



FEDERAL ELECTION COMMISSION
Washington DC 20463

THIS IS THE BEGINNING OF ADMINISTRATIVE FINE CASE # 2545

DATE SCANNED 5/3/13

SCANNER NO. 2

SCAN OPERATOR EEJ

13092683159



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

2012 SEP 11 PM 1:12

September 11, 2012

MEMORANDUM

SENSITIVE

TO: The Commission

THROUGH: Alec Palmer *AP*
Staff Director

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

Debbie Chacona *DC*
Assistant Staff Director
Reports Analysis Division

BY: *JW* Jodi Winship/Sari Pickerall *JP*
Compliance Branch

SUBJECT: Reason To Believe Recommendation – 2012 July Quarterly Report for the
Administrative Fine Program

Attached is a list of political committees and their treasurers who failed to file the 2012 July Quarterly Report in accordance with 2 U.S.C. 434(a). The 2012 July Quarterly Report was due on July 15, 2012.

The committees listed in the attached RTB Circulation Report either failed to file the report, no more than thirty (30) days after the due date (considered a late filed report), or filed the report more than thirty (30) days after the due date (considered a non-filed report). In accordance with the schedule of civil money penalties for reports at 11 CFR 111.43, these committees should be assessed the civil money penalties highlighted on the attached circulation report.

Recommendation

1. Find reason to believe that the political committees and their treasurers listed on the RTB Circulation Report violated 2 U.S.C. 434(a) and make a preliminary determination that the civil money penalties would be the amounts indicated on the RTB Circulation Report.
2. Send the appropriate letters.

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Federal Election Commission
Reason to Believe Circulation Report
2012 JULY QUARTERLY Not Election Sensitive 07/15/2012 H_S_P_UNAUTH

AF#	Committee ID	Committee Name	Candidate Name	Treasurer	Threshold	PV	Receipt Date	Days Late	LOA	RTB Penalty
2538	C00506295	BICKNELL FOR CONGRESS	BICKNELL, HUNTER	JAMES R. SHAW, JR.	\$121,335	0	8/3/2012	19	\$34,201	\$580
2539	C00020453	CASS COUNTY REPUBLICAN CENTRAL COMMITTEE		TONY P. KEY	\$100,231	1	8/9/2012	25	\$8,064	\$225
2540	C00511311	DAVE SITTON FOR CONGRESS	SITTON, DAVE	DAVID KATSEL	\$403,582	0		Not Filed	\$403,582 (est)	\$9,900
2541	C00500173	DAVID MCINTOSH FOR INDIANA	MCINTOSH, DAVID MARTIN	JACKIE M. BENNETT, JR.	\$1,733,077	0	7/31/2012	16	\$575,917	\$6,500
2542	C00501072	DEAN YOUNG FOR CONGRESS COMMITTEE	YOUNG, LARRY DEAN JR	HUGH R. PARJUE	\$468,916	0		Not Filed	\$117,229 (est)	\$4,950
2543	C00505628	FRIENDS OF CHRIS GARNER	GARNER, CHRISTOPHER JOHN	BARBARA S. SMALL	\$120,085	0		Not Filed	\$120,085 (est)	\$4,950
2544	C00495119	FRIENDS OF HEATHER MCITEER	MCITEER, HEATHER	MERCIDEES MCITEER	\$671,360	0		Not Filed	\$134,272 (est)	\$4,950
2545	C00505685	GARY SMITH FOR CONGRESS	SMITH, GARY	GARY SMITH	\$455,677	0		Not Filed	\$227,839 (est)	\$7,150

2547	C00497644	JIMMIE MOORE FOR CONGRESS	MOORE, JIMMIE SEE	GAIL A. CHINN-PRATT	\$328,232	0		Not Filed	\$82,058 (est)	\$3,850
2548	C00500827	JOHN LEE FOR CONGRESS	LEE, JOHN JAY	RYANN PATRICK-SHELL	\$138,309	0		Not Filed	\$46,103 (est)	\$990
2549	C00514489	KENNETH SANDERS FOR CONGRESS CAMPAIGN	SANDERS, KENNETH	ESQUE	\$156,338	0		Not Filed	\$52,113 (est)	\$2,970
2550	C00494187	MODICA FOR SENATE	MODICA, JULIEN	SANDERS, JR. JULIEN MODICA	\$673,796	1		Not Filed	\$224,599 (est)	\$8,937
2551	C00293100	NAADAC THE ASSOCIATION FOR ADDICTION PROFESSIONALS		ALVIN FELICIANO	\$103,032	0	8/23/2012	Not Filed	\$14,149	\$550
2552	C00413567	NATIONAL ASSOCIATION OF FARM SERVICE AGENCY COUNTY OFFICE EMPLOYEES INC PPC AKA NASCOE PAC		ROBERT L. REDDING, JR.	\$154,216	0	8/8/2012	24	\$33,826	\$680
2553	C00192849	PLUMBERS AND PIPEFITTERS LOCAL UNION 74		MARK R. PERMAR	\$109,945	1	8/2/2012	18	\$15,813	\$250

