



# Final Audit Report of the Commission on McSally for Congress

(January 1, 2013 - December 31, 2014)

## 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.<sup>1</sup> 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)

McSally for Congress is the principal campaign committee for Martha E. McSally, Republican candidate for the United States House of Representatives from the state of Arizona, 2<sup>nd</sup> Congressional District, and is headquartered in Tucson, Arizona. For more information, see the Campaign Organization chart, p.2.

## Financial Activity (p. 2)

• <b>Receipts</b>	
○ Contributions from Individuals	\$ 3,757,456
○ Contributions from Political Parties	544,055
○ Transfers from Authorized Committees	304,638
○ Offsets/Other Receipts	240,363
<b>Total Receipts</b>	<b>\$ 4,846,512</b>
• <b>Disbursements</b>	
○ Operating Expenditures	\$ 4,298,479
○ Contribution Refunds	42,228
○ Other Disbursements	76,817
<b>Total Disbursements</b>	<b>\$ 4,417,524</b>

## Commission Findings (p. 3)

- Misstatement of Financial Activity (Finding 1)
- Disclosure of Occupation/Name of Employer (Finding 2)
- Receipt of Contributions in Excess of the Limit (Finding 3)
- Failure to File 48-Hour Notices (Finding 4)
- Failure to Itemize Contributions from Political Committees (Finding 5)

<sup>1</sup> 52 U.S.C. §30111(b).

# **Final Audit Report of the Commission on McSally for Congress**

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(January 1, 2013 - December 31, 2014)



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# **Part I**

## **Background**

### **Authority for Audit**

This report is based on an audit of the McSally for Congress (MFC), 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;
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.

### **Audit Hearing**

MFC requested a hearing before the Commission. The request was granted and the hearing was held on February 8, 2018. At the hearing, MFC addressed issues related to the audit findings for the Misstatement of Financial Activity and the Disclosure of Occupation/Name of Employer. (For more detail, see Audit Hearing at Finding 1, p. 10 and Finding 2, p. 13, respectively.)

## Part II

### Overview of Campaign

#### Campaign Organization

<b>Important Dates</b>	
• Date of Registration	February 6, 2012
• Audit Coverage	January 1, 2013 - December 31, 2014
<b>Headquarters</b>	Tucson, Arizona
<b>Bank Information</b>	
• Bank Depositories	Three
• Bank Accounts	Three checking, one savings
<b>Treasurer</b>	
• Treasurer When Audit Was Conducted	Paul Kilgore (4/1/15 – Present)
• Treasurer During Period Covered by Audit	James C. Thomas III (10/2/14 – 3/31/15) Hieu Tran (11/11/13 – 10/1/14) Janine Kaucher (5/22/12 – 11/10/13)
<b>Management Information</b>	
• Attended FEC Campaign Finance Seminar	No
• Who Handled Accounting and Recordkeeping Tasks	Paid Staff

#### Overview of Financial Activity (Audited Amounts)

<b>Cash-on-hand @ January 1, 2013</b>	<b>\$ 29,501</b>
<b>Receipts</b>	
o Contributions from Individuals	3,757,456
o Contributions from Political Parties	544,055
o Transfers from Authorized Committees	304,638
o Offsets /Other Receipts	240,363
<b>Total Receipts</b>	<b>\$4,846,512</b>
<b>Disbursements</b>	
o Operating Expenditures	4,298,479
o Contribution Refunds	42,228
o Other Disbursements	76,817
<b>Total Disbursements</b>	<b>\$4,417,524</b>
<b>Cash-on-hand @ December 31, 2014</b>	<b>\$ 458,489</b>

## **Part III**

### **Summaries**

#### **Commission Findings**

##### **Finding 1. Misstatement of Financial Activity**

During audit fieldwork, a comparison of MFC's reported activity with its bank records identified misstatements in 2013 and 2014. In 2013, beginning cash-on-hand was understated by \$9,121, disbursements were overstated by \$8,177, and receipts were overstated by \$15,676. In 2014, ending cash-on-hand was understated by \$94,453. In 2016, MFC filed amended disclosure reports for calendar years 2013 and 2014 which materially corrected some of the misstatements, including cash-on-hand. However, 2014 receipts and disbursements remained misstated on the amended reports largely due to the manner in which MFC reported voided disbursements as offsets to operating expenditures.

