 30116(j). The district court decision is on appeal before the Supreme Court, which recently heard oral argument in the case. Considering the potential impact the Court's decision may have on this finding, MBFI believes "it is imperative for the Commission's Audit staff to either postpone or reconsider its audit findings, reissue a revised Draft Final Audit Report, and give the Committee the opportunity to respond to the revised Draft Final Audit Report." This issue was not discussed at the audit hearing.

The Audit staff acknowledges the potential impact that the Supreme Court's decision this term in *Cruz* may have on this portion of the proposed finding. The

⁴ This amount is based on sample testing and high dollar contributions not included in the sample population. The \$898,166 consists of contributions not resolved via presumptive letter or refund totaling \$271,010; contributions not resolved via signed reattribution letter or refund totaling \$566,556; and untimely resolved or refunded contributions totaling \$60,600.

Audit staff therefore recommends the Commission refrain from making a finding on whether MBFI received excessive contributions from individuals totaling \$898,166 until the Court issues its decision. Thereafter, the Audit staff will recommend disposition of this finding in a Final Addendum Audit Report for the Commission's consideration.

B. Contributions from Political Committees

In response to the DFAR, MBFI did not provide documentation demonstrating the political committees' contributions were not excessive. MBFI stated the current treasurer found some refund checks that had been prepared by the former treasurer but not sent to the contributors, and further stated that it is unknown the extent to which "normal and customary procedures" of preparing reattribution and redesignation tasks were completed by the former treasurer.

Additionally, MBFI stated the Audit Division should amend this finding since the district court decision in *Ted Cruz for Senate v. Federal Election Commission*, Civil No. 19-cv-908 (D.C. Dist. Ct., June 3, 2021) held unconstitutional the candidate loan repayment provision at 52 U.S.C. § 30116(j). The district court decision is on appeal before the Supreme Court, which recently heard oral argument in the case. Considering the potential impact the Court's decision may have on this finding, MBFI believes "it is imperative for the Commission's Audit staff to either postpone or reconsider its audit findings, reissue a revised Draft Final Audit Report, and give the Committee the opportunity to respond to the revised Draft Final Audit Report." This issue was not discussed at the audit hearing.

The Audit staff acknowledges the potential impact that the Supreme Court's decision this term in *Cruz* may have on this portion of the proposed finding. The Audit staff therefore recommends the Commission refrain from making a finding on whether MBFI received excessive contributions from political committees totaling \$188,212 until the Court issues its decision. Thereafter, the Audit staff will recommend disposition of this finding in a Final Addendum Audit Report for the Commission's consideration.

Finding 6. Disclosure of Memo Entries and Candidate Loans

A. Transfers from Joint Fundraising Committees

In response to the DFAR, MBFI filed amended disclosure reports that materially corrected disclosure of the joint fundraising memo entries. This matter was not discussed at the audit hearing.

The Audit staff recommends that the Commission find that MBFI failed to correctly disclose joint fundraising memo entries totaling \$933,814.

B. Disclosure of Loans

In response to the DFAR, MBFI did not correct the disclosure of loan terms and dates, repayment amounts, loan forgiveness, and outstanding balances on Schedule C (Loans) and Schedule C-1 (Loans and Lines of Credit from Lending Institutions). MBFI reiterated the statement it provided in response to the Interim Audit Report, "...it is still unclear to the Committee how the Audit

Division concluded that the Committee accepted two unreported candidate loans totaling \$96,520 since this finding does not correspond to any of the Committee's records." Furthermore, MBFI believes the Supreme Court's pending ruling in *Ted Cruz for Senate v. Federal Election Commission* will impact the facts and conclusions of this finding. MBFI believes "it is imperative for the Commission's Audit staff to either postpone or reconsider its audit findings, reissue a revised Draft Final Audit Report, and give the Committee the opportunity to respond to the revised Draft Final Audit Report." This matter was not discussed at the audit hearing.

The Audit staff notes that this finding is not related to MBFI making Candidate loan and interest repayments in excess of the \$250,000 limit permitted for repayment to the Candidate, as discussed in Finding 7. The Disclosure of Loans finding is based on whether or not the *reporting* of the loan terms is supported by the loan documentation provided by MBFI, and not based on the Candidate loan *repayment limitation* amount. Pursuant to 11 C.F.R. §§ 104.3(d) and 104.11, the Schedule C must disclose the date of the loan, original loan amount and payments to reduce the principal on each report until the loan is repaid. The Schedule C-1 must disclose the date, amount and interest rate of the loan, as well as the name and address of the lending institution. MBFI incorrectly disclosed loan terms and dates, repayment amounts, loan forgiveness, and outstanding balances on Schedules C and C-1, disclosure requirements which exists irrespective of the *Cruz* litigation cited by MBFI.

The Audit staff further notes that MBFI was provided the schedule of the unreported loans and lines of credit totaling \$96,520 at the exit conference and again upon receipt of MBFI's response to the Interim Audit Report. The converted candidate loans should have been disclosed as memo entries on Schedule A (Itemized Receipts) and Schedule B (Itemized Disbursements) or MBFI could have filed a Form 99 (Miscellaneous Electronic Submission) in lieu of filing amendments with memo entries for Schedules A and B.

The Audit staff recommends that the Commission find that MBFI failed to correctly disclose loan balances and loan terms for transactions totaling \$11,569,963.

Finding 7. Prohibited Candidate Personal Loan Repayments

In response to the DFAR, MBFI stated "To the extent that the facts and conclusions in Finding 7 relate to the \$250,000 loan repayment limit found in Section 403 of BCRA or the Committee's acceptance of debt retirement contributions, the Audit Division should amend this finding because of the recent federal court decision in *Ted Cruz for Senate v. Federal Election Commission*, Civil No. 19-cv-908 (D.C. Dist. Ct., June 3, 2021). Since many of the facts and conclusions of Finding 7 involve and are impacted by the loan repayment limit, the Commission's conclusions rely on an unconstitutional provision that renders Finding 7 invalid, or at least a portion of it." This matter was not discussed at the audit hearing.

The district court found the loan repayment provision at 52 U.S.C. § 30116(j) unconstitutional. *Ted Cruz for Senate v. Federal Election Commission*, Civil No.

19-cv-908 (D.C. Dist. Ct., June 3, 2021). The decision is now on appeal before the Supreme Court, which recently heard oral argument in the case. Considering the potential impact that the Supreme Court's decision this term in *Cruz* may have on this proposed finding, the Audit staff recommends the Commission refrain from making a finding on whether MBFI made excessive Primary candidate loan and interest repayments totaling \$750,669 until the Court issues its decision. Thereafter, the Audit staff will recommend disposition of this finding in a Final Addendum Audit Report for the Commission's consideration.

The Office of General Counsel has reviewed this memorandum and concurs with the recommendations.

If this memorandum is approved, the Proposed Final Audit Report will be prepared and circulated within 30 days of the Commission's approval.

If this Audit Division Recommendation Memorandum is not approved on a tally vote, Directive No. 70 states that the matter will be placed on the next regularly scheduled open session agenda.

Documents related to this audit report can be viewed in the Voting Ballot Matters folder. Should you have any questions, please contact Ryan Krogen or Rickida Morcomb at 694-1200.

Attachment:

- Draft Final Audit Report of the Audit Division on Mike Braun for Indiana

cc: Office of General Counsel



Draft Final Audit Report of the Audit Division on Mike Braun for Indiana

(August 7, 2017 - December 31, 2018)

Why the Audit Was Done

Federal law permits the Commission to conduct audits and field investigations of any political committee that is required to file reports under the Federal Election Campaign Act (the Act). The Commission generally conducts such audits when a committee appears not to have met the threshold requirements for substantial compliance with the Act.¹ The audit determines whether the committee complied with the limitations, prohibitions and disclosure requirements of the Act.

Future Action

The Commission may initiate an enforcement action, at a later time, with respect to any of the matters discussed in this report.

About the Campaign (p. 2)

Mike Braun for Indiana is the principal campaign committee for Michael K. Braun, Republican candidate for the United States Senate from the state of Indiana, and is headquartered in Zionsville, Indiana. For more information, see the Campaign Organization Chart, p. 2.

Financial Activity (p. 2)

• Receipts	
○ Contributions from Individuals	\$ 6,336,454
○ Contributions from the Candidate	13,938
○ Contributions from Other Political Committees	833,940
○ Transfers from Other Authorized Committees	802,946
○ Candidate Loans	11,666,483
○ Offsets to Operating Expenditures	3,097
Total Receipts	\$ 19,656,858
• Disbursements	
○ Operating Expenditures	\$ 18,016,343
○ Candidate Loan Repayments	1,148,925
○ Contribution Refunds	76,875
○ Other Disbursements	342,000
Total Disbursements	\$ 19,584,143

Findings and Recommendations (p. 3)

- Misstatement of Financial Activity (Finding 1)
- Failure to File 48-Hour Notices (Finding 2)
- Disclosure of Occupation and/or Name of Employer (Finding 3)
- Receipt of Apparent Prohibited Contributions – Loans (Finding 4)
- Receipt of Contributions in Excess of the Limit (Finding 5)
- Disclosure of Memo Entries and Candidate Loans (Finding 6)
- Prohibited Candidate Personal Loan Repayments (Finding 7)

¹ 52 U.S.C. §30111(b).



Draft Final Audit Report of the Audit Division on Mike Braun for Indiana

(August 7, 2017 - December 31, 2018)

DRAFT

Table of Contents

	Page
Part I. Background	
Authority for Audit	1
Scope of Audit	1
Part II. Overview of Campaign	
Campaign Organization	2
Overview of Financial Activity	2
Part III. Summaries	
Findings and Recommendations	3
Part IV. Findings and Recommendations	
Finding 1. Misstatement of Financial Activity	6
Finding 2. Failure to File 48-Hour Notices	8
Finding 3. Disclosure of Occupation and/or Name of Employer	10
Finding 4. Receipt of Apparent Prohibited Contributions – Loans	13
Finding 5. Receipt of Contributions in Excess of the Limit	22
Finding 6. Disclosure of Memo Entries and Candidate Loans	28
Finding 7. Prohibited Candidate Personal Loan Repayments	33

Part I

Background

Authority for Audit

This report is based on an audit of Mike Braun for Indiana (MBFI), undertaken by the Audit Division of the Federal Election Commission (the Commission) in accordance with the Federal Election Campaign Act of 1971, as amended (the Act). The Audit Division conducted the audit pursuant to 52 U.S.C. §30111(b), which permits the Commission to conduct audits and field investigations of any political committee that is required to file a report under 52 U.S.C. §30104. Prior to conducting any audit under this subsection, the Commission must perform an internal review of reports filed by selected committees to determine if the reports filed by a particular committee meet the threshold requirements for substantial compliance with the Act. 52 U.S.C. §30111(b).