2555	C00503078	STRONG UTAH PAC		MICHAEL D. EDMONDS	\$154,435	0	8/28/2012	Not Filed	\$75,185	\$3,850
2556	C00467761	SUE LOWDEN FOR U S SENATE	LOWDEN, SUE	BOB BEERS	\$273,273	2		Not Filed	\$54,655 (est)	\$4,455

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AF#	Committee ID	Committee Name	Candidate Name	Treasurer	Threshold	PV	Receipt Date	Days Late	LOA	RTB Penalty
2557	C00507772	SYLVIA ROMO FOR CONGRESS	ROMO, SYLVIA S	LARRY BENSON	\$108,265	0		Not Filed	\$54,133 (est)	\$2,970
2558	C00503342	TOM ENGEL FOR CONGRESS COMMITTEE	ENGEL, TOM	RICHARD VACCARIELLO	\$385,678	0		Not Filed	\$192,839 (est)	\$6,050
2559	C00466011	TRUST WOMEN PAC		TIFFANY REYNOLDS-RICHARDSON	\$175,617	0		Not Filed	\$35,123 (est)	\$990
2560	C00430686	WEBB FOR SENATE	WEBB, JAMES H JR	INGRID MORROY	\$257,207	0		Not Filed	\$51,441 (est)	\$2,970
2561	C00509778	WIELAND 2012	WIELAND, RICHARD E	ROBERT W. MERKLE	\$569,527	0		Not Filed	\$569,527 (est)	\$11,000

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Reason To Believe Recommendation - 2012)
July Quarterly Report for the)
Administrative Fine Program:)
BICKNELL FOR CONGRESS, and) AF# 2538
JAMES R SHAW JR as treasurer;)
CASS COUNTY REPUBLICAN) AF# 2539
CENTRAL COMMITTEE, and TONY P)
KEY as treasurer;)
DAVE SITTON FOR CONGRESS, and) AF# 2540
DAVID KATSEL as treasurer;)
DAVID MCINTOSH FOR INDIANA, and) AF# 2541
JACKIE M BENNETT JR as treasurer;)
DEAN YOUNG FOR CONGRESS) AF# 2542
COMMITTEE, and HUGH R PARDUE as)
treasurer;)
FRIENDS OF CHRIS GARNER, and) AF# 2543
BARBARA S SMALL as treasurer;)
FRIENDS OF HEATHER MCTEER, and) AF# 2544
MERCIDEES MCTEER as treasurer;)
GARY SMITH FOR CONGRESS, and) AF# 2545
GARY SMITH as treasurer;)

JIMMIE MOORE FOR CONGRESS, and) AF# 2547
CHINN-PRATT, GAIL A. as treasurer;)
JOHN LEE FOR CONGRESS, and) AF# 2548
JUDEN, RYANN PATRICK-SHELL as)
treasurer;)
KENNETH SANDERS FOR CONGRESS) AF# 2549
CAMPAIGN, and ESQUE SANDERS JR)
as treasurer;)
MODICA FOR SENATE, and JULIEN) AF# 2550
MODICA as treasurer;)
NAADAC THE ASSOCIATION FOR) AF# 2551
ADDICTION PROFESSIONALS, and)
ALVIN FELICIANO as treasurer;)

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NATIONAL ASSOCIATION OF FARM) AF# 2552
SERVICE AGENCY COUNTY OFFICE)
EMPLOYEES INC PPC AKA NASCOE)
PAC, and ROBERT L REDDING JR as)
treasurer;)
PLUMBERS AND PIPEFITTERS LOCAL) AF# 2553
UNION 74, and MR MARK R PERMAR as)
treasurer;)

STRONG UTAH PAC, and MICHAEL D) AF# 2555
EDMONDS as treasurer;)
SUE LOWDEN FOR U S SENATE, and) AF# 2556
BOB BEERS as treasurer;)
SYLVIA ROMO FOR CONGRESS, and) AF# 2557
LARRY BENSON as treasurer;)
TOM ENGEL FOR CONGRESS) AF# 2558
COMMITTEE, and VACCARIELLO,)
RICHARD MR. as treasurer;)
TRUST WOMEN PAC, and REYNOLDS-) AF# 2559
RICHARDSON, TIFFANY as treasurer;)
WEBB FOR SENATE, and INGRID) AF# 2560
MORROY as treasurer;)
WIELAND 2012, and ROBERT W) AF# 2561
MERKLE as treasurer;)

CERTIFICATION

I, Shelley E. Garr, Deputy Secretary of the Federal Election Commission, do
hereby certify that on September 12, 2012 the Commission took the following actions
on the Reason To Believe Recommendation - 2012 July Quarterly Report for the
Administrative Fine Program as recommended in the Reports Analysis Division's
Memorandum dated September 11, 2012, on the following committees:

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AF#2538 Decided by a vote of 6-0 to: (1) find reason to believe that BICKNELL FOR CONGRESS, and JAMES R. SHAW JR as treasurer violated 2 U.S.C. 434(a) and make a preliminary determination that the civil money penalty would be the amount indicated on the report; (2) send the appropriate letter. Commissioners Bauerly, Hunter, McGahn II, Petersen, Walther, and Weintraub voted affirmatively for the decision.