In response to the Interim Audit Report recommendation, MFC discussed in detail the overstated receipts and disbursements on the amended 2014 reports. MFC maintained that it did not misstate its receipts and disbursements and that filing Form 99 (Miscellaneous Text) for activity that occurred almost three years ago would create "needless confusion." MFC requested a hearing before the Commission to discuss this matter. (For more detail, see Audit Hearing, p. 10.)

The Commission approved a finding that MFC misstated its 2014 amended financial activity. (For more detail, see p. 6.)

##### **Finding 2. Disclosure of Occupation/Name of Employer**

A review of contributions from individuals requiring itemization indicated that 1,266 contributions totaling \$687,572 lacked disclosure of occupation/name of employer. During audit fieldwork, MFC explained that it maintained "best efforts" during the 2014 election cycle. MFC further demonstrated "best efforts" to obtain, maintain and submit the missing occupation/name of employer information to materially correct the disclosure errors. MFC filed amended reports subsequent to audit notification which materially resolved this matter.

In response to the Interim Audit Report recommendation, MFC reiterated that it utilized "best efforts" to collect and report occupation/name of employer during the entire history of MFC including the 2014 cycle. MFC requested a hearing before the Commission to discuss this matter. (For more detail, see Audit Hearing, p. 13.)

The Commission approved a finding that MFC failed to disclose occupation/name of employer information for contributions from individuals totaling \$687,572. (For more detail, see p. 10.)

**Finding 3. Receipt of Contributions in Excess of the Limit**

During audit fieldwork, the Audit staff reviewed contributions from individuals to determine if any contributions exceeded the limit. This review indicated that MFC received 153 apparent excessive contributions totaling \$319,212. These errors occurred as a result of MFC not resolving the excessive portions of contributions by forwarding presumptive redesignation and/or reattribution letters to the contributors or issuing refunds in a timely manner. MFC has untimely resolved 148 contributions totaling \$312,412. The five remaining excessive contributions totaling \$6,800 could still be resolved, albeit untimely, via a presumptive redesignation and/or reattribution letters and refunds.

In response to the Interim Audit Report recommendation, MFC provided copies of negotiated refund checks totaling \$6,500 which untimely resolved four of the above excessive contributions. In response to the Draft Final Audit Report, MFC provided a signed redesignation letter and resolved the remaining excessive contribution of \$300, albeit untimely.

The Commission approved a finding that MFC untimely resolved excessive contributions totaling \$319,212. (For more detail, see p. 13.)

**Finding 4. Failure to File 48-Hour Notices**

During audit fieldwork, the Audit staff noted that MFC failed to file or filed untimely 48-hour notices for 33 contributions totaling \$99,853, that were received prior to primary and general elections.

In response to the Interim Audit Report recommendation, MFC reiterated that the volume of contributions it received before both the primary and general elections was "overwhelming." However, MFC restated it has implemented procedures and hired experienced FEC compliance specialists to ensure future compliance. In response to the Draft Final Audit Report, MFC stated that even if the Audit staff was correct in its determination of the number and amount of untimely filed 48-hour notices, MFC believed the total amount in question would be immaterial "in contrast to the vast overall amount of financial activity [MFC] had during the applicable period."

The Commission approved a finding that MFC failed to file 48-hour notices totaling \$99,853. (For more detail, see p. 17.)

**Finding 5. Failure to Itemize Contributions from Political Committees**

The Audit staff reviewed contributions from political committees and determined that MFC failed to itemize 15 contributions from such entities totaling \$32,750 on Schedule A (Itemized Receipts) of its disclosure reports. During audit fieldwork, MFC filed amended reports and correctly disclosed these receipts. Since MFC's corrective action occurred after audit notification, the matter is included in this audit report.

In response to the Interim Audit Report recommendation, MFC reiterated that it has hired an experienced FEC compliance specialist to serve as treasurer to ensure such inadvertent

errors do not happen in the future. MFC offered no further comments in response to the Draft Final Audit Report.

The Commission approved a finding that MFC failed to itemize contributions from political committees totaling \$32,750. (For more detail, see p.19.)

## Part IV

# Commission Findings

### Finding 1. Misstatement of Financial Activity

#### Summary

During audit fieldwork, a comparison of MFC's reported activity with its bank records identified misstatements in 2013 and 2014. In 2013, beginning cash-on-hand was understated by \$9,121, disbursements were overstated by \$8,177, and receipts were overstated by \$15,676. In 2014, ending cash-on-hand was understated by \$94,453. In 2016, MFC filed amended disclosure reports for calendar years 2013 and 2014 which materially corrected some of the misstatements, including cash-on-hand. However, 2014 receipts and disbursements remained misstated on the amended reports largely due to the manner in which MFC reported voided disbursements as offsets to operating expenditures.

In response to the Interim Audit Report recommendation, MFC discussed in detail the overstated receipts and disbursements on the amended 2014 reports. MFC maintained that it did not misstate its receipts and disbursements and that filing a Form 99 (Miscellaneous Text) for activity that occurred almost three years ago would create "needless confusion." MFC requested a hearing before the Commission to discuss this matter.

The Commission approved a finding that MFC misstated its 2014 amended financial activity.

#### Legal Standard

**A. 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
- Certain 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) and 11 CFR §104.3.

**B. Formal Requirements Regarding Reports and Statements.** Each treasurer of a political committee is responsible for the timely and complete filing of the report or statement and for the accuracy of any information or statement contained in it. 11 CFR §104.14(d).

#### Facts and Analysis

##### A. Facts

During audit fieldwork, the Audit staff reconciled MFC's reported activity with its bank records for calendar years 2013 and 2014. The reconciliation revealed that MFC

misstated its beginning cash-on-hand, receipts, and disbursements for 2013 and its ending cash-on-hand for 2014. The following charts outline the discrepancies between MFC's 2013 and 2014 disclosure reports and its bank records. The succeeding paragraphs explain why the discrepancies occurred.

<b>2013 Committee Activity</b>			
	<b>Reported</b>	<b>Bank Records</b>	<b>Discrepancy</b>
Beginning Cash-on-Hand @ January 1, 2013	\$ 20,380	\$ 29,501	\$ 9,121 Understated
Receipts	\$740,944	\$725,268	\$15,676 Overstated
Disbursements	\$213,349	\$205,172	\$ 8,177 Overstated
Ending Cash-on-Hand @ December 31, 2013	\$547,975	\$549,597	\$ 1,622 Understated

The \$9,121 understatement of beginning cash-on-hand likely resulted from prior-period discrepancies.

The overstatement of receipts resulted from the following:

• Offset to operating expenditure not supported by bank deposit <sup>2</sup>	\$(15,000)
• Contribution refund from individual not reported as a negative	(150)
• Reported contribution from individual not supported by bank deposit	(500)
• Unexplained difference	(26)
<b>Overstatement of Receipts</b>	<b><u>\$(15,676)</u></b>

The overstatement of disbursements resulted from the following:

• Reported disbursements not clearing bank	\$(8,584)
• Unreported in-kind contribution	334
• Unexplained difference	73
<b>Overstatement of Disbursements</b>	<b><u>\$(8,177)</u></b>

<b>2014 Committee Activity</b>			
	<b>Reported</b>	<b>Bank Records</b>	<b>Discrepancy</b>
Beginning Cash-on-Hand @ January 1, 2014	\$ 547,975	\$ 549,597	\$ 1,622 Understated
Receipts	\$4,067,069	\$4,121,244	\$54,175 Understated
Disbursements	\$4,253,328	\$4,212,352	\$40,976 Overstated
Ending Cash-on-Hand @ December 31, 2014	\$ 364,036	\$ 458,489	\$94,453 Understated

<sup>2</sup> This transaction relates to a 2012 media disbursement. From the documents provided, the Audit staff could not confirm whether MFC was issued a credit for the presumed payment. However, no actual refund was deposited into MFC's bank account.

The \$94,453 understatement of the ending cash-on-hand resulted from various reporting discrepancies for receipts and disbursements.<sup>3</sup>

During audit fieldwork, MFC filed comprehensive amended disclosure reports for calendar years 2013 and 2014. The Audit staff analyzed the amended reports and determined that MFC materially corrected the 2013 misstatements noted above as well as the 2014 ending cash-on-hand misstatement.<sup>4</sup>

However, by amending the reports, MFC overstated its 2014 receipts and disbursements by \$94,528 and \$85,472,<sup>5</sup> respectively. The Audit staff discussed these misstatements at the exit conference.

#### **B. Interim Audit Report & Audit Division Recommendation**

The Audit staff discussed the misstatement of financial activity for both audited and amended reports with MFC representatives at the exit conference and provided work papers detailing the differences. The Audit staff stated that, by amending the disclosure reports, MFC materially corrected the misstatements identified in the audited reports filed prior to audit notification. However, MFC inadvertently created additional reporting discrepancies in the amended reports:

In response to the exit conference, MFC representatives stated that they undertook a comprehensive internal review of MFC's accounting and disclosure reports beginning with MFC's inception in 2012 and reconciled over \$12.3 million in financial activity. As a result, MFC amended every disclosure report filed from 2012 through the year-end 2014. The representatives further stated that MFC spent considerable time and resources to ensure that the public record was as complete and accurate as possible. With respect to the 2013 and 2014 misstatements, MFC representatives stated that they would review the Audit staff's figures and would provide a detailed response at the completion of their review.

As mentioned above, MFC's amended disclosure reports materially overstated its 2014 receipts and disbursements. The majority of the misstatements was caused by the manner in which MFC voided previously reported payments and credit card chargebacks. With respect to the reported payments MFC subsequently voided, instead of disclosing these voids as negative amounts on Schedule B, Line 17 (Operating Expenditures), MFC incorrectly added refunds on Schedule A, Line 14 (Offsets to Operating Expenditures) to offset the voided disbursements. While such reporting will create a material agreement in the ending cash-on-hand balances per bank and reports, it will also effectively inflate both receipts and disbursements. Similarly, the credit card chargebacks should have been disclosed as negative entries on Schedule A, Line 11a (Contributions from Individuals). Instead, MFC reported these chargebacks as disbursements on Line 20a (Refunds of Contributions), which also contributed to an overstatement of receipts and disbursements.

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<sup>3</sup> The reported 2014 ending cash-on-hand includes a \$2,320 mathematical discrepancy.

<sup>4</sup> MFC correctly removed 33 receipt transactions totaling \$27,115.

<sup>5</sup> The initial overstatement was \$93,122, however, MFC later clarified the treatment of two disbursements totaling \$7,650. ( $\$85,472 = \$93,122 - \$7,650$ )

Regarding the 2014 voided payments, MFC acknowledged that the Commission guidance provides that non-negotiated checks written by a committee should be reported as negative entries rather than as offsets to operating expenditures. However, MFC further stated that it does not believe its decision to report these amounts as offsets is inconsistent with the Commission regulations. The FEC Campaign Guide for Congressional Candidates and Committees, however, states otherwise and provides instructions on how to address these transactions. The Audit staff maintains that MFC's reporting of voided checks is incorrect. MFC merely reported an accurate cash-on-hand balance but such reporting is insufficient because the Act and Commission regulations also requires disclosure and accurate reporting of receipts and disbursements. As such, the Audit staff notes that 2014 receipts and disbursements remain overstated by \$94,528 and \$85,472, respectively.

The Interim Audit Report recommended that MFC file a Form 99 (Miscellaneous Text) to further explain its reporting methodology regarding the transactions as a matter of public record. The Interim Audit Report further recommended that, in the future, MFC correctly disclose voided payments as negative entries on Schedule B.

### **C. Committee Response to Interim Audit Report**

In response to the Interim Audit Report recommendation, MFC representatives maintained that the receipts and disbursements, as amended, were not materially misstated. Their response to the Interim Audit Report contained the same assertions discussed in detail above. With respect to the voided payments, MFC continued to maintain that its reporting of these items as receipts was to ensure that the cash on hand was accurate. MFC explained that the Detailed Summary Pages delineate between the contributions from individuals and other types of receipts and, because these "vendor refunds" did not represent contributions from individuals, MFC concluded that no overstatement occurred. The Audit staff's position remains unchanged; reporting voided disbursements and the corresponding non-existent vendor refunds did result in overstatement of total disbursements and total receipts, respectively, regardless of the fact that the subtotals for certain subcategories of receipts and disbursements, were accurate. The overstatement occurred because MFC reported items that did not clear the bank. Therefore, MFC's reconciliation of its internal records did not translate to an accurate reporting even though the cash-on-hand was in agreement with the bank balance.

MFC did not file a Form 99 as recommended. The representatives stated that filing a Form 99 and referencing activity that occurred almost three years ago would create "needless confusion." In addition, MFC stated that even if this could be considered a misstatement, it would "barely represent 1.5% of MFC's receipts and disbursements," a percentage MFC considers immaterial. MFC also stated that the Commission's audit was "just a sample," whereas its internal review was a complete recreation of the database.<sup>6</sup>

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<sup>6</sup> The Audit staff notes that MFC's internal review coincided with the audit's fieldwork. Also, the Audit staff notes that the bank reconciliation does not involve a sample or sampling. The bank reconciliation involves a detailed comparison of the reconciled bank entries with the reports MFC filed with the Commission during the audit period.

**D. Draft Final Audit Report**

The Draft Final Audit Report reiterated that MFC's amended disclosure reports materially overstated its 2014 receipts and disbursements. The majority of the misstatements were caused by the manner in which MFC voided previously reported payments and credit card chargebacks.

**E. Committee Response to Draft Final Audit Report**

MFC responded to the Draft Final Audit Report by requesting a hearing on this matter. MFC maintained that its amended reports accurately reported the 2014 receipts and disbursements.

**F. Audit Hearing**

During the Audit hearing, MFC reiterated its position that it fully and accurately disclosed its transactions. MFC further stated that chargebacks totaling \$21,100 were correctly reported on the amended reports as contribution refunds. Lastly, MFC reiterated that it believed it was reasonable to report \$45,015 as offsets to operating expenditures as such reporting was not inconsistent with the statute or regulations. MFC stated that the Commission has not provided clear guidance on how such chargebacks should be reported. During the Audit hearing, MFC did not provide any further documentation, nor any new legal arguments.

The Audit staff maintains MFC should follow the reporting guidance outlined in the Campaign Guide for Congressional Candidates and Committees regarding the treatment of the two types of transactions discussed above. The Campaign Guide recommends disclosing voided transactions as negative entries within the identified receipt or disbursement categories. Following such best practices in the future will help ensure that MFC's reported financial activity is in agreement with its bank activity, resulting in no misstatement or reporting discrepancies. Moreover, utilizing these best practices will most likely prevent MFC from receiving future Requests for Additional Information from the Commission's Reports Analysis Division.

**Commission Conclusion**

On April 26, 2018, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission find that MFC misstated its 2014 amended financial activity as stated above.

The Commission approved the Audit staff's recommendation.

**Finding 2. Disclosure of Occupation/Name of Employer****Summary**

A review of contributions from individuals requiring itemization indicated that 1,266 contributions totaling \$687,572 lacked disclosure of occupation/name of employer. During audit fieldwork, MFC explained that it maintained "best efforts" during the 2014 election cycle. MFC further demonstrated "best efforts" to obtain, maintain and submit the missing occupation/name of employer information to materially correct the disclosure

errors. MFC filed amended reports subsequent to audit notification which materially resolved this matter.

In response to the Interim Audit Report recommendation, MFC reiterated that it utilized "best efforts" to collect and report occupation/name of employer during the entire history of MFC including the 2014 cycle. MFC requested a hearing before the Commission to discuss this matter.

The Commission approved a finding that MFC failed to disclose occupation/name of employer information for contributions from individuals totaling \$687,572.

### **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 be considered to have used "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**

A review of itemized contributions from individuals indicated that 1,266 contributions totaling \$687,572, or 29 percent of the dollar value of individual contributions required to be itemized by MFC, lacked disclosure of occupation/name of employer. The majority of the contributor entries with missing information were either disclosed with notations of "Information Requested" or were left blank on the Schedule A (Itemized Receipts).

During audit fieldwork, the Audit staff reviewed the receipt documents provided by MFC to determine if MFC utilized "best efforts" to obtain, maintain and submit the missing information. MFC presented a variety of documents to demonstrate its efforts to obtain and maintain the documentation throughout the 2014 cycle:

- MFC provided a written statement from its former Finance Director which summarized his roles and duties with respect to the "best efforts." According to MFC, its solicitation materials and devices notified contributors of MFC's obligation under Federal Law to collect and report the name, mailing address, occupation and employer of individuals whose contributions exceeded \$200 in an election cycle. However, if the contributor did not provide the information, MFC sent a letter and asked for the information.
- The above statement was accompanied by samples of e-mail correspondence between the former Finance Director and the former Treasurer. In these, the former officials discussed the follow-up procedures for the contributors whose occupation/name of employer information was missing.
- Further, MFC provided samples of the "best effort" letters; a spreadsheet template used to create a list for the mail merge; as well as an example of the populated mail merge spreadsheet listing the dates and names of contributors whose information was requested.
- Finally, MFC described its "best efforts" procedures in the internal control questionnaire the Audit staff requested MFC to complete as follows: campaign staff would either call the contributor and explain the "best efforts" requirement to request, obtain and report the occupation/name of employer information, or, would send letters explaining the requirements and requesting the information.

Based on the contributor responses from the efforts noted above, MFC filed amended disclosure reports during audit fieldwork. The Audit staff reviewed these reports and determined that MFC materially disclosed the occupation/name of employer information.

### **B. Interim Audit Report and Audit Division Recommendation**

The Audit staff presented this matter to MFC representatives at the exit conference and noted that MFC has filed amended reports during audit fieldwork to disclose the occupation and name of employer information for a material number of individuals and as a result no further action was required. In response to the exit conference, MFC representatives reiterated that MFC utilized "best efforts" to collect and report the occupation/name of employer information during the 2014 election cycle. They further stated that solicitation materials included a clear request for the name, address, and occupation/name of employer of individuals whose contributions aggregated \$200 during

the election cycle. In instances where the contributor did not provide such information, MFC made at least one effort to obtain the information.

The Interim Audit Report recommended that MFC provide any additional comments it deemed necessary with respect to this matter.

#### **C. Committee Response to Interim Audit Report**

In response to the Interim Audit Report recommendation, MFC stated that it utilized "best efforts" to collect and report occupation/name of employer during the entire history of the committee, including the 2014 cycle. MFC reiterated that its solicitation materials included a clear request for the required occupation/name of employer information and in instances where the information was not provided, MFC made at least one effort to obtain the information.

#### **D. Draft Final Audit Report**

The Draft Final Audit Report concluded that MFC failed to disclose occupation/name of employer information for contributions from individuals totaling \$687,572 and that it filed amended disclosure reports to materially disclose this information after the audit notification.

#### **E. Committee Response to Draft Final Audit Report**

MFC responded to the Draft Final Audit Report by requesting a hearing on this matter. MFC stated that it demonstrated "best efforts" from its inception.

#### **F. Audit Hearing**

During the Audit hearing, MFC reiterated its position that it complied with the "best efforts" requirements from its inception. It agreed with the Audit staff's assertion that the matter was resolved, however, stated that this issue should not have been a finding given the documentation MFC provided during the fieldwork. During the Audit hearing, MFC did not provide any further documentation, nor any new legal arguments.

#### **Commission Conclusion**

On April 26, 2018, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission find that MFC failed to disclose occupation/name of employer information for contributions from individuals totaling \$687,572.

The Commission approved the Audit staff's recommendation.

### **Finding 3. Receipt of Contributions in Excess of the Limit**

#### **Summary**

During audit fieldwork, the Audit staff reviewed contributions from individuals to determine if any contributions exceeded the limit. This review indicated that MFC received 153 apparent excessive contributions totaling \$319,212. These errors occurred as a result of MFC not resolving the excessive portions of contributions by forwarding presumptive redesignation and/or reattribution letters to the contributors or issuing

refunds in a timely manner. MFC has untimely resolved 148 contributions totaling \$312,412. The five remaining excessive contributions totaling \$6,800 could still be resolved, albeit untimely, via a presumptive redesignation and/or reattribution letters and refunds.

In response to the Interim Audit Report recommendation, MFC provided copies of negotiated refund checks totaling \$6,500 which untimely resolved four of the above excessive contributions. In response to the Draft Final Audit Report, MFC provided a signed redesignation letter and resolved the remaining excessive contribution of \$300, albeit untimely.

The Commission approved the finding that MFC untimely resolved excessive contributions totaling \$319,212.

### **Legal Standard**

- A. Authorized Committee Limits.** For the 2014 election, an authorized committee may not receive more than a total of \$2,600 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).

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).

## **Facts and Analysis**

### **A. Facts**

During audit fieldwork, the Audit staff identified 117 individuals with 153 apparent excessive contributions totaling \$319,212. MFC resolved \$259,969 of the excessive contributions by sending presumptive reattribution and/or redesignation letters that were untimely. The remaining excessive contributions totaling \$59,243 were primarily credit card or single accounts check contributions requiring additional documentation. These contributions could still be resolved, albeit untimely, via reattribution and/or redesignation letters or refunds. During the campaign, MFC maintained sufficient funds in its accounts to make refunds of these apparent excessive contributions.

### **B. Interim Audit Report & Audit Division Recommendation**

The Audit staff discussed this matter with the MFC representatives at the exit conference. The Audit staff provided schedules of the apparent excessive contributions along with a description of actions necessary to resolve them. Subsequent to the exit conference, MFC presented additional presumptive letters sent to the contributors that untimely resolved additional excessive contributions totaling \$20,550 and provided copies of negotiated refund checks that untimely resolved excessive contributions totaling \$31,893. The remaining five excessive contributions totaling \$6,800<sup>7</sup> could still be resolved, albeit untimely; as follows: One excessive contribution could be resolved with a signed redesignation letter and the remaining four excessive contributions could be resolved with refunds to the contributor.

The Interim Audit Report recommended that MFC provide documentation demonstrating that it resolved the remaining excessive contributions totaling \$6,800.

### **C. Committee Response to Interim Audit Report**

In response to the Interim Audit Report recommendation, MFC provided copies of negotiated refund checks totaling \$6,500 which untimely resolved four of the five excessive contributions. As such, MFC has materially complied with the recommendation.

### **D. Draft Final Audit Report**

The Draft Final Audit Report acknowledged that MFC submitted additional documentation that untimely resolved four of the five excessive contributions.

### **E. Committee Response to Draft Final Audit Report**

In response to the Draft Final Audit Report, MFC provided the remaining copy of a signed redesignation letter that untimely resolved the last pending excessive contribution.

### **F. Audit Hearing**

MFC did not address this finding during the Audit hearing.

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<sup>7</sup> Remaining excessive contribution balance of \$6,800 = \$59,243 - \$20,550 - \$31,893.

**Commission Conclusion**

On April 26, 2018, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission find that MFC received contributions from individuals that exceeded the limit totaling \$319,212.

The Commission approved the Audit staff's recommendation.

**Finding 4. Failure to File 48-Hour Notices****Summary**

During audit fieldwork, the Audit staff noted that MFC failed to file or filed untimely 48-hour notices for 33 contributions totaling \$99,853, that were received prior to primary and general elections.

In response to the Interim Audit Report recommendation, MFC reiterated that the volume of contributions it received before both the primary and general elections was "overwhelming." However, MFC restated it has implemented procedures and hired experienced FEC compliance specialists to ensure future compliance. In response to the Draft Final Audit Report, MFC stated that even if the Audit staff was correct in its determination of the number and amount of untimely filed 48-hour notices, MFC believed the total amount in question would be immaterial "in contrast to the vast overall amount of financial activity [MFC] had during the applicable period."

The Commission approved the finding that MFC failed to file 48-hour notices totaling \$99,853.

**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 not 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 187 contributions totaling \$442,543 that equaled or exceeded \$1,000 and were received during the 48-hour notice period for the primary and general elections. A review of these contributions indicated that MFC did not file 48-hour notices for 29 contributions totaling \$91,053 and untimely filed 48-hour notices for four contributions totaling \$8,800. These contributions are summarized as follows.

	Primary	General	Total
<b>48-Hour Notices Not Filed</b>	\$13,200	\$77,853	\$91,053
<b>48-Hour Notices Filed Late</b>	\$0	\$8,800	\$8,800
<b>TOTALS</b>	\$13,200	\$86,653	\$99,853

### **B. Interim Audit Report & Audit Division Recommendation**

At the exit conference, the Audit staff discussed the filing of 48-hour notices with MFC representatives and provided schedules of the contributions for which 48-hour notices were not filed or were filed in an untimely manner. In response to the exit conference, MFC stated that the volume of contributions it received before the primary and general elections was at times overwhelming but it filed notices for almost 90 percent of the amount raised during the 48-hour time period. MFC also confirmed that it has implemented procedures and hired experienced FEC compliance specialists to ensure future compliance.

The Interim Audit Report recommended that MFC provide evidence that the 48-hour notices were not required to be filed; or were filed in a timely manner; or provide any further comments it considers relevant.

### **C. Committee Response to Interim Audit Report**

In response to the Interim Audit Report recommendations, MFC stated that the total error amount for non-filed and untimely filed 48-hour notices differed from the amount presented at the exit conference.<sup>8</sup> MFC also reiterated that the volume of contributions received before both the primary and general elections was overwhelming at times. MFC has implemented procedures and hired experienced FEC compliance specialists to ensure future compliance. The Audit staff maintained the 33 contributions totaling \$99,853 were not filed or were filed untimely.

### **D. Draft Final Audit Report**

The Draft Final Audit Report acknowledged that MFC restated it has implemented procedures and hired experienced FEC compliance specialists to ensure future compliance.

### **E. Committee Response to Draft Final Audit Report**

In response to the Draft Final Audit Report, MFC stated that the total amount of untimely filed 48-hour notices was not material considering the overall amount of financial activity.

### **F. Audit Hearing**

MFC did not address this finding during the Audit hearing.

<sup>8</sup> The Audit staff routinely presents *preliminary* findings at the exit conference. These preliminary findings may be subject to change or modification based on additional documentation; internal review; legal advice, etc.

**Commission Conclusion**

On April 26, 2018, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission find that MFC failed to file or filed untimely 48-hour notices totaling \$99,853.

The Commission approved the Audit staff's recommendation.

**Finding 5. Failure to Itemize Contributions from Political Committees****Summary**

The Audit staff reviewed contributions from political committees and determined that MFC failed to itemize 15 contributions from such entities totaling \$32,750 on Schedule A (Itemized Receipts) of its disclosure reports. During audit fieldwork, MFC filed amended reports and correctly disclosed these receipts. Since MFC's corrective action occurred after audit notification, the matter is included in this audit report.

In response to the Interim Audit Report recommendation, MFC reiterated that it has hired an experienced FEC compliance specialist to serve as treasurer to ensure such inadvertent errors do not happen in the future. MFC offered no further comments in response to the Draft Final Audit Report.

The Commission approved the finding that MFC failed to itemize contributions from political committees totaling \$32,750.

**Legal Standard**

**Regardless of Amount.** Several types of receipts must be itemized on Schedule A regardless of amount. They include:

- Contributions from political committees and similar organizations;
- Transfers from other party committees and party organizations;
- Refunded contributions received from political committees. 52 U.S.C. §30104(b)(3)(B), (C), and (D).

**Facts and Analysis****A. Facts**

Based on a review of all contributions from political committees, the Audit staff identified 15 contributions totaling \$32,750 that were not itemized, as required and regardless of amount, on Schedule A, Line 11c (Contributions from Other Political Committees). All of these contributions were reported by the donor committees.

The Audit staff traced ten of these contributions totaling \$23,250 to MFC's receipt database. MFC had apparently recorded the receipt of these contributions and presumably reported them as unitemized contributions. The remaining five contributions

totaling \$9,500<sup>9</sup> were neither included in MFC's receipt database, nor itemized on Schedule A.

**B. Interim Audit Report & Audit Division Recommendation**

The Audit staff discussed the unitemized contributions from political committees with MFC representatives and presented a schedule of the unitemized contributions. The Audit staff also noted that the review of the amended reports filed after audit notification indicated that MFC correctly disclosed all of these contributions on Schedule A. However, the Audit staff also noted that because MFC's corrective action was taken after the audit notification, the matter will be presented in this audit report. In response to the exit conference, MFC representatives stated that MFC hired an experienced FEC compliance specialist to serve as treasurer and to file the FEC reports. MFC further stated it will make every effort to ensure such inadvertent errors do not happen in the future.

The Interim Audit Report recommended that MFC provide any comments it deemed necessary with respect to this matter.

**C. Committee Response to Interim Audit Report**

In response to the Interim Audit Report recommendation, MFC representatives reiterated that they hired an experienced FEC compliance specialist to serve as treasurer to ensure such inadvertent errors do not happen in the future. The Audit staff considered this matter resolved.

**D. Draft Final Audit Report**

The Draft Final Audit Report acknowledged that MFC filed amended reports and correctly disclosed contributions from political committees. However, since MFC's corrective action occurred after audit notification the matter is included in this audit report.

**E. Committee Response to Draft Final Audit Report**

In response to the Draft Final Audit Report, MFC provided no additional comments.

**F. Audit Hearing**

MFC did not address this finding during the Audit hearing.

**Commission Conclusion**

On April 26, 2018, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission find that MFC failed to itemize contributions from political committees totaling \$32,750.

The Commission approved the Audit staff's recommendation.

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<sup>9</sup> This amount is also included in the 2014 understatement of receipts total (see Finding 1).