Scope of Audit

Following Commission-approved procedures, the Audit staff evaluated various risk factors and as a result, this audit examined:

1. the receipt of excessive contributions and loans;
2. the receipt of contributions from prohibited sources;
3. the disclosure of contributions received;
4. the disclosure of individual contributors' occupation and name of employer;
5. the consistency between reported figures and bank records;
6. the completeness of records; and
7. other committee operations necessary to the review.

Part II

Overview of Campaign

Campaign Organization

Important Dates	
• Date of Registration	August 10, 2017 ²
• Audit Coverage	August 7, 2017 ³ - December 31, 2018
Headquarters	Zionsville, Indiana
Bank Information	
• Bank Depositories	One
• Bank Accounts	One checking account
Treasurer	
• Treasurer When Audit Was Conducted	Thomas Datwyler (1/1/2019 – Present)
• Treasurer During Period Covered by Audit	Travis Kabrick (8/7/2017 – 12/31/2018)
Management Information	
• Attended FEC Campaign Finance Seminar	Yes
• Who Handled Accounting and Recordkeeping Tasks	Paid Staff

Overview of Financial Activity (Audited Amounts)

Cash on hand @ August 7, 2017	\$ 0
Receipts	
○ Contributions from Individuals	6,336,454
○ Contributions from the Candidate	13,938
○ Contributions from Other Political Committees	833,940
○ Transfers from Other Authorized Committees	802,946
○ Candidate Loans	11,666,483
○ Offsets to Operating Expenditures	3,097
Total Receipts	\$ 19,656,858
Disbursements	
○ Operating Expenditures	18,016,343
○ Candidate Loan Repayments	1,148,925
○ Contribution Refunds	76,875
○ Other Disbursements	342,000
Total Disbursements	\$ 19,584,143
Cash on hand @ December 31, 2018	\$ 72,715

² MBFI filed a Statement of Organization on August 10, 2017. Mike Braun filed a Statement of Candidacy on August 9, 2017.

³ MBFI opened its bank account on August 7, 2017.

Part III

Summaries

Findings and Recommendations

Finding 1. Misstatement of Financial Activity

During audit fieldwork, a comparison of MBFI's reported financial activity with its bank records revealed a misstatement of receipts and disbursements in calendar year 2018. MBFI overstated receipts by \$6,293,350 and disbursements by \$6,294,482. In response to the Interim Audit Report recommendation, MBFI did not file amendments or a Form 99 (Miscellaneous Electronic Submission). MBFI stated, "...the former treasurer did not ultimately report the repayments from the Candidate's personal funds correctly" and that loan repayments should have been reported as in-kind contributions instead of as memo entries as recommended by the Audit staff. Absent the filing of amended reports or a Form 99, MBFI's receipts and disbursements remain misstated. (For more detail, see p. 6.)

Finding 2. Failure to File 48-Hour Notices

During audit fieldwork, the Audit staff identified that MBFI failed to file or untimely filed 48-hour notices for ten contributions totaling \$262,600. This amount included seven contributions totaling \$9,100 for which MBFI misreported contribution dates. In response to the Interim Audit Report recommendation, MBFI did not file amendments or a Form 99 (Miscellaneous Electronic Submission). MBFI stated the former treasurer failed to properly file the 48-hour notices and that "the Committee will amend the reports to report the correct dates of all contributions." Absent the filing of amended reports or a Form 99, MBFI did not correct the public record for the misreported dates of the seven contributions totaling \$9,100. (For more detail, see p. 8.)

Finding 3. Disclosure of Occupation and/or Name of Employer

During audit fieldwork, a review of contributions from individuals requiring itemization indicated that 1,363 contributions totaling \$1,464,449 lacked or inadequately disclosed the required occupation and/or name of employer information. MBFI did not sufficiently demonstrate "best efforts" to obtain, maintain and submit the required information. In response to the Interim Audit Report recommendation, MBFI did not file amendments or a Form 99 (Miscellaneous Electronic Submission), but stated it prepared amended reports and obtained the missing information for all but 387 contributors. Absent the filing of amended reports or a Form 99, MBFI did not correct the public record for contributions totaling \$1,464,449 that lacked or inadequately disclosed the required occupation and/or name of employer information. (For more detail, see p. 10.)

Finding 4. Receipt of Apparent Prohibited Contributions – Loans

During audit fieldwork, a review of loan documents provided by MBFI, indicated apparent prohibited loans and lines of credit totaling \$8,549,405. This included five loans and eleven lines of credit from financial institutions, totaling \$7,049,405, that did not appear to be made in the ordinary course of business. These loans were not made on a basis that assured repayment and, therefore, appeared to be prohibited contributions from the financial institutions.

Additionally, the Audit staff identified two checks from one corporation totaling \$1,500,000 that were reported as loans.

In response to the Interim Audit Report recommendation, MBFI did not provide documentation from MBFI's financial institutions, but stated it "fervently" disagreed that the loans and lines of credits were not made in the ordinary course of business and stated that the Audit Division had not correctly applied the law or Commission precedents. Additionally, MBFI stated that the Audit Division failed "to recognize that unsecured lines of credit are not unique to candidates for public office." MBFI also provided a letter it asserts supports that the two corporate checks were from a permissible source. However, no documentation was provided to support the assertions outlined within the letter. Absent additional documentation, the Audit staff maintains the loans and lines of credit totaling \$7,049,405 were not made on a basis that assured repayment and the \$1,500,000 in corporate checks were not from a permissible source.

(For more detail, see p. 13.)

Finding 5. Receipt of Contributions in Excess of the Limit

During audit fieldwork, the Audit staff reviewed contributions from individuals and political committees to determine if any exceeded the contribution limit. Based on these reviews, MBFI received apparent excessive contributions totaling \$1,173,557. This included apparent excessive contributions from individuals totaling \$985,345 and from political committees totaling \$188,212. These errors occurred as a result of MBFI not resolving the excessive portion of contributions in a timely manner and by designating contributions for Primary or General debt that had already been extinguished.

In response to the Interim Audit Report recommendation, MBFI did not provide documentation that the contributions in question were not excessive. MBFI stated it will provide confirmations from the contributors regarding the reattribution and redesignation of contributions, based on the reconciliations performed by MBFI's current treasurer. Absent documentation, the Audit staff maintains that MBFI received excessive contributions from individuals totaling \$985,345 and from political committees totaling \$188,212.

(For more detail, see p. 22.)

Finding 6. Disclosure of Memo Entries and Candidate Loans

During audit fieldwork, the Audit staff determined that MBFI failed to properly disclose joint fundraising memo entries totaling \$933,814 from 13 joint fundraising committees. MBFI also failed to properly disclose the correct loan balances and loan terms for 29

transactions totaling \$11,569,963. In response to the Interim Audit Report recommendation, MBFI did not file amendments or a Form 99 (Miscellaneous Electronic Submission) and did not provide any documentation. However, regarding disclosure of joint fundraising memo entries, MBFI stated “all have been corrected and will be included in the amendments that have been prepared to be filed.” Regarding the disclosure of loan balances and loan terms, MBFI did not agree with the finding. Absent filing of amendments or a Form 99, MBFI has not corrected the public record regarding memo entries from joint fundraisers totaling \$933,814, and loan balances and terms for transactions totaling \$11,569,963.
(For more detail, see p. 28.)

Finding 7. Prohibited Candidate Personal Loan Repayments

Based on a review of loans, the Audit staff determined that MBFI made excessive Primary candidate loan and interest repayments totaling \$750,669. This amount is in excess of the \$250,000 limit permitted for repayment to the Candidate within 20 days following the Primary election. In response to the Interim Audit Report recommendation, MBFI stated, “...the Audit Division should amend this finding because of the recent federal court decision in *Ted Cruz for Senate v. Federal Election Commission*, Civil No. 19-cv-908....” The Audit staff maintains MBFI did not comply with 11 CFR §116.11 (d).
(For more detail, see p. 33.)

Part IV

Findings and Recommendations

Finding 1. Misstatement of Financial Activity

Summary

During audit fieldwork, a comparison of MBFI's reported financial activity with its bank records revealed a misstatement of receipts and disbursements in calendar year 2018. MBFI overstated receipts by \$6,293,350 and disbursements by \$6,294,482. In response to the Interim Audit Report recommendation, MBFI did not file amendments or a Form 99 (Miscellaneous Electronic Submission). MBFI stated, "...the former treasurer did not ultimately report the repayments from the Candidate's personal funds correctly" and that loan repayments should have been reported as in-kind contributions instead of as memo entries as recommended by the Audit staff. Absent the filing of amended reports or a Form 99, MBFI's receipts and disbursements remain misstated.

Legal Standard

Contents of Reports. Each report must disclose:

- The amount of cash on hand at the beginning and end of the reporting period;
- The total amount of receipts for the reporting period and for the election cycle;
- The total amount of disbursements for the reporting period and for the election cycle; and
- Transactions that require itemization on Schedule A (Itemized Receipts) or Schedule B (Itemized Disbursements). 52 U.S.C. §30104(b)(1), (2), (3), (4), and (5).

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff reconciled MBFI's reported financial activity with its bank records for calendar years 2017 and 2018. In addition to the bank records provided by MBFI, on May 9, 2019, the Commission issued subpoenas to one vendor and its financial institution to obtain documentation necessary to complete the comparison of MBFI's financial activity to the information contained in the disclosure reports filed with the Commission.⁴ The reconciliation determined that MBFI misstated receipts and disbursements for 2018. The following chart details the discrepancies between MBFI's disclosure reports and bank activity. The succeeding paragraphs explain why the discrepancies occurred.

2018 Committee Activity			
	Reported	Bank Records	Discrepancy
Beginning Cash on hand @ January 1, 2018	\$2,313,439	\$2,313,439	\$0
Receipts	\$22,376,798	\$16,083,448	\$6,293,350

⁴ MBFI was cooperative and attempted to comply with the Audit staff's request for documentation but was unable to obtain the requested information from the associated vendors, resulting in the issuance of subpoenas.