AF#2539 Decided by a vote of 6-0 to: (1) find reason to believe that CASS COUNTY REPUBLICAN CENTRAL COMMITTEE, and TONY P KEY as treasurer violated 2 U.S.C. 434(a) and make a preliminary determination that the civil money penalty would be the amount indicated on the report; (2) send the appropriate letter. Commissioners Bauerly, Hunter, McGahn II, Peterson, Walther, and Weintraub voted affirmatively for the decision.

AF#2540 Decided by a vote of 6-0 to: (1) find reason to believe that DAVE SITTON FOR CONGRESS, and DAVID KATSEL as treasurer violated 2 U.S.C. 434(a) and make a preliminary determination that the civil money penalty would be the amount indicated on the report; (2) send the appropriate letter. Commissioners Bauerly, Hunter, McGahn II, Petersen, Walther, and Weintraub voted affirmatively for the decision.

AF#2541 Decided by a vote of 6-0 to: (1) find reason to believe that DAVID MCINTOSH FOR INDIANA, and JACKIE M BENNETT JR as treasurer violated 2 U.S.C. 434(a) and make a preliminary determination that the civil money penalty would be the amount indicated on the report; (2) send the appropriate letter. Commissioners Bauerly, Hunter, McGahn II, Petersen, Walther, and Weintraub voted affirmatively for the decision.

AF#2542 Decided by a vote of 6-0 to: (1) find reason to believe that DEAN YOUNG FOR CONGRESS COMMITTEE, and HUGH R PARDUE as treasurer violated 2 U.S.C. 434(a) and make a preliminary determination that the civil money penalty would be the amount indicated on the report; (2) send the appropriate letter. Commissioners Bauerly, Hunter, McGahn II, Petersen, Walther, and Weintraub voted affirmatively for the decision.

AF#2543 Decided by a vote of 6-0 to: (1) find reason to believe that FRIENDS OF CHRIS GARNER, and BARBARA S SMALL as treasurer violated 2 U.S.C. 434(a) and make a preliminary determination that the civil money penalty would be the amount indicated on the report; (2) send the appropriate letter. Commissioners Bauerly, Hunter, McGahn II, Petersen, Walther, and Weintraub voted affirmatively for the decision.

AF#2544 Decided by a vote of 6-0 to: (1) find reason to believe that FRIENDS OF HEATHER MCTEER, and MERCEDES MCTEER as treasurer violated 2 U.S.C. 434(a) and make a preliminary determination that the civil money penalty would be the amount indicated on the report; (2) send the appropriate letter. Commissioners Bauerly, Hunter, McGahn II, Petersen, Walther, and Weintraub voted affirmatively for the decision.

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AF#2545 Decided by a vote of 6-0 to: (1) find reason to believe that GARY SMITH FOR CONGRESS, and GARY SMITH as treasurer violated 2 U.S.C. 434(a) and make a preliminary determination that the civil money penalty would be the amount indicated on the report; (2) send the appropriate letter. Commissioners Bauerly, Hunter, McGahn II, Petersen, Walther, and Weintraub voted affirmatively for the decision.

AF#2547 Decided by a vote of 6-0 to: (1) find reason to believe that JIMMIE MOORE FOR CONGRESS, and CHINN-PRATT, GAIL A. as treasurer violated 2 U.S.C. 434(a) and make a preliminary determination that the civil money penalty would be the amount indicated on the report; (2) send the appropriate letter. Commissioners Bauerly, Hunter, McGahn II, Petersen, Walther, and Weintraub voted affirmatively for the decision.

AF#2548 Decided by a vote of 6-0 to: (1) find reason to believe that JOHN LEE FOR CONGRESS, and JUDEN, RYANN PATRICK-SHELL as treasurer violated 2 U.S.C. 434(a) and make a preliminary determination that the civil money penalty would be the amount indicated on the report; (2) send the appropriate letter. Commissioners Bauerly, Hunter, McGahn II, Petersen, Walther, and Weintraub voted affirmatively for the decision.

AF#2549 Decided by a vote of 6-0 to: (1) find reason to believe that KENNETH SANDERS FOR CONGRESS CAMPAIGN, and ESQUE SANDERS JR as treasurer violated 2 U.S.C. 434(a) and make a preliminary determination that the civil money penalty would be the amount indicated on the report; (2) send the appropriate letter. Commissioners Bauerly, Hunter, McGahn II, Petersen, Walther, and Weintraub voted affirmatively for the decision.

AF#2550 Decided by a vote of 6-0 to: (1) find reason to believe that MODICA FOR SENATE, and JULIEN MODICA as treasurer violated 2 U.S.C. 434(a) and make a preliminary determination that the civil money penalty would be the amount indicated on the report; (2) send the appropriate letter. Commissioners Bauerly, Hunter, McGahn II, Petersen, Walther, and Weintraub voted affirmatively for the decision.

AF#2551 Decided by a vote of 6-0 to: (1) find reason to believe that NAADAC THE ASSOCIATION FOR ADDICTION PROFESSIONALS, and ALVIN FELICIANO as treasurer violated 2 U.S.C. 434(a) and make a preliminary determination that the civil money penalty would be the amount indicated on the report; (2) send the appropriate

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letter. Commissioners Bauerly, Hunter, McGahn II, Petersen, Walther, and Weintraub voted affirmatively for the decision.

AF#2552 Decided by a vote of 6-0 to: (1) find reason to believe that NATIONAL ASSOCIATION OF FARM SERVICE AGENCY COUNTY OFFICE EMPLOYEES INC PPC AKA NASCOE PAC, and ROBERT L REDDING JR as treasurer violated 2 U.S.C. 434(a) and make a preliminary determination that the civil money penalty would be the amount indicated on the report; (2) send the appropriate letter. Commissioners Bauerly, Hunter, McGahn II, Petersen, Walther, and Weintraub voted affirmatively for the decision.

AF#2553 Decided by a vote of 6-0 to: (1) find reason to believe that PLUMBERS AND PIPEFITTERS LOCAL UNION 74, and MR MARK R PERMAR as treasurer violated 2 U.S.C. 434(a) and make a preliminary determination that the civil money penalty would be the amount indicated on the report; (2) send the appropriate letter. Commissioners Bauerly, Hunter, McGahn II, Petersen, Walther, and Weintraub voted affirmatively for the decision.

AF#2555 Decided by a vote of 6-0 to: (1) find reason to believe that STRONG UTAH PAC, and MICHAEL D EDMONDS as treasurer violated 2 U.S.C. 434(a) and make a preliminary determination that the civil money penalty would be the amount indicated on the report; (2) send the appropriate letter. Commissioners Bauerly, Hunter, McGahn II, Petersen, Walther, and Weintraub voted affirmatively for the decision.

AF#2556 Decided by a vote of 6-0 to: (1) find reason to believe that SUE LOWDEN FOR U S SENATE, and BOB BEERS as treasurer violated 2 U.S.C. 434(a) and make a preliminary determination that the civil money penalty would be the amount indicated on the report; (2) send the appropriate letter. Commissioners Bauerly, Hunter, McGahn II, Petersen, Walther, and Weintraub voted affirmatively for the decision.

AF#2557 Decided by a vote of 6-0 to: (1) find reason to believe that SYLVIA ROMO FOR CONGRESS, and LARRY BENSON as treasurer violated 2 U.S.C. 434(a) and make a preliminary determination that the civil money penalty would be the amount indicated on the report; (2) send the appropriate letter. Commissioners Bauerly, Hunter, McGahn II, Petersen, Walther, and Weintraub voted affirmatively for the decision.

AF#2558 Decided by a vote of 6-0 to: (1) find reason to believe that TOM ENGEL FOR CONGRESS COMMITTEE, and VACCARIELLO, RICHARD MR. as treasurer

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violated 2 U.S.C. 434(a) and make a preliminary determination that the civil money penalty would be the amount indicated on the report; (2) send the appropriate letter. Commissioners Bauerly, Hunter, McGahn II, Peterson, Walther, and Weintraub voted affirmatively for the decision.

AF#2559 Decided by a vote of 6-0 to: (1) find reason to believe that TRUST WOMEN PAC, and REYNOLDS-RICHARDSON, TIFFANY as treasurer violated 2 U.S.C. 434(a) and make a preliminary determination that the civil money penalty would be the amount indicated on the report; (2) send the appropriate letter. Commissioners Bauerly, Hunter, McGahn II, Petersen, Walther, and Weintraub voted affirmatively for the decision.

AF#2560 Decided by a vote of 6-0 to: (1) find reason to believe that WEBB FOR SENATE, and INGRID MORROY as treasurer violated 2 U.S.C. 434(a) and make a preliminary determination that the civil money penalty would be the amount indicated on the report; (2) send the appropriate letter. Commissioners Bauerly, Hunter, McGahn II, Petersen, Walther, and Weintraub voted affirmatively for the decision.

AF#2561 Decided by a vote of 6-0 to: (1) find reason to believe that WIELAND 2012, and ROBERT W MERKLE as treasurer violated 2 U.S.C. 434(a) and make a preliminary determination that the civil money penalty would be the amount indicated on the report; (2) send the appropriate letter. Commissioners Bauerly, Hunter, McGahn II, Petersen, Walther, and Weintraub voted affirmatively for the decision.

Attest:

September 13, 2012
Date

Shelley E. Garr
Shelley E. Garr
Deputy Secretary of the Commission

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 13, 2012

Gary Smith, in official capacity as Treasurer
Gary Smith for Congress
P.O. Box 36287
Albuquerque, NM 87176

C00505685
AF#: 2545

Dear Mr. Smith:

The Federal Election Campaign Act of 1971, as amended ("the Act"), requires that your committee file a July Quarterly Report of Receipts and Disbursements every calendar year. This report, covering the period through June 30th, shall be filed no later than July 15th. 2 U.S.C. § 434(a). Records at the Federal Election Commission ("FEC") indicate that this report was not filed within thirty (30) days of the due date. You should file this report if you have not already done so.

The Act permits the FEC to impose civil money penalties for violations of the reporting requirements of 2 U.S.C. § 434(a). 2 U.S.C. § 437g(a)(4). On September 12, 2012, the FEC found that there is reason to believe ("RTB") that Gary Smith for Congress and you, in your official capacity as treasurer, violated 2 U.S.C. § 434(a) by failing to file timely this report on or before July 15th. Based on the FEC's schedules of civil money penalties at 11 CFR § 111.43, the amount of your civil money penalty calculated at the RTB stage is \$7,150. Please see the attached copy of the Commission's administrative fine regulations at 11 CFR §§ 111.30-111.55. Attachment 1. The Commission's website contains further information about how the administrative fine program works and how the fines are calculated. See <http://www.fec.gov/af/af.shtml>. 11 CFR § 111.34. Your payment of \$7,150 is due within forty (40) days of the finding, or by October 22, 2012, and is based on these factors:

Sensitivity of Report: Not Election Sensitive
Level of Activity: \$227,839
Number of Days Late: Not Filed
Number of Previous Civil Money Penalties Assessed: 0

At this juncture, the following courses of action are available to you:

1. If You Choose to Challenge the RTB Finding and/or Civil Money Penalty

If you should decide to challenge the RTB finding and/or calculated civil money penalty, you must submit a written response, including the AF# found at the top of page 1 under your committee's identification number, to the FEC's Office of Administrative Review, 999 E Street,

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NW, Washington, DC 20463. Your response must be received within forty (40) days of the Commission's RTB finding, or October 22, 2012. 11 CFR § 111.35(a). Your written response must include the reason(s) why you are challenging the RTB finding and/or calculated civil money penalty, and must include the factual basis supporting the reason(s) and supporting documentation. The FEC strongly encourages that documents be submitted in the form of affidavits or declarations. 11 CFR § 111.36(c).

The FEC will only consider challenges that are based on at least one of three grounds: (1) a factual error in the RTB finding; (2) miscalculation of the calculated civil money penalty by the FEC; or (3) your demonstrated use of best efforts to file in a timely manner when prevented from doing so by reasonably unforeseen circumstances that were beyond your control. 11 CFR § 111.35(b). In order for a challenge to be considered on the basis of best efforts, you must have filed the required report no later than 24 hours after the end of these reasonably unforeseen circumstances. *Id.* Examples of circumstances that will be considered reasonably unforeseen and beyond your control include, but are not limited to, (1) a failure of Commission computers or Commission-provided software despite your seeking technical assistance from Commission personnel and resources; (2) a widespread disruption of information transmissions over the Internet that is not caused by a failure of the Commission's or your computer systems or Internet service provider; and (3) severe weather or other disaster-related incident. 11 CFR § 111.35(c). Examples of circumstances that will not be considered reasonably unforeseen and beyond your control include, but are not limited to, (1) negligence; (2) delays caused by vendors or contractors; (3) treasurer and staff illness, inexperience or unavailability; (4) committee computer, software, or Internet service provider failures; (5) failure to know filing date; and (6) failure to use filing software properly. 11 CFR § 111.35(d).

The "failure to raise an argument in a timely fashion during the administrative process shall be deemed a waiver" of your right to present such argument in a petition to the U.S. district court under 2 U.S.C. § 437g. 11 CFR § 111.38.

If you intend to be represented by counsel, please advise the Office of Administrative Review. You should provide, in writing, the name, address and telephone number of your counsel and authorize counsel to receive notifications and communications relating to this challenge and imposition of the calculated civil money penalty.

2. If You Choose Not to Pay the Civil Money Penalty and Not to Submit a Challenge

If you do not pay the calculated civil money penalty and do not submit a written response, the FEC will assume that the preceding factual allegations are true and make a final determination that Gary Smith for Congress and you, in your official capacity as treasurer, violated 2 U.S.C. § 434(a) and assess a civil money penalty.

Unpaid civil money penalties assessed through the Administrative Fine regulations will be subject to the Debt Collection Act of 1982 ("DCA"), as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 *et seq.* The FEC may take any and all appropriate action authorized and required by the DCA, as amended, including transfer to the U.S. Department of the Treasury for collection. 11 CFR § 111.51(a)(2).

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3. If You Choose to Pay the Civil Money Penalty

If you should decide to pay the calculated civil money penalty, send the enclosed remittance form, along with your payment, to the FEC at the address on page 4. Upon receipt of your payment, the FEC will send you a final determination letter.

This matter was generated based on information ascertained by the FEC in the normal course of carrying out its supervisory responsibilities. 2 U.S.C. § 437g(a)(2). It will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and 437g(a)(12)(A) until it is placed on the public record in accordance with 11 CFR § 111.42, unless you notify the FEC in writing that you wish the matter to be made public.

As noted earlier, you may obtain additional information on the FEC's administrative fine program, including the final regulations, on the FEC's website at <http://www.fec.gov/af/af.shtml>. If you have questions regarding the payment of the calculated civil money penalty, please contact Sari Pickerall in the Reports Analysis Division at our toll free number (800) 424-9530 (at the prompt press 5) or (202) 694-1130. If you have questions regarding the submission of a challenge, please contact the Office of Administrative Review at our toll free number (800) 424-9530 (press 0, then ext. 1660) or (202) 694-1660.

On behalf of the Commission,

Carole C. Hunter

Caroline C. Hunter
Chair

13092683171

ADMINISTRATIVE FINE REMITTANCE & PAYMENT INSTRUCTIONS

In accordance with the schedule of penalties at 11 CFR § 111.43, the amount of your civil money penalty calculated at RTB is \$7,150 for the 2012 July Quarterly Report.

Please mail this remittance with a check or money order made payable to the Federal Election Commission to the following address:

Federal Election Commission
P.O. Box 979058
St. Louis, MO 63197-9000

If you choose to send your remittance and payment by courier or overnight delivery, please use this address:

U.S. Bank - Government Lockbox
FEC #979058
1005 Convention Plaza
Attn: Government Lockbox, SL-MO-C2GL
St. Louis, MO 63101

The remittance and your payment are due by October 22, 2012. Upon receipt of your remittance and payment, the FEC will send you a final determination letter.

PAYMENTS BY PERSONAL CHECK

Personal checks will be converted into electronic funds transfers (EFTS). Your account will be electronically debited for the amount on your check, usually within 24 hours, and the debit will appear on your regular statement. We will destroy your original check and keep a copy of it. In case the EFT cannot be processed for technical reasons, you authorize us to process the copy in lieu of the original check. Should the EFT not be completed because of insufficient funds, we may try to make the transfer twice.

PLEASE DETACH AND RETURN THE PORTION BELOW WITH YOUR PAYMENT

FOR: Gary Smith for Congress

FEC ID#: C00505685

AF#: 2545

PAYMENT DUE DATE: October 22, 2012

PAYMENT AMOUNT DUE: \$7,150

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CAROLINE HUNTER,

10-12-12

I NEED TO CHALLENGE THE
AF # 2545, C 00505685 FOR THE
following REASON: THE FEC
HAS BEEN AND IS ASSISTING
ME IN THE FILING OF REPORTS AND
THERE SHOULD BE 0 PENALTY.

Harry D. Smith

13092683173



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Via First Class Mail

October 17, 2012

Gary Smith, in official capacity as Treasurer
Gary Smith for Congress
P.O. Box 36287
Albuquerque, NM 87176

C00505685
AF#: 2545

Dear Mr. Smith:

On October 17, 2012, the Commission received your written response ("challenge") which is being reviewed by the Office of Administrative Review. If you have any questions regarding your challenge, please contact this Office on our toll free number (800)424-9530 (press 0, then ext. 1660) or (202)694-1660.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dayna C. Brown".

Dayna C. Brown
Reviewing Officer
Office of Administrative Review

13092683174

Date: October 18, 2012

**REFERRAL TO OFFICE OF ADMINISTRATIVE REVIEW
CHALLENGE RECEIVED**

AF#: 2545

Committee Name: Gary Smith for Congress

Committee ID#: C00505685

Committee Address (if different than in RTB letter):

Treasurer Name (if different than in RTB finding): N/A

Attachments:

Copy of RTB Circulation Report, dated September 11, 2012 and RTB Certification, dated September 13, 2012: Previously Forwarded

Attachment #: N/A

Proof of Delivery (to be forwarded at later date if not yet received) (Y/N): Y

Attachment #: 1

Other Relevant Telecoms (Y/N): N

Attachment #: N/A

Original Correspondence Received by RAD in Response to RTB Letter (Y/N): N

Attachment #: N/A

RAD Staff Declaration (Y/N): Y

-2012 July Quarterly Report Prior Notice, dated June 21, 2012.

-Non-Filer Letter, dated July 31, 2012.

-RTB Letter, dated September 13, 2012.

Attachment #: 3

Other RAD Information: (Y/N): Y

-Memo to File, dated September 17, 2012

Attachment#: 4

13092683175



Delivery Notification

Dear Customer,

This notice serves as proof of delivery for the shipment listed below.

Tracking Number: 1Z WF5 860 A2 9331 531 7
Reference Number(s): RAD, 2545
Service: NEXT DAY AIR
Special Instructions: ADULT SIGNATURE REQUIRED
Shipped/Billed On: 09/20/2012
Delivered On: 09/21/2012 10:23 A.M.
Delivered To:

Signed By: ALBUQUERQUE, NM, US 87108
Location: SMITH
RESIDENTIAL

Thank you for giving us this opportunity to serve you.

Sincerely,
UPS

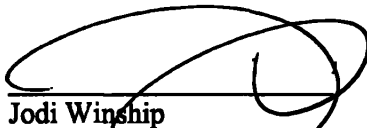
Tracking results provided by UPS: 09/21/2012 1:25 P.M. ET

Attachment 1

13092683176

DECLARATION OF JODI WINSHIP

1. I am the Chief of the Compliance Branch for the Reports Analysis Division of the Federal Election Commission ("Commission"). In my capacity as Chief of the Compliance Branch, I oversee the initial processing of the Administrative Fine Program. I make this declaration based on my personal knowledge and, if called upon as a witness, could and would testify competently to the following matters.
2. I hereby certify that documents identified herein are true and accurate copies of the following sent by the Commission to Gary Smith for Congress:
 - A) Prior Notice, dated June 21, 2012, referencing the 2012 July Quarterly Report (sent via electronic mail to: GARY@GARYSMITH2012.COM);
 - B) Non-Filer Letter, dated July 31, 2012, referencing the 2012 July Quarterly Report;
 - C) Reason-to-Believe Letter, dated September 13, 2012 referencing the 2012 July Quarterly Report.
3. I hereby certify that I have searched the Commission's public records and find that Gary Smith for Congress has not yet filed the 2012 July Quarterly Report with the Commission.
4. Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct and that all relevant telecoms for the matter have been provided. This declaration was executed at Washington, D.C. on the 18th day of October, 2012.



Jodi Winship
Chief, Compliance Branch
Reports Analysis Division
Federal Election Commission



JULY QUARTERLY REPORT NOTICE

FEDERAL ELECTION COMMISSION

CONGRESSIONAL COMMITTEES
PARTIES AND PACS

June 21, 2012

CURRENT REPORT DUE

REPORT	CLOSE OF BOOKS	REG./CERT. & OVERNIGHT MAILING DEADLINE	FILING DEADLINE
July Quarterly	06/30/12	07/15/12	07/15/12 ²

REPORTING SCHEDULE FOR REMAINDER OF 2012

REPORT	CLOSE OF BOOKS	REG./CERT. & OVERNIGHT MAILING DEADLINE	FILING DEADLINE
October Quarterly	09/30/12	10/15/12	10/15/12
Pre-General ³	10/17/12	10/22/12	10/25/12
Post-General	11/26/12	12/06/12	12/06/12
Year-End	12/31/12	01/31/13	01/31/13

Supplemental Filing Information is available:

- Congressional Committees
- Parties and PACs

¹ A reporting period always begins the day after the closing date of the last report filed. If the committee is new and has not previously filed a report, the first report must cover all activity that occurred before the committee registered up through the close of books for the first report due.

² Notice that this filing date falls on a weekend. Filing deadlines are not extended when they fall on nonworking days. Accordingly, reports filed by methods other than Registered, Certified or Overnight Mail, or electronically, must be received before the Commission's (or for committees supporting only Senate candidates, the Secretary of Senate's) close of business on the last business day before the deadline.

³ **Parties and PACs:** required only if committee makes contributions or expenditures in connection with the general election during the reporting period. 11 CFR 104.5(c)(1)(ii).
Congressional Committees: the principal campaign committee of a candidate who participates in the general election must file pre-and post-general election reports. 11 CFR 104.5(a)(2).

2012 SUPPLEMENTAL FILING INFORMATION CONGRESSIONAL COMMITTEES

PLEASE NOTE: The Commission provides reminders of upcoming filing dates as a courtesy to help committees comply with the filing deadlines set forth in the Act and Commission regulations. Committee treasurers must comply with all applicable filing deadlines established by law, and the lack of prior notice does not constitute an excuse for failing to comply with any filing deadline.

WHO MUST FILE

Principal campaign committees of congressional candidates ¹ (including unopposed candidates and candidates whose names do not appear on the ballot) must file Quarterly Reports in 2012. ²

Campaigns that raise or spend more than \$5,000 for the 2012 election cycle (and thus trigger registration and reporting requirements) must file quarterly reports throughout 2012, even if the candidate plans to retire, withdraws from the race prior to the primary election, loses the primary or drops out of the race prior to the general election. See 11 CFR 104.5(a)(2).

Before a committee can stop filing with the FEC, it must file a termination report with the Commission. See 11 CFR 102.3. Committees must continue to file reports until the Commission notifies them in writing that their termination report has been accepted.

METHODS OF FILING REPORTS

Electronic Filing

Reports filed electronically must be received and validated by the Commission by 11:59 p.m. Eastern Time on the filing deadline. See 11 CFR 104.5(e). See also 11 CFR 104.18 and 100.19.

- Web Page: Electronic Filing Page
- Campaign Guide for Congressional Candidates and Committees (Candidate Guide), pp. 83-86 [PDF]

Paper Filing - Meeting the Filing Deadline

Paper Report filing options -- Registered, Certified or Overnight or First Class Mail. See 11 CFR 104.5(e). See also 11 CFR 100.19.

- Web Page: Link to Paper Forms (for downloading and printing)
- Candidate Guide, p. 82 [PDF]

¹ Generally, an individual becomes a candidate for federal office (and thus triggers registration and reporting obligations) when his or her campaign exceeds \$5,000 in either contributions or expenditures. If the campaign has not crossed the \$5,000 threshold, it is not required to file reports. See 11 CFR 100.3(a). See also 11 CFR 104.5(a).

² If a candidate has more than one authorized committee, the principal campaign committee files a consolidated report on Form 32 [PDF]. See 11 CFR 104.3(f).

PRE- AND POST-ELECTION REPORTS

The principal campaign committee of any candidate participating in a 2012 state primary, nominating convention or runoff election -- even if unopposed -- must also file a pre-election report 12 days prior to the primary, nominating convention or runoff. The principal campaign committee of a candidate who participates in the general election must file pre- and post-general election reports. See 11 CFR 104.5(a)(2).

- Web Page: 2012 Congressional Pre-Primary Reporting Dates
- The Record:
 - FEC Record Blog: Reporting
 - January 2012 issue [PDF]
- Candidate Guide, pp. 81-82 [PDF]

48 HOUR NOTICES OF CONTRIBUTIONS

The principal campaign committee must file notices if any authorized committees receive any contribution (including in-kind gifts or advances of goods or services; loans from the candidate or other non-bank sources; and guarantees or endorsements of bank loans to the candidate or committee) of \$1,000 or more per source, during the period less than 20 days but more than 48 hours before any election in which the candidate is running. See 11 CFR 104.5(f).

The notices must reach the appropriate federal filing office within 48 hours of the committee's receipt of the contribution(s). Campaign committees that file electronically MUST submit their 48-hour notices electronically. See 11 CFR 104.5(f).

- Web Page: Electronic Filing Page
- Web Page: Link to Paper Forms (for downloading and printing)
- Web Page: Link to Web Form 6 (for online submission)
- Form 6 Fax numbers
 - Senate campaigns (Secretary of the Senate): (202) 224-1851
 - House Campaigns (FEC): (202) 219-0174
- Campaign Guide: Candidate Guide, p. 81 [PDF]

2012 REPORTING SCHEDULE

- Web Page: 2012 Reporting Dates Page
- The Record:
 - FEC Record Blog: Reporting
 - January 2012 issue [PDF]
- Candidate Guide, p. 83 [PDF]

COMPLIANCE

Treasurer Responsibility

Committee Treasurers are responsible for both the timeliness and the accuracy of all reports. They may be subject to monetary penalties if reports are inaccurate or are not filed on time. See 11 CFR 104.14(d).

- Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings [PDF]
- Candidate Guide, p. 7-9 [PDF]

Administrative Fine Program

Political committees and their treasurers who fail to file their reports on time may be subject to civil money penalties up to \$17,600 (or more for repeat late- and non-filers).³ See generally, 11 CFR Part 111 Subpart B. See also 11 CFR 111.43.

- Web Page: Administrative Fine Program
- Candidate Guide, pp. 82-83 [PDF]

DISCLOSURE OF LOBBYIST BUNDLING ACTIVITY

Campaign committees must file FEC Form 3L [PDF] if they receive two or more bundled contributions from lobbyists/registrants or lobbyist/registant PACs that aggregate in excess of \$16,700 during the applicable reporting period (see page 1 of this notice). See 11 CFR 104.22 and 11 CFR 110.17(f).

- The Record: March 2009 issue [PDF]
- Candidate Guide, Appendix F, pp. 155-161 [PDF]

IMPORTANT FILING INFORMATION - PAPER FILERS

In response to the 2001 anthrax threat, the U.S. Postal Service is irradiating mail directed to many federal agencies, including the FEC and the Secretary of the Senate.⁴ This process has not only delayed mail delivery, it has also damaged and in some cases destroyed pieces of mail. As a result, committees that file reports with the FEC may want to consider submitting their reports by some means other than U.S. mail. Alternative methods include electronic filing, overnight mail or delivery service, and hand delivery.

³ Penalties for late- or non-filing of 48-hour notices are based on the amount of contributions not timely disclosed. As a result, these penalties may exceed \$17,600, even for first-time violations.

⁴ Senate committees should contact the Secretary of the Senate at (202) 224-0322 for more information on filing reports via US mail.

FOR INFORMATION, CALL: (800) 424-9530 or (202) 694-1100

2012 SUPPLEMENTAL FