



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

DEC 22 2015

MEMORANDUM

TO: Patricia C. Orrock
Chief Compliance Officer

Thomas E. Hintermister
Assistant Staff Director
Audit Division

FROM: Lisa J. Stevenson
Deputy General Counsel - Law *LJS*

Lorenzo Holloway *LH*
Assistant General Counsel
Compliance Advice

Margaret J. Forman *m j f*
Attorney

SUBJECT: Proposed Interim Audit Report on the Majority Committee PAC (LRA 992)

I. INTRODUCTION

The Office of the General Counsel has reviewed the proposed Interim Audit Report ("proposed IAR") on the Majority Committee PAC ("McPAC"). The proposed IAR contains one finding: Excessive Contributions to Candidates.¹ We concur with the finding and comment on it below. If you have any questions, please contact Margaret J. Forman, the attorney assigned to this audit.

¹ We recommend that the Commission consider this document in Executive Session because the Commission may eventually decide to pursue an investigation of matters contained in the proposed IAR. 11 C.F.R. §§ 2.4(a) and (b)(6).

II. **McPAC's PAYMENT OF TRAVEL EXPENSES OF LEADERSHIP PAC'S SPONSOR TO ATTEND OR SPEAK AT FUNDRAISERS ARE IN-KIND CONTRIBUTIONS TO THE EXTENT THAT THE FEDERAL CANDIDATES DIRECTLY BENEFITED**

McPAC is a non-connected, multicandidate leadership PAC whose sponsor is Congressman Kevin McCarthy.² The Audit Division determined that McPAC made excessive in-kind contributions to nine federal candidate committees, totaling \$20,110. The in-kind contributions consisted of airfare paid by McPAC for Mr. McCarthy to speak or make appearances at fundraising events that directly benefitted these federal candidate committees.

We conclude that McPAC's payment of Mr. McCarthy's travel expenses are in-kind contributions to those candidates and the relevant committees to the extent that his travel was for the purpose of attending or speaking at those fundraisers. A contribution includes "anything of value made by any person for the purpose of influencing any election for Federal office." 52 U.S.C. § 30101(8)(A)(i). When the Commission established the concept of a Leadership PAC in its regulations, it recognized that activities paid for by Leadership PACs on behalf of Federal candidates would be considered contributions.

"[A] leadership PAC's provision of funds, goods, or services to *any* authorized committee will be treated as a contribution as defined in 2 U.S.C. 431(8) [now 52 U.S.C. § 30101(8)], and thus limited to the amount at either 2 U.S.C. 441a(a)(1)(A) or 441a(a)(2)(A) [now 52 U.S.C. § 30116(a)(1)(A) or 30116(a)(2)(A)] per election, depending on whether the leadership PAC has attained multicandidate committee status, unless the activity falls within an exception to the definition of "contribution" or "expenditure," or is a fair market value exchange of goods or services for the usual and normal charge. *See also* 2 U.S.C. 431(8) [now 52 U.S.C. § 30101(8)]." *Explanation and Justification for Leadership PACs*, 68 Fed. Reg. 67013, 67016 (Dec. 1, 2003) (emphasis in original).

Consequently, "Leadership PACs ... whose purpose is to support more than one Federal candidate ... once they qualify as multicandidate committees, may contribute up to \$5,000 per candidate per election. *See* 2 U.S.C. 432(e)(3) [now 52 U.S.C. § 30102(e)(3)], 441a(a)(1)(C) [now 52 U.S.C. § 30116(a)(1)(C)] and 441a(a)(2)(A) [now 52 U.S.C. § 30116(a)(2)(A)]; 11 CFR 110.1(d) and 110.2(b)." *Id.* at 67017.

The payment of an individual's travel costs to attend or speak at a fundraiser for a Federal candidate is an in-kind contribution. The Commission has specifically recognized that travel costs paid for by a multicandidate committee and associated with an individual's appearances on behalf of a Federal candidate are a contribution to the Federal candidate. *See* Advisory Opinion 1986-6 (America's Future), and Advisory Opinion 1985-40 (Republican Majority Fund); *cf.* Advisory

² As a leadership PAC, McPAC is a political committee that is directly or indirectly established, financed, maintained, or controlled by a candidate for Federal office or an individual holding Federal office (Congressman McCarthy) but which is not an authorized committee, nor affiliated with an authorized committee of the candidate or individual, except that leadership PAC does not include a political committee of a political party. 11 C.F.R. § 100.5(e)(6).

Opinion 1996-20 (Lucas); Advisory Opinion 2000-12 (Bradley and McCain). Thus, McPAC's payment of Mr. McCarthy's travel expenses to attend or speak at fundraisers for Federal candidates are in-kind contributions to those candidates and the relevant committees.³

³ We understand that Mr. McCarthy may have traveled to appear on behalf of one or more Federal candidates, either at a single fundraiser, or at several separate fundraisers at the same destination. As a general matter, "expenditures may be allocable as in-kind contributions to the candidates and political committees for whom appearances are made. See 11 C.F.R. § 100.7(a)(1)(iii) [now 11 C.F.R. § 100.52(d)], 106.1(b), and 110.2(a); Advisory Opinion 1985-40." Advisory Opinion 1986-6 (Fund for American's Future, Inc.). To the extent that travel expenses benefit more than one Federal candidate, the Commission has applied 11 C.F.R. § 106.1. "[E]xpenditures on behalf of more than one candidate shall be attributed to each candidate in proportion to, and shall be reported to reflect, the benefit reasonably expected to be derived." Advisory Opinion 1986-6 (Fund for American's Future, Inc.) *citing* 11 C.F.R. § 106.1(a); *see* Advisory Opinion 1982-56 (Jacobs) (superseded in part on other grounds) and Advisory Opinion 1985-40 (Republican Majority Fund). We conclude, therefore, that 11 C.F.R. § 106.1 governs the allocation of these in-kind contributions among several candidates.

If, however, Congressman McCarthy also attended events in his capacity as an officeholder, or for purposes other than the purpose of influencing any election for Federal office, the travel expenses incurred would require a separate analysis of the specific underlying facts. See Advisory Opinion 1985-40 (Republican Majority Fund); *cf.*, Advisory Opinion 1996-20 (Lucas).