2018 Committee Activity			
	Reported	Bank Records	Discrepancy
			Overstated
Disbursements	\$24,618,654	\$18,324,172	\$6,294,482 Overstated
Ending Cash on hand @ December 31, 2018	\$71,583	\$72,715	\$1,132 Understated

The overstatement of receipts resulted from the following:

• Two unreported Candidate loans	+ 96,520
• Candidate loans incorrectly reported	- 6,388,558
• Unexplained differences	- 1,312
Net Overstatement of Receipts	<u>\$ 6,293,350</u>

The overstatement of disbursements resulted from the following:

• Disbursements not reported or reported incorrectly	+ 2,736
• Credit card fees over-reported	- 4,472
• Candidate loan repayments not reported	+ 96,520
• Candidate loans incorrectly reported	- 6,388,558
• Unexplained differences	- 708
Net Overstatement of Disbursements	<u>\$ 6,294,482</u>

The \$1,132 understatement of the ending cash on hand was a result of the reporting discrepancies described above.

The Candidate loan and loan repayments totaling \$6,388,558 were the result of MBFI misreporting the conversion of Candidate loans to contributions. The converted loan amounts should have been disclosed as memo entries on Schedule A (Itemized Receipts) and Schedule B (Itemized Disbursements), given the campaign finance software used by MBFI.⁵ Instead, MBFI reported the loan amounts as transactions on Schedules A and B, which overstated receipts and disbursements, respectively.

The credit card fees totaling \$4,472 were the net result of some fees being over-reported and some fees being under-reported.

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter during the exit conference with MBFI representatives and provided schedules detailing the misstatement of financial activity.

In response to the exit conference, MBFI submitted a written response as follows:

“The Committee provided documentation related to this finding during the audit process, including access to all banking records, electronic transaction processors,

⁵ Various campaign finance software handle the conversion of a candidate loan to a contribution differently, but in no case should this conversion be reported as an in-kind contribution. The software used by MBFI treats the conversion of a candidate loan to a contribution as memo entries on Schedules A and B. Regardless of which campaign finance software a committee chooses to use, the amounts in the disclosure reports must match the bank statement activities.

and the Committee’s electronic information database. The Committee has no new materials to provide with this response, but it is the Committee’s belief that the FEC’s preliminary finding mischaracterizes certain transactions. The Committee will likely be requesting Commission guidance on legal questions related to this finding⁶, and the Committee intends to take further corrective action as may be required at the conclusion of this matter.”

The Interim Audit Report recommended that MBFI amend its disclosure reports or file a Form 99⁷ to correct the misstatements noted above and reconcile the cash balance on its most recently filed report to correct any subsequent discrepancies.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, MBFI stated, “...the former treasurer did not ultimately report the repayments from the Candidate’s personal funds correctly” and “The current treasurer has since conferred with the software provider and legal counsel, and they are all in agreement that the proper reporting of the payments is as an in-kind contribution.” MBFI stated that the lines of credit were in the name of the Candidate and repaid from his personal funds, without first being deposited into MBFI’s bank account, and it prepared amended reports to “more clearly disclose the source(s) of the funds.” MBFI also stated that “...while the transaction(s) were not reported on the correct lines of the FEC report, all the transactions were publicly disclosed.”

The Audit staff notes the Candidate loans and lines of credit were not taken out in the name of MBFI, as such, the repayments were not made on behalf of MBFI and should not be reported as in-kind contributions. The transactions were between the Candidate and the financial institution. As a result, and in consultation with the Reports Analysis Division, the Audit staff maintains that the converted loans should have been disclosed as memo entries on Schedule A and Schedule B, given the campaign finance software used by MBFI⁵, rather than in-kind contributions. The Audit staff further notes that MBFI has not filed amendments or a Form 99 as of this report.

Absent the filing of amended reports or a Form 99, MBFI’s 2018 receipts remain overstated by \$6,293,350 and disbursements overstated by \$6,294,482.

Finding 2. Failure to File 48-Hour Notices

Summary

During audit fieldwork, the Audit staff identified that MBFI failed to file or untimely filed 48-hour notices for ten contributions totaling \$262,600. This amount included seven contributions totaling \$9,100 for which MBFI misreported contribution dates. In response to the Interim Audit Report recommendation, MBFI did not file amendments or a Form 99 (Miscellaneous Electronic Submission). MBFI stated the former treasurer failed to properly file the 48-hour notices and that “the Committee will amend the reports

⁶ MBFI did not submit a Request for Consideration of a Legal Question by the Commission with respect to this finding.

⁷ MBFI was advised by the Audit staff that if it chose to file a Form 99, instead of amending its disclosure reports, the form must contain all pertinent information that is required on each schedule.

to report the correct dates of all contributions.” Absent the filing of amended reports or a Form 99, MBFI did not correct the public record for the misreported dates of the seven contributions totaling \$9,100.

Legal Standard

Last-Minute Contributions (48-Hour Notice). Campaign committees must file special notices regarding contributions of \$1,000 or more received less than 20 days but more than 48-hours before any election in which the candidate is running. This rule applies to all types of contributions to any authorized committee of the candidate, including:

- Contributions from the candidate;
- Loans from the candidate and other non-bank sources; and
- Endorsements or guarantees of loans from the banks. 11 CFR §104.5(f).

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff identified 302 contributions totaling \$2,345,363 that equaled or exceeded \$1,000 and were received during the 48-hour notice reporting period for the Primary and General elections. A review of these contributions indicated that MBFI did not file 48-hour notices for three contributions totaling \$3,400 and untimely filed 48-hour notices for seven contributions totaling \$259,200. These contributions are summarized below.

	Primary	General	Total
48-Hour Notices Not Filed	\$0	\$3,400	\$3,400
48-Hour Notices Filed Untimely	\$253,500	\$5,700	\$259,200
TOTAL	\$253,500	\$9,100	\$262,600

In addition, seven contributions totaling \$9,100 for the General election, noted above, were disclosed with the incorrect receipt dates.

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter during the exit conference with MBFI representatives and provided a schedule of the contributions for which 48-hour notices were not filed or were filed in an untimely manner, as well as contributions with misreported dates.

In response to the exit conference, MBFI submitted a written response as follows:

“The Committee provided documentation related to this finding during the audit process, including providing the FEC with access to the Committee’s accounts and electronic information database. The Committee has no new materials to provide with this response, and the Committee intends to take any such corrective action as may be required at the conclusion of this matter.”

The Interim Audit Report recommended that MBFI provide any additional comments it deemed necessary and submit documentation demonstrating that:

- The 48-hour notices for the contributions in question were timely filed;
- The contributions were received outside of the 48-hour notice reporting period; and
- Amend its disclosure reports or file a Form 99⁷ to correct the misreported dates for the seven contributions totaling \$9,100.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, MBFI stated, “Although the former treasurer’s failure to file 48-hour notices is uncorrectable at this point, the Committee will amend the reports to report the correct dates of all contributions if the Audit Division’s team will provide to the Committee a list of 48-hour notices that were either not timely filed or not filed at all.”

The Audit staff notes, as stated in Section B of this finding, MBFI was provided with a schedule of the contributions for which 48-hour notices were not filed or were filed in an untimely manner, as well as contributions with misreported dates at the exit conference. In addition, the Audit staff offered to send the schedule again with the issuance of the Interim Audit Report if MBFI requested it; however, MBFI did not make the request at that time. The Audit staff again provided the relevant information upon receipt of MBFI’s response to the Interim Audit Report.

The Audit staff acknowledges MBFI’s statement that the “...former treasurer’s failure to file 48-hour notices is uncorrectable at this point...” as the response to why there were untimely and unfiled 48-hour notices totaling \$262,600. However, absent the filing of amended reports or a Form 99, MBFI has not corrected the public record for the misreported dates of the seven contributions totaling \$9,100.

Finding 3. Disclosure of Occupation and/or Name of Employer

Summary

During audit fieldwork, a review of contributions from individuals requiring itemization indicated that 1,363 contributions totaling \$1,464,449 lacked or inadequately disclosed the required occupation and/or name of employer information. MBFI did not sufficiently demonstrate “best efforts” to obtain, maintain and submit the required information. In response to the Interim Audit Report recommendation, MBFI did not file amendments or a Form 99 (Miscellaneous Electronic Submission), but stated it prepared amended reports and obtained the missing information for all but 387 contributors. Absent the filing of amended reports or a Form 99, MBFI did not correct the public record for contributions totaling \$1,464,449 that lacked or inadequately disclosed the required occupation and/or name of employer information.

Legal Standard

- A. Itemization Required for Contributions from Individuals.** An authorized candidate committee must itemize any contribution from an individual if it exceeds

\$200 per election cycle, either by itself or when combined with other contributions from the same contributor. 52 U.S.C. §30104(b)(3)(A).

B. Required Information for Contributions from Individuals. For each itemized contribution from an individual, the committee must provide the following information:

- The contributor’s full name and address (including zip code);
- The contributor’s occupation and the name of his or her employer;
- The date of receipt (the date the committee received the contribution);
- The amount of the contribution; and
- The election cycle year-to-date total of all contributions from the same individual. 52 U.S.C. §30104(b)(3)(A) and 11 CFR §§100.12 and 104.3(a)(4)(i).

C. Best Efforts Ensure Compliance. When the treasurer of a political committee shows that the committee used best efforts (see below) to obtain, maintain, and submit the information required by the Act, the committee’s reports and records will be considered in compliance with the Act. 52 U.S.C. §30102(i) and 11 CFR §104.7(a).

D. Definition of Best Efforts. The treasurer and the committee will only be deemed to have exercised “best efforts” if the committee satisfied all of the following criteria.

- All written solicitations for contributions included:
 - A clear request for the contributor's full name, mailing address, occupation, and name of employer; and
 - The statement that such reporting is required by Federal law.
- Within 30 days of receipt of the contribution, the treasurer made at least one effort to obtain the missing information, in either a written request or a documented oral request.
- The treasurer reported any contributor information that, although not initially provided by the contributor, was obtained in a follow-up communication or was contained in the committee’s records or in prior reports that the committee filed during the same two-year election cycle. 11 CFR §104.7(b).

Facts and Analysis

A. Facts

MBFI did not disclose or inadequately disclosed the required occupation and/or name of employer information for contributions requiring itemization on its FEC reports, as of the date of the audit notification letter.

Contribution Lacking or Inadequate Occupation and/or Name of Employer Disclosure	
Number of Contributions	1,363
Dollar Value of Contributions	\$1,464,449
Percent of Contributions	26%

1. Contributor Information Provided but Amendments Not Filed:

During audit fieldwork, MBFI provided the Audit staff with the required contributor occupation and/or name of employer information; however, MBFI did not report the required amendments for the following:

Contributor Information Provided but Amendments Not Filed	
Number of Contributions	88 ⁸
Dollar Value of Contributions	\$73,622

2. Best Efforts Documentation Not Provided:

MBFI did not provide the Audit staff records to document “best efforts” for the following:

Best Efforts Documentation Not Provided by Committee	
Number of Contributions	1,275
Dollar Value of Contributions	\$1,390,827

3. Additional Information:

MBFI disclosed the following unacceptable entries on Schedule A:

- “Information Requested” for 1,125 contributions totaling \$1,340,623, and
- Inadequate occupation and/or name of employer for 238 contributions totaling \$123,826.

B. Interim Audit Report & Audit Division Recommendation

The Audit staff provided schedules and discussed the disclosure of the contributors’ occupation and/or name of employer information with MBFI representatives during audit fieldwork and at the exit conference. MBFI representatives did not provide any comments during audit fieldwork.

In response to the exit conference, MBFI submitted a written response as follows:

“The Committee provided documentation related to this finding during the audit process and has no new materials to provide with this response. To date, the Committee has made additional preemptive adjustments to its contributor information and intends to take any such corrective action as may be required at the conclusion of this matter.”

⁸ MBFI’s database for the audit period, provided to the Audit staff during fieldwork, contained the occupation and name of employer information.

The Interim Audit Report recommended that MBFI amend its reports or file a Form 99⁷ to report and submit the occupation and/or name of employer information for the 1,363 contributions.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, MBFI submitted a written response as follows:

“The Committee has researched all donors whose contributions require ‘best efforts’ to obtain and report employer/occupation information. Amended reports have been prepared and the Committee has obtained and will report employer/occupation information for most donors for which the Audit Division identified as missing information. As of this writing, there are only 387 remaining donors with ‘Information Requested’ for the 2018 election cycle. The Committee will continue its ongoing ‘best efforts’ to obtain and report the employer/occupation information for the remaining 387 donors from the 2018 election cycle.”

The Audit staff notes that MBFI has not filed amendments or a Form 99 as of this report. Absent the filing of amended reports or a Form 99, MBFI has not corrected the public record for contributions totaling \$1,464,449 that lacked or inadequately disclosed the required occupation and/or name of employer information.

Finding 4. Receipt of Apparent Prohibited Contributions – Loans

Summary

During audit fieldwork, a review of loan documents provided by MBFI, indicated apparent prohibited loans and lines of credit totaling \$8,549,405. This included five loans and eleven lines of credit from financial institutions, totaling \$7,049,405, that did not appear to be made in the ordinary course of business. These loans were not made on a basis that assured repayment and, therefore, appeared to be prohibited contributions from the financial institutions.

Additionally, the Audit staff identified two checks from one corporation totaling \$1,500,000 that were reported as loans.

In response to the Interim Audit Report recommendation, MBFI did not provide documentation from MBFI’s financial institutions, but stated it “fervently” disagreed that the loans and lines of credits were not made in the ordinary course of business and stated that the Audit Division had not correctly applied the law or Commission precedents. Additionally, MBFI stated that the Audit Division failed “to recognize that unsecured lines of credit are not unique to candidates for public office.” MBFI also provided a letter it asserts supports that the two corporate checks were from a permissible source. However, no documentation was provided to support the assertions outlined within the letter. Absent additional documentation, the Audit staff maintains the loans and lines of credit totaling \$7,049,405 were not made on a basis that assured repayment and the \$1,500,000 in corporate checks were not from a permissible source.

Legal Standard

A. Loans Excluded from the Definition of Contribution. A loan of money to a political committee by a state bank, a federally chartered depository institution (including national bank) or a depository institution whose deposits and accounts are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration is not a contribution by the lending institution if such loan is made in accordance with applicable banking laws and regulations and is made in the ordinary course of business.

A loan will be deemed to be made in the ordinary course of business if it bears the usual and customary interest rate of the lending institution for the category of loan involved; is made on a basis which assures repayment; is evidenced by a written instrument and is subject to a due date or amortization schedule. 11 CFR §100.82(a).

B. Assurance of Repayment. Commission regulations state a loan is considered made on a basis which assures repayment if:

- The lending institution making the loan has perfected a security interest in collateral owned by the candidate or political committee receiving the loan;
- Amounts guaranteed by secondary sources of repayment, such as guarantors and cosigners, do not exceed the contribution limits of 11 CFR part 110;
- The lending institution making the loan has obtained a written agreement whereby the candidate or political committee receiving the loan has pledged future receipts, such as public financing payments; and
- If these requirements are not met, the Commission will consider the totality of circumstances on a case by case basis in determining whether the loan was made on a basis which assured repayment. 11 CFR §100.82(e).

C. Gift, subscription, loan, advance or deposit of money. A loan is a contribution at the time it is made and is a contribution to the extent that it remains unpaid. The aggregate amount loaned to a candidate or committee by a contributor, when added to other contributions from that individual to that candidate or committee, shall not exceed the contribution limits set forth at CFR § 110. A loan, to the extent it is repaid, is no longer a contribution. 11 CFR §100.52(b)(2).

D. Receipt of Prohibited Contributions General Prohibition. Candidates and committees may not accept contributions (in the form of money, in-kind contributions or loans):

- In the name of another; or
- From the treasury funds of the following prohibited sources:
 - Corporations (this means any incorporated organization, including a non-stock corporation, an incorporated membership organization, and an incorporated cooperative);
 - Federal government contractors (including partnerships, individuals, and sole proprietors who have contracts with the federal government); and
 - Foreign nationals (including individuals who are not U.S. citizens and not lawfully admitted for permanent residence; foreign governments and foreign political parties; and groups organized under the laws of a foreign

country or groups whose principal place of business is in a foreign country, as defined in 22 U.S.C. §611(b). 52 U.S.C. §§30118, 30119, 30121, and 30122.

E. Receipt of Prohibited Corporate Contributions. Political committees may not accept contributions from the general treasury funds of corporations. This prohibition applies to any type of corporation including a non-stock corporation, an incorporated membership organization, and an incorporated cooperative. 52 U.S.C. §30118.

F. Questionable Contributions. It is the Treasurer's responsibility to ensure that all contributions are lawful. 11 CFR §103.3(b). If a committee receives a contribution that appears to be prohibited (a questionable contribution), it must follow the procedures below:

- Within 10 days after the treasurer receives the questionable contribution, the committee must either:
 - Return the contribution to the contributor without depositing it; or
 - Deposit the contribution (and follow the steps below). 11 CFR §103.3(b)(1).
- If the committee deposits the questionable contribution, it may not spend the funds and must be prepared to refund them. It must therefore maintain sufficient funds to make the refunds or establish a separate account in a campaign depository for possibly illegal contributions. 11 CFR §103.3(b)(4).
- The committee must keep a written record explaining why the contribution may be prohibited and must include this information when reporting the receipt of the contribution. 11 CFR §103.3(b)(5).
- Within 30 days of the treasurer's receipt of the questionable contribution, the committee must make at least one written or oral request for evidence that the contribution is legal. Evidence of legality includes, for example, a written statement from the contributor explaining why the contribution is legal or an oral explanation that is recorded by the committee in a memorandum. 11 CFR §103.3(b)(1).
- Within these 30 days, the committee must either:
 - Confirm the legality of the contribution; or
 - Refund the contribution to the contributor and note the refund on the report covering the period in which the refund was made. 11 CFR §103.3(b)(1) and (5).

G. Reporting Bank Loans, Home Equity Loans and Other Lines of Credit. When a political committee obtains a loan from, or establishes a line of credit at, a lending institution as described in 11 CFR §100.82(a) through (d) and 100.142(a) through (d), it shall disclose in the report covering the period when the loan was obtained, the following information on Schedules C-1:

- The types and value of the collateral or other sources of repayment that secure the loan or line of credit, and whether that security interest is perfected;
- An explanation of the basis upon which the loan was made or the line of credit established, if not made on the basis of either traditional collateral or the other sources of repayment described in 11 CFR §§100.82(e)(1) and (2) and 100.142(e)(1) and (2); and

- A certification from the lending institution that the borrower's responses to 11 CFR §104.3(d)(1)(i)-(iv) are accurate, to the best of the lending institution's knowledge; that the loan was made or the line of credit established on terms and conditions (including interest rate) no more favorable at the time than those imposed for similar extensions of credit to other borrowers of comparable credit worthiness; and that the lending institution is aware of the requirement that a loan or a line of credit must be made on a basis which assures repayment and that the lending institution has complied with Commission regulations at 11 CFR §100.82(a) through (d) and 100.142(a) through (d). 11 CFR §104.3(d)(1)(iii)-(v).

H. Income. Income received during the current election cycle, of the candidate, including:

- A salary and other earned income that the candidate earns from bona fide employment;
- Income from the candidate's stocks or other investments including interest, dividends, or proceeds from the sale or liquidation of such stocks or investments;
- Bequests to the candidate;
- Income from trusts established before the beginning of the election cycle;
- Income from trusts established by bequest after the beginning of the election cycle of which the candidate is the beneficiary;
- Gifts of a personal nature that had been customarily received by the candidate prior to the beginning of the election cycle; and
- Proceeds from lotteries and similar legal games of chance. 11 CFR §100.33(b)(1)-(7).

Facts and Analysis

A. Assurance of Repayment - Bank Loans

1. Facts

MBFI received five loans and eleven lines of credit totaling \$7,049,405. These loans consisted of promissory/consumer bank notes and open-ended lines of credit in the name of the Candidate, Mike Braun ('Candidate'), supported with agreements from five lending institutions.

Information About the Bank Loans

- None of the five lending institution agreements provided to the Audit staff indicated collateral⁹ or guarantors were used to secure the loans and lines of credit.
- MBFI reported \$2,856,163 in loans and lines of credit as secured with collateral on Schedule C-1 (Loans and Lines of Credit from Lending Institutions). The remaining \$4,193,242 in loans were not reported as secured.

⁹ The Audit staff reviewed the Candidate's financial forms filed with the Senate. Based on these documents, the Candidate appeared to have enough personal equity to cover the loans obtained. However, no property or assets were listed as collateral on the financial institution documents, provided to the Audit staff, to secure the loans and lines of credit.

Based upon the documents provided by MBFI, it did not appear that the loans were made in the ordinary course of business because, per 11 CFR §100.82(e), they were not made on a basis that assured repayment based on either of the following:

- A loan may be considered made on a basis that assures repayment if the lending institution making the loan perfects a security interest in collateral owned by the candidate or political committee receiving the loan. Documents supplied by MBFI showed no guarantor nor collateral offered to the financial institutions making the loans.
- A loan may be considered made on a basis that assures repayment if the lending institution has obtained a written agreement whereby the candidate or political committee receiving the loan has pledged future receipts. MBFI did not provide documentation to support that it or the Candidate gave the financial institutions a pledge of future receipts or other method of assuring repayment.

2. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter with MBFI representatives during audit fieldwork and at the exit conference and provided a schedule of the loans. During audit fieldwork, MBFI verified loan receipt and repayment amounts and provided additional loan documentation.

In response to the exit conference, MBFI submitted a written response as follows:

“As requested by the FEC, the Committee provided extensive documentation for the loan agreements considered by the FEC in this preliminary finding. The Committee has no new materials to provide with this response, but it is the Committee’s belief that the documentation already provided establishes that the loans in question were provided by commercial lenders on terms customary in the ordinary course of business. The Committee will likely be requesting Commission guidance on legal questions related to this finding, and the Committee intends to take further corrective action as may be required at the conclusion of this matter.”¹⁰

The Interim Audit Report recommended that MBFI demonstrate the loans and lines of credit totaling \$7,049,405 were made in the ordinary course of business and were made on a basis that assured repayment. Documentation could have included, but was not limited to submission of:

- Fully signed copy of the loan agreement.
- Required lending institution certifications.
- Amended disclosure reports, consistent with 11 C.F.R. §104.3(d)(1), to support its contention that the loans and lines of credit were made on a basis that assured repayment.
- Other information to demonstrate that the loans and lines of credit were based on the assurance of repayment to include the following information from each

¹⁰ On April 8, 2020, counsel for MBFI submitted a Request for Consideration of a Legal Question by the Commission (Request). MBFI asked whether an unsecured line of credit issued by a commercial lending institution to a “high-net-worth, creditworthy” candidate may be deemed to be made within the ordinary course of business under 11 C.F.R. §100.82. Two or more Commissioners did not agree to consider the Request. MBFI was informed of this outcome on April 21, 2020.

of the lending institutions at issue: (1) the length of time of the Candidate's relationship with the bank; (2) the Candidate's creditworthiness, net worth, assets and repayment history; (3) the bank's underwriting criteria for unsecured loans of the type made to the Candidate; and (4) information demonstrating that the loan terms were not unduly favorable to the candidate.

3. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, MBFI stated it "ferverly disagrees with this finding" for the following reasons:

- (i) "The Audit Division simply fails to recognize that unsecured lines of credit are not unique to candidates for public office."

MBFI provided a redacted copy of an unsecured line of credit issued to the MBFI counsel in March 2017. MBFI asserted that commercial lending institutions provide unsecured lines of credit to "creditworthy" individuals who are unlikely to default on the loan. MBFI counsel stated he was able to obtain the unsecured line of credit "without a net worth that remotely approaches that of the Candidate's."

- (ii) "Under Commission rules, a perfected security is a "safe harbor," not an essential element, for demonstrating assurance of repayment."

"...it is the undersigned counsel's understanding and belief that the commercial lending institutions that made the [l]oans did so in their ordinary course of business (i.e., in their own commercial interests), and not for the purpose of influencing the outcome of the Candidate's candidacy."

According to MBFI, "There should be no dispute" that the loans satisfy three of the four components necessary for a loan to be deemed made in the ordinary course of business per 11 CFR §100.82 and §104.3(d)(1)(iii)-(v). Regarding the fourth component, MBFI stated, "The critical inquiry, therefore, is whether the [l]oans were made on a basis that assures repayment." MBFI further stated, "Commission rules provide several express ways for commercial lending institutions to satisfy this remaining element, including obtaining a perfected security interest in collateral such as real or personal property and certificates of deposit, or a written agreement pledging a security in future receipts. While candidates, political committees, and the commercial lending institutions may rely on these express provisions as a 'safe harbor,' the Commission's rules also contain a fallback provision that permits the Commission to apply a 'totality of the circumstances' test to determine whether loans were made on a basis that assures repayment."

- (iii) "Prior Commission advisory opinions and enforcement decisions indicate deference to commercial lending institutions in assuring repayment, including considerations of the candidate's creditworthiness."

MBFI stated, "In its own advisory opinions..., the Commission has noted that the critical inquiry is whether the terms, placed within the larger understanding of the relationship between the lending institution and the

borrower, evidence an agreement that mitigates the risk of the loans to such a degree that repayment is assured.”

MBFI further stated, “...the deference ordinarily given to a lending institution’s commercial judgment (i.e., their own commercial interest) is not eliminated from the analysis simply because the loans are unsecured. Rather, the Commission must nonetheless give that deference while performing its analysis to determine whether significant risk mitigation still exists in the relationship between the parties to the agreement.”

MBFI noted that in the Cunningham Advisory Opinion (AO 1994-26), the Commission highlighted that “unsecured lines of credit can be made on a basis that assures repayment” and that the AO “cited several important contextual factors, including: the long-standing relationship between the commercial lender and the candidate; that the interest rates and additional contractual clauses were standard form agreement provisions matching agreements given to other customers; and the terms were not unduly favorable to the candidate.”

MBFI further noted that in the Matter Under Review (MUR) 5198 (Cantwell) enforcement matter, “the Commission considered the prior existing relationship between the candidate and the lending institution. Importantly, the Commission’s analysis emphasized how the candidate’s personal net worth far exceeded the actual value of the line of credit, and the Commission ultimately concluded that the banking institution validly relied on the very favorable ratio between the candidate’s net worth and the value of the line of credit to determine that the risk of non-repayment was small.”

MBFI concluded that, “the Commission accepted the lending institution’s conclusion that the loan agreement sufficiently mitigated the risk of non-repayment because it bore the signature of a high-net-worth, creditworthy individual who, in the bank’s own judgment, was very unlikely to default on the loan.”

Concerning section (i) above, the redacted bank documentation provided by MBFI demonstrates that no collateral was provided for the MBFI *counsel’s* line of credit. However, the Audit staff notes MBFI did not provide the fully signed copy of a loan agreement, lending institution certificates or any other documentation from its financial institutions demonstrating that MBFI’s loans were not unduly favorable to the Candidate, as required by 11 C.F.R. §104.3(d)(1).

Concerning section (ii) above, the Audit staff agrees this finding is about MBFI receiving loans and lines of credit that were not made on the basis of assured repayment, because: (1) documentation provided by MBFI showed no guarantor nor collateral offered to the financial institutions making the loans and (2) MBFI did not provide documentation to support that it or the Candidate gave the financial institutions a pledge of future receipts or other method of assuring repayment. The Commission can make a determination based on the totality of circumstances on a case-by-case basis in determining whether the loans were made on a basis which

assured repayment. However, based upon the submitted documentation, the Audit staff believes MBFI did not demonstrate the loans and lines of credit were made on a basis of assured repayment due to the reasons listed above, irrespective of the totality of circumstances.

Concerning section (iii) above, the Audit staff notes that MBFI's reference to Advisory Opinion 1994-26 and MUR 5198 is applicable. However, MBFI failed to provide documentation to demonstrate that the loans and lines of credit were based on the assurance of repayment to include the following information from each of the lending institutions at issue: (1) the length of time of the Candidate's relationship with the bank; (2) the Candidate's creditworthiness, net worth, assets and repayment history; (3) the bank's underwriting criteria for unsecured loans of the type made to the Candidate; and (4) information demonstrating that the loan terms were not unduly favorable to the Candidate. Absent this documentation, the Audit staff maintains the loans and lines of credit totaling \$7,049,405 were not made in the ordinary course of business because they were not made on a basis that assured repayment.

B. Corporate Contributions Reported as Candidate Loans

1. Facts

During audit fieldwork, the Audit staff identified two checks received by MBFI totaling \$1,500,000 that appeared to be from a corporation, which is a prohibited source. These checks, dated October 17, 2018 and October 25, 2018, were from Meyer Distributing, and were reported as loans on Schedule C (Loans), and memo text identified these transactions as 'Personal Funds'. The Audit staff verified the corporate status of Meyer Distributing, as of the date of the contribution, with the applicable Secretary of State office. Based on the Indiana Secretary of State website, this business entity is a for-profit corporation. The Candidate was President of Meyer Distributing during the audit period. Loans other than from lending institutions are considered contributions to the extent of the outstanding balance of the loan. MBFI did not repay the \$1,500,000; rather MBFI reported \$1,250,000 as a contribution from the Candidate on the disclosure reports and reported the remaining \$250,000 as an outstanding loan balance on the disclosure reports.

However, MBFI did not correctly report the \$1,250,000 contribution from the Candidate as a memo entry (see Finding 1. Misstatement of Financial Activity). MBFI did not maintain a separate account for questionable contributions. Additionally, MBFI did not maintain a sufficient balance in its bank account to refund the apparent prohibited contributions.

2. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter with MBFI representatives during audit fieldwork as well as at the exit conference and provided a schedule of the apparent prohibited contributions. MBFI representatives did not provide any comments during audit fieldwork.

In response to the exit conference, MBFI submitted a written response as follows:

“To support this preliminary finding, the FEC identified two checks paid from Meyer Distributing to Mike Braun. Despite the FEC’s mischaracterization of these checks, the Committee properly reported the associated value of these checks as loans to the Committee. The Committee intends to provide additional documentation demonstrating that the checks in question were initially issued to Mr. Braun, pursuant to his employment agreement, as compensation for services that he provided to Meyer Distributing; however, the Committee has been unable to obtain the relevant documentation because of the ongoing COVID-19 crisis, and the information will be provided to the FEC upon its receipt. Furthermore, Mr. Braun then endorsed these payments to the Committee directly as a loan to the Committee without first depositing and re-issuing payment, an option permitted by FEC rules.”

“The Committee’s compliance with the FEC’s recommendation regarding this preliminary finding would cause the Committee to knowingly misrepresent the transactions in question and incorrectly disclose prohibited corporate contributions that did not take place. Therefore, the Committee declines to take the FEC’s recommended remedial action at this time.”

MBFI contended that the \$1,500,000 represented compensation paid to the Candidate from Meyer Distributing for services rendered pursuant to his employment agreement. MBFI did not provide the employment agreement or any additional documentation regarding the checks in question.

The Interim Audit Report recommended that MBFI:

- Submit documentation demonstrating that the funds represented salary or other income the Candidate earned from bona fide employment and thus were the personal funds of the Candidate. Or that the contributions in question totaling \$1,500,000 were not from a prohibited source or, if prohibited, were resolved through the timely issuance of refunds.
- Absent documentation that the funds were from a permissible source or were timely resolved, MBFI should have refunded these apparent prohibited contributions to the corporation or disgorged them to a governmental entity or to a qualified charitable organization.¹¹
- If funds were not available to make the necessary refunds or disgorgement, MBFI should have disclosed the contributions requiring refunds on Schedule D (Debts and Obligations) until funds became available to make such refunds.

3. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, MBFI stated these funds were “...the personal funds owed by Meyer Distributing to the Candidate, and the Candidate paid taxes on the amount as income to him.” To support this statement, MBFI provided a letter from the Candidate’s Certified Public Accountant (CPA). The Audit staff notes that MBFI’s exit conference response indicated that the funds in question were compensation for services the Candidate provided Meyer Distributing; however, the letter from the CPA, in response to the Interim Audit Report, states the funds were for stock sale. The Audit staff further notes MBFI did not provide any

¹¹ See 26 U.S.C. §170(c).

documentation the CPA indicates he reviewed to make the determination the funds were from the sale of stock and the CPA appeared to not have first-hand knowledge of the transactions. Additional documentation is needed to assist the Commission in determining whether the \$1,500,000 was from the sale of stock.

Political committees must maintain records which provide in sufficient detail the necessary information and data from which filed reports and statements may be verified. Absent records such as a stock purchase agreement between the Candidate and Meyers Distributing, or the financial documents that the CPA reviewed to determine the stock sale, the Audit staff maintains the \$1,500,000 appears to be from a prohibited source.

Finding 5. Receipt of Contributions in Excess of the Limit

Summary

During audit fieldwork, the Audit staff reviewed contributions from individuals and political committees to determine if any exceeded the contribution limit. Based on these reviews, MBFI received apparent excessive contributions totaling \$1,173,557. This included apparent excessive contributions from individuals totaling \$985,345 and from political committees totaling \$188,212. These errors occurred as a result of MBFI not resolving the excessive portion of contributions in a timely manner and by designating contributions for Primary or General debt that had already been extinguished.

In response to the Interim Audit Report recommendation, MBFI did not provide documentation that the contributions in question were not excessive. MBFI stated it will provide confirmations from the contributors regarding the reattribution and redesignation of contributions, based on the reconciliations performed by MBFI's current treasurer. Absent documentation, the Audit staff maintains that MBFI received excessive contributions from individuals totaling \$985,345 and from political committees totaling \$188,212.

Legal Standard

A. Authorized Committee Limits. For the 2018 election, an authorized committee may not receive more than a total of \$2,700 per election from any one person or \$5,000 per election from a multicandidate political committee. 52 U.S.C. §§30116(a)(1)(A) and (a)(2)(A); 11 CFR §§110.1(a) and (b) and 110.9.

B. Handling Contributions That Appear Excessive. If a committee receives a contribution that appears to be excessive, the committee must either:

- Return the questionable check to the donor; or
- Deposit the check into its federal account and:
 - Keep enough money in the account to cover all potential refunds;
 - Keep a written record explaining why the contribution may be illegal;
 - Include this explanation on Schedule A if the contribution has to be itemized before its legality is established;

- Seek a reattribution or a redesignation of the excessive portion, following the instructions provided in the Commission regulations (see below for explanations of reattribution and redesignation); and
- If the committee does not receive a proper reattribution or redesignation within 60 days after receiving the excessive contribution, refund the excessive portion to the donor. 11 CFR §§103.3(b)(3), (4) and (5) and 110.1(k)(3)(ii)(B).

C. Joint Contributions. Any contribution made by more than one person (except for a contribution made by a partnership) must include the signature of each contributor on the check, money order, or other negotiable instrument or in a separate writing. A joint contribution is attributed equally to each donor unless a statement indicates that the funds should be divided differently. 11 CFR §110.1(k)(1) and (2).

D. Reattribution of Excessive Contributions. The Commission regulations permit committees to ask donors of excessive contributions (or contributions that exceed the committee's net debts outstanding) whether they had intended their contribution to be a joint contribution from more than one person and whether they would like to reattribute the excess amount to the other contributor. The committee must inform the contributor that:

- The reattribution must be signed by both contributors;
- The reattribution must be received by the committee within 60 days after the committee received the original contribution; and
- The contributor may instead request a refund of the excessive amount. 11 CFR §110.1(k)(3).

Within 60 days after receiving the excessive contribution, the committee must either receive the proper reattribution or refund the excessive portion to the donor. 11 CFR §§103.3(b)(3) and 110.1(k)(3)(ii)(B). Further, a political committee must retain written records concerning the reattribution in order for it to be effective. 11 CFR §110.1(l)(5).

Notwithstanding the above, any excessive contribution that was made on a written instrument that is imprinted with the names of more than one individual may be attributed among the individuals listed unless instructed otherwise by the contributor(s). The committee must inform each contributor:

- How the contribution was attributed; and
- The contributor may instead request a refund of the excessive amount. 11 CFR §110.1(k)(3)(ii)(B).

E. Redesignation of Excessive Contributions. When an authorized candidate committee receives an excessive contribution (or a contribution that exceeds the committee's net debts outstanding), the committee may ask the contributor to redesignate the excess portion of the contribution for use in another election. The committee must inform the contributor that:

- The redesignation must be signed by the contributor;
- The redesignation must be received by the committee within 60 days after the committee received the original contribution; and

- The contributor may instead request a refund of the excessive amount. 11 CFR §110.1(b)(5).

Within 60 days after receiving the excessive contribution, the committee must either receive the proper redesignation or refund the excessive portion to the donor. 11 CFR §§103.3(b) (3) and 110.1(b) (5) (ii) (A). Further, a political committee must retain written records concerning the redesignation in order for it to be effective. 11 CFR §110.1(l)(5).

Presumptive Redesignation- When an individual makes an excessive contribution to a candidate's authorized committee, the campaign may presumptively redesignate the excessive portion to the general election if the contribution:

- Is made before that candidate's primary election;
- Is not designated in writing for a particular election;
- Would be excessive if treated as a primary election contribution; and
- As redesignated, does not cause the contributor to exceed any other contribution limit.

The committee is required to notify the contributor of the redesignation within 60 days of the treasurer's receipt of the contribution and must offer the contributor the option to receive a refund instead. 11 CFR §110.1(b)(5)(ii)(B)(1), (2), (3), (4), (5), and (6).

- F. Contributions by Multi-candidate Committees.** A contribution designated in writing for a particular election, but made after that election, shall be made only to the extent that the contribution does not exceed net debts outstanding from such election. To the extent that such contribution exceeds net debts outstanding, the candidate or the candidate's authorized political committee shall return or deposit the contributions within ten days from the date of the treasurer's receipt of the contribution and if deposited, then within sixty days from the date of the treasurer's receipt the treasurer shall take that the following action, as appropriate:
- Refund the contribution using a committee check or draft; or
 - Obtain a written redesignation by the contributor for another election in accordance with 11 CFR §110.2(b)(5). 11 CFR §110.2(b)(3)(i).

Facts and Analysis

A. Contributions from Individuals

1. Facts

The Audit staff utilized sample testing and a review of high dollar contributions not included in the sample population to identify apparent excessive contributions from individuals, as noted below.

Excessive Contributions - Testing Method	
Sample Projection Amount ¹²	\$568,545
High Dollar Review Contribution Error Amount	\$416,800
Total Amount of Excessive Contributions	\$985,345
Reason for Excessive Contributions	
Contributions not resolved via presumptive letter or refund	\$327,710
Contributions not resolved via signed reattribution letter or refund	\$642,935
Contributions refunded untimely	\$14,700
Total Amount of Excessive Contributions	\$985,345

2. Additional Information

Contributions, totaling \$642,935, could not be presumptively reattributed or redesignated by MBFI. These contributions were either made with a single account holder check, joint account holder checks that exceeded the per election limit for both individuals or credit cards which required signed authorization from its contributors or a refund.

MBFI did not maintain a separate account for questionable contributions. Additionally, based on its cash on hand at the end of the audit period (\$72,715), it appears that MBFI did not maintain sufficient funds to refund the apparent excessive contributions.

3. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter with MBFI representatives during audit fieldwork as well as at the exit conference and provided a schedule of the apparent excessive contributions. MBFI representatives did not provide any comments during audit fieldwork.

In response to the exit conference MBFI submitted a written response as follows:

“The Committee provided documentation related to these findings during the audit process and has no new materials to provide with this response. To date, the

¹² The sample error amount (\$568,545) was projected using a Monetary Unit Sample with a 95 percent confidence level. The sample estimate could be as low as \$378,477 or as high as \$947,020.

Committee has made additional preemptive adjustments to its contributor information and intends to take any such corrective action as may be required at the conclusion of this matter.”

The Interim Audit Report recommended that MBFI:

- Provide evidence demonstrating that the contributions totaling \$985,345 were not excessive or were timely resolved.
- Absent evidence that the contributions were not excessive or were timely resolved, MBFI should have reviewed its contributions to determine which were excessive and how each should be resolved. For any excessive contributions that MBFI could have resolved by sending a presumptive redesignation and/or reattribution letter, it could now send letters to inform the contributors how the committee designated and/or reattributed the contribution and offer a refund. Absent the contributor’s request for a refund, these letters would obviate the need to refund the contributions or disgorgement to a governmental entity or to a qualified charitable organization.¹¹
- For any excessive contributions that were not resolved through the timely receipt of a signed authorization letter from the contributor or by refund, MBFI should have obtained signed authorization notification from the contributor or make refunds in response to the audit.
- If funds were not available to make such refunds, MBFI should have reported the excessive contributions as debts owed on Schedule D (Debts and Obligations) until funds became available to make the refunds.

4. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, MBFI submitted a written response as follows:

“When the current treasurer took over the accounting and compliance duties in early 2019, he found a number of refund checks that had been prepared but not sent to donors, with some information suggesting that the former treasurer had initiated the reattribution and redesignation tasks required of a treasurer. It is unknown the extent to which those normal and customary procedures were completed. All reattributions and redesignations were completed by the current treasurer in 2019 after he took over the accounting and reporting duties, and refunds were sent to donors at that time.”

MBFI indicated it will provide confirmations from the contributors regarding the reattribution and redesignation of contributions, based on the reconciliations performed by MBFI’s current treasurer. MBFI also stated “...to the extent that the facts and conclusions in Finding 5 relate to the \$250,000 loan repayment limit found in Section 403 of the Bipartisan Campaign Reform Act of 2002 (“BCRA”) and 28 U.S.C. § 2884 or the Committee’s acceptance of debt retirement contributions, the Audit Division should amend this finding in light of a recent decision of the federal court regarding the constitutional validity of the provision of law on which the Audit Division is relying on.” MBFI further stated that the Audit staff should reconsider its findings, reissue the Interim Audit Report and give MBFI the opportunity to respond

to the revised report, in light of the decision in *Ted Cruz for Senate v. Federal Election Commission*, Civil No. 19-cv-908.

Although there was a decision in the D.C. District Court, the Commission is appealing the decision. MBFI did not provide any documentation demonstrating the contributions from individuals totaling \$985,345 were not excessive or were timely resolved.

B. Contributions From Political Committees

1. Facts

Contributions Received in Excess of Primary Debt

As of May 8, 2018, the date of the Primary election, the Audit staff calculated that MBFI had net debt outstanding of \$191,951. The review determined that there was no Primary debt as of June 30, 2018. A review of all contributions from political committees received after May 8, 2018 and designated by the political committees for primary debt, determined that MBFI received 22¹³ apparent excessive contributions totaling \$78,000 which exceeded the amount needed to retire the net debt outstanding for the Primary election.

Contributions Received in Excess of General Debt

As of November 6, 2018, the date of the General election, the Audit staff calculated that MBFI had net debt outstanding of \$101,066. The review determined that there was no General debt as of December 18, 2018. A review of all contributions received from political committees after November 6, 2018 and designated by the political committees for general debt, identified that MBFI received 34¹³ apparent excessive contributions totaling \$110,212 which exceeded the amount needed to retire the net debt outstanding for the General election.

MBFI did not maintain a separate account for questionable contributions. Additionally, MBFI did not maintain a sufficient balance in its bank account to refund the apparent excessive contributions.

2. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter with MBFI representatives at the exit conference and provided schedules of the apparent excessive contributions.

In response to the exit conference, MBFI submitted a written statement as follows:

“The Committee provided documentation related to these findings during the audit process and has no new materials to provide with this response. To date, the Committee has made additional preemptive adjustments to its contributor information and intends to take any such corrective action as may be required at the conclusion of this matter.”¹⁴

¹³ Two contributions totaling \$4,500 moved from the General to Primary election after issuance of the Interim Audit Report due to the designation on the contributors’ check memo line. The total excessive contributions from political committees remains \$188,212.

¹⁴ On April 23, 2019, counsel for MBFI submitted a Request for Consideration of a Legal Question by the Commission. MBFI asked whether the proceeds from the Candidate’s personal lines of credit were

The Interim Audit Report recommended that MBFI provide documentation demonstrating that the contributions in question were not excessive, or if excessive, were resolved by refund.

3. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, MBFI submitted a written response as follows:

“When the current treasurer took over the accounting and compliance duties in early 2019, he found a number of refund checks that had been prepared but not sent to donors, with some information suggesting that the former treasurer had initiated the reattribution and redesignation tasks required of a treasurer. It is unknown the extent to which those normal and customary procedures were completed. All reattributions and redesignations were completed by the current treasurer in 2019 after he took over the accounting and reporting duties, and refunds were sent to donors at that time.”

MBFI indicated it will provide confirmations from the contributors regarding the reattribution and redesignation of contributions, based on the reconciliations performed by MBFI’s current treasurer. MBFI also stated “...to the extent that the facts and conclusions in Finding 5 relate to the \$250,000 loan repayment limit found in Section 403 of the Bipartisan Campaign Reform Act of 2002 (“BCRA”) and 28 U.S.C. § 2884 or the Committee’s acceptance of debt retirement contributions, the Audit Division should amend this finding in light of a recent decision of the federal court regarding the constitutional validity of the provision of law on which the Audit Division is relying on.” MBFI further stated that the Audit staff should reconsider its findings, reissue the Interim Audit Report and give MBFI the opportunity to respond to the revised report, in light of the decision in *Ted Cruz for Senate v. Federal Election Commission*, Civil No. 19-cv-908.

Although there was a decision in the D.C. District Court, the Commission is appealing the decision. MBFI did not provide any documentation demonstrating the contributions from political committees totaling \$188,212 were not excessive or were timely resolved.

Finding 6. Disclosure of Memo Entries and Candidate Loans

Summary

During audit fieldwork, the Audit staff determined that MBFI failed to properly disclose joint fundraising memo entries totaling \$933,814 from 13 joint fundraising committees.

“personal loans” per 11 C.F.R. §116.11(a); and whether the \$250,000 post-election loan-repayment limitation was a constitutional and enforceable limitation. On June 20, 2019, the Commission concluded that MBFI may not repay the Candidate in excess of \$250,000 more than 20 days after the Primary election and rejected MBFI’s argument that the candidate loan repayment requirements are unconstitutional.

MBFI also failed to properly disclose the correct loan balances and loan terms for 29 transactions totaling \$11,569,963. In response to the Interim Audit Report recommendation, MBFI did not file amendments or a Form 99 (Miscellaneous Electronic Submission) and did not provide any documentation. However, regarding disclosure of joint fundraising memo entries, MBFI stated “all have been corrected and will be included in the amendments that have been prepared to be filed.” Regarding the disclosure of loan balances and loan terms, MBFI did not agree with the finding. Absent filing of amendments or a Form 99, MBFI has not corrected the public record regarding memo entries from joint fundraisers totaling \$933,814, and loan balances and terms for transactions totaling \$11,569,963.

Legal Standard

- A. Contents of Reports.** Each report must disclose for the reporting period and for the election cycle, the total amount of:
- Contributions from persons other than political committees;
 - Contributions from authorized committees which makes a transfer to the reporting committee;
 - Loans made by or guaranteed by the candidate and the identification of each person who makes, endorses or guarantees a loan to the committee. 52 U.S.C. §30104(b)(2)(G), (3)(E) and 4(D).
- B. Contents Required - Information for Contributions.** For each itemized contribution, the committee must provide the following information:
- The contributor’s full name and address (including zip code);
 - The contributor’s occupation and the name of his or her employer (for individual contributors);
 - The date of receipt (the date the committee received the contribution);
 - The amount of the contribution; and
 - The aggregate year-to-date total of all contributions from the same individual. 11 CFR §§100.12 and 104.3(a)(4) and 52 U.S.C. §30104(b)(3)(A).
- C. Itemization of Contributions from Joint Fundraising Efforts.** Participating political committees shall report joint fundraising proceeds in accordance with 11 CFR §102.17(c) (8) when such funds are received from the fundraising representative. 11 CFR §102.17(c)(3)(iii).
- Each participating political committee reports its share of the net proceeds as a transfer-in from the fundraising representative and shall also file a memo Schedule A itemizing its share of gross receipts as contributions from the original contributors to the extent required under 11 CFR §104.3(a). 11 CFR §102.17(c)(8)(i)(B).
- D. Itemization required.** Political committees must itemize:
- Any contributions from an individual if it exceeds \$200 per calendar year (or per election cycle in the case of an authorized committee) either by itself or when aggregated with other contributions from the same contributor. 11 CFR §104.3(a)(4)(i); and
 - Every contribution from any political committee, regardless of the amount. 52 U.S.C. §30104(b)(3)(A) and (B).

E. Itemizing Loans. Each person who makes a loan to the political committee during the reporting period must be disclosed with the following information:

- Identification of any endorser or guarantor of the loan;
- The date the loan was made;
- The amount of the loan. 11 CFR §104.3(a)(4)(iv).

F. Schedule C. On a Schedule C, both the original loan and payments to reduce principal must be reported each reporting period until the loan is repaid. The committee need only list the candidate as the source of the loan. Also, the type of loan the candidate receives (i.e., bank loan, brokerage account, credit card, home equity line of credit) must be disclosed in either the first box for endorsers and guarantors with a notation for loan type or in the box for “Loan Source” after the candidate’s name. 11 CFR §104.3(d) and §104.11.

G. Reporting Bank Loans, Home Equity Loans and Other Lines of Credit. A political committee must disclose in the report covering the period when the loan was obtained on Schedules C-1:

- The date, amount, and interest rate of the loan;
- The name and address of the lending institution; and
- The types and value of the collateral or other sources of repayment that secure the loan, if any. 11 CFR §104.3(d)(4).

Facts and Analysis

A. Transfers from Joint Fundraising Committees

1. Facts

The Audit staff’s review of all joint fundraising transfers identified that MBFI failed to properly disclose joint fundraising memo entries totaling \$933,814 from 13 joint fundraising committees. The chart below details the \$933,814 as follows:

Disclosure Errors	
Type of Review	100%
Memo Entries Not Itemized	\$29,785
Memo Entries Disclosed on Schedule A - Incorrect Receipt Date	\$904,029
Total Amount	\$933,814

2. Additional Information

For the contributions that were disclosed on Schedule A, totaling \$904,029, MBFI reported the date of the transfer from the joint fundraising committee rather than the date the contribution was reported received by the joint fundraising committee.

3. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter with MBFI representatives during the exit conference and provided schedules of the incorrectly disclosed joint fundraising memo entries.

In response to the exit conference, MBFI submitted the written response as follows:

“The Committee provided documentation related to this preliminary finding during the audit process and has no new materials to provide with this response. To date, the Committee has made additional preemptive adjustments to its contributor information, including identifying memo entries to be added to contribution entries. The Committee intends to take further corrective action as may be required at the conclusion of this matter.”

The Interim Audit Report recommended that MBFI provide additional documentation demonstrating that the joint fundraising memo entries were correctly disclosed on Schedule A. Absent such documentation, it was further recommended that MBFI amend its disclosure reports or file a Form 99⁷ to correct the memo entries totaling \$904,029 and itemize the missing memo entries on Schedule A totaling \$29,785.

4. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, MBFI submitted a written statement as follows :

“Regarding the receipts from joint fundraising committees (“JFCs”), two years ago the current treasurer reviewed all receipts from JFC’s and personally contacted all the JFC treasurers from whom the Committee did not have memo entries related to the transfers. He then added those memo entries to the Committee’s reports as the information was obtained. Some of the reported JFC transfers were missing memo entries and others were reported on line 11c, not line 12. All have been corrected and will be included in the amendments that have been prepared to be filed.”

The Audit staff notes that MBFI has not filed amendments or a Form 99 as of this report and maintains, absent filing of amendments or a Form 99, that MBFI has not corrected the public record for disclosing memo entries from joint fundraisers totaling \$933,814.

B. Disclosure of Loans

1. Facts

During audit fieldwork, the Audit staff reviewed 31 bank loans, lines of credit and candidate loans to MBFI totaling \$11,666,483. Of this amount:

- Three bank loans, 13 lines of credit and 13 candidate loans, for 29 transactions totaling \$11,569,963 were disclosed incorrectly on Schedules C and C-1; and
- Loans and lines of credit for two transactions, totaling \$96,520, were not reported (see Finding 1. Misstatement of Financial Activity).

Disclosure errors consisted of disclosing incorrect or missing information including: loan terms and dates, repayment amounts, loan forgiveness, outstanding balances, as well as disclosing the Candidate's spouse as a guarantor for a loan. The loan documentation did not support the information that was reported on the disclosure reports.

2. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter with MBFI representatives during the exit conference and provided a schedule of the loans and lines of credit disclosed incorrectly.

In response to the exit conference, MBFI submitted a written response as follows:

“The Committee provided documentation related to this preliminary finding during the audit process and has no new materials to provide with this response. The Committee intends to take further corrective action as may be required at the conclusion of this matter.”

The Interim Audit Report recommended that MBFI provide additional documentation demonstrating that the identified loans and lines of credit were correctly disclosed. Absent such documentation, it was further recommended that MBFI amend its reports or file a Form 997 to correct the disclosure errors.

3. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, MBFI stated, “...it is currently unclear to the Committee how the Audit Division concluded that the Committee accepted two unreported candidate loans totaling \$96,520 since this finding does not correspond to any of the Committee's records.” There was no specific comment regarding the disclosure of the 29 transactions totaling \$11,569,963. Additionally, MBFI further stated:

“Furthermore, to the extent that the facts and conclusions in Finding 6 relate to the \$250,000 loan repayment limit found in Section 403 of BCRA or the Committee's acceptance of debt retirement contributions, the Audit Division should amend this finding because of the recent federal court decision in *Ted Cruz for Senate v. Federal Election Commission*, Civil No. 19-cv-908 (D.C. Dist. Ct., June 3, 2021). Since many of the facts and conclusions of Finding 6 may involve and may be impacted by the loan repayment limit, the Commission's conclusions may rely on an unconstitutional provision that renders Finding 6 invalid, or at least a portion of it.

Given the significant impact that the Ted Cruz for Senate ruling may have on Finding 6, the Committee believes it is imperative for the Commission's Audit staff to reconsider its preliminary audit findings, reissue a revised Interim Audit Report, and give the Committee the opportunity to respond to the revised Interim Audit Report. For this reason, the Committee will refrain from providing any additional response to Finding 6 until that occurs.”

The Audit staff notes that MBFI was provided the schedule for the unreported loans and lines of credit totaling \$96,520 at the exit conference, as it relates to the unreported loans outlined in Finding 1, Misstatement of Financial Activity. In addition, the Audit staff offered to send the schedule again with the issuance of the Interim Audit Report if MBFI requested it; however, MBFI did not make the request at that time. The Audit staff again provided the relevant information upon receipt of MBFI's response to the Interim Audit Report.

The Audit staff notes that this finding is not related to MBFI making Candidate loan and interest repayments in excess of the \$250,000 limit permitted for repayment to the Candidate, as discussed in Finding 7, and therefore is not impacted by the ruling cited by MBFI. MBFI has not filed amendments or a Form 99 as of this report. The Audit staff maintains, absent filing of amendments or a Form 99, that MBFI has not corrected the public record regarding the proper disclosure of the loans, including the loan balance and loan terms, and incorrectly disclosing the Candidate's spouse as a guarantor for transactions totaling \$11,569,963.

Finding 7. Prohibited Candidate Personal Loan Repayments

Summary

Based on a review of loans, the Audit staff determined that MBFI made excessive Primary candidate loan and interest repayments totaling \$750,669. This amount is in excess of the \$250,000 limit permitted for repayment to the Candidate within 20 days following the Primary election. In response to the Interim Audit Report recommendation, MBFI stated, "...the Audit Division should amend this finding because of the recent federal court decision in *Ted Cruz for Senate v. Federal Election Commission*, Civil No. 19-cv-908...." The Audit staff maintains MBFI did not comply with 11 CFR §116.11 (d).

Legal Standard

- A. Limitation on Repayment of Personal Loans.** Any candidate who incurs personal loans made after the effective date of the Bipartisan Campaign Reform Act of 2002 in connection with the candidate's campaign for election shall not repay (directly or indirectly), to the extent such loans exceed \$250,000, such loans from any contributions made to such candidate or any authorized committee of such candidate after the date of such election. 52 U.S.C. §30116(j).
- B. Restriction on an Authorized Committee's Repayment of Personal Loans Exceeding \$250,000 Made by the Candidate to the Authorized Committee.** Specific to this finding, personal loans mean a loan or loans, including advances, made by a candidate, using personal funds, as defined in 11 CFR §100.33, to his or her authorized committee where the proceeds of the loan were used in connection with the candidate's campaign for election. Personal loans also include loans made to a candidate's authorized committee that are endorsed or guaranteed by the candidate or that are secured by the candidate's personal funds. 11 CFR §116.11(1)(a).

For personal loans that, in the aggregate, exceed \$250,000 in connection with an election, the authorized committee:

- May repay the entire amount of the personal loans using contributions to the candidate or the candidate's authorized committee provided that those contributions were made on the day of the election or before;
- May repay up to \$250,000 of the personal loans from contributions made to the candidate or the candidate's authorized committee after the date of the election; and
- Must not repay, directly or indirectly, the aggregate amount of the personal loans that exceeds \$250,000, from contributions to the candidate or the candidate's authorized committee if those contributions were made after the date of the election. 11 CFR §116.11(1)(b)(1),(2) and (3).

If the aggregate outstanding balance of the personal loans exceeds \$250,000 after the elections, the authorized political committees must comply with the following conditions:

- If the authorized committee uses the amount of cash-on-hand as of the day after the election to repay all or part of the personal loans, it must do so within 20 days of the election.
- Within 20 days of the election date, the authorized committee must treat the portion of the aggregate outstanding balance of the personal loans that exceeds \$250,000 minus the amount of cash-on-hand as of the day after the election used to repay the loan as a contribution by the candidate.
- The candidate's principal campaign committee must report the transactions in paragraphs (c) (1) and (c) (2) of this section in the first report scheduled to be filed after the election pursuant to 11 CFR §104.5(a) or (b) and 11 CFR §116.11(1)(c)(1),(2) and (3)
- This section applies separately to each election. 11 CFR §116.11 (d).

Facts and Analysis

A. Facts

Based on a review of loans, the Audit staff determined that MBFI made Primary candidate loan and interest repayments totaling \$1,000,669 after the May 8, 2018 Primary election. MBFI could have repaid up to \$250,000 of the personal loans for the Primary election from contributions made to the Candidate after the date of the election. Also, after 20 days following the Primary election, MBFI was required to treat as a contribution the amount which was equal to the outstanding balance of the candidate Primary loans less the repayment limit.¹⁴ Therefore, the Audit staff identified that MBFI made excessive Primary candidate loan and interest repayments totaling \$750,669.

• Primary candidate loan and interest repayments	+ \$1,000,669
• Allowable repayment amount of candidate loans from contributions limit	- <u>250,000</u>
Excessive Primary Candidate Loan and Interest Repayments	<u><u>\$750,669</u></u>

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter with MBFI representatives at the exit conference and provided schedules of the apparent excessive contributions.

In response to the exit conference MBFI submitted a written response as follows:

“The FEC’s preliminary finding shows no apparent “mis-disclosure” of the transactions in question. The Committee has no new materials to provide with this response, but it is the Committee’s belief that the FEC’s preliminary finding is based on the FEC’s mischaracterization of certain loans (which, in turn, would require the loans to be converted to personal contributions and not repayable). The Committee will likely be requesting Commission guidance on legal questions related to this finding.”⁶

The Interim Audit Report recommended that MBFI provide additional documentation to demonstrate the Primary candidate loan and interest repayments were not excessive and provide any relevant comments on the matter.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, MBFI stated:

“To the extent that the facts and conclusions in Finding 7 relate to the \$250,000 loan repayment limit found in Section 403 of BCRA or the Committee’s acceptance of debt retirement contributions, the Audit Division should amend this finding because of the recent federal court decision in *Ted Cruz for Senate v. Federal Election Commission*, Civil No. 19-cv-908 (D.C. Dist. Ct., June 3, 2021). Since many of the facts and conclusions of Finding 7 involve and are impacted by the loan repayment limit, the Commission’s conclusions rely on an unconstitutional provision that renders Finding 7 invalid, or at least a portion of it.

Given the significant impact that the *Ted Cruz for Senate* ruling has on Finding 7 and others, the Committee believes it is imperative for the Commission’s Audit staff to reconsider its preliminary audit findings, reissue a revised Interim Audit Report, and give the Committee the opportunity to respond to the revised Interim Audit Report. For this reason, the Committee will refrain from providing any additional response to Finding 7 until that occurs.”

Although there was a decision in the D.C. District Court, the Commission is appealing the decision. Therefore, the Audit staff maintains that MBFI made excessive Primary candidate loan and interest repayments totaling \$750,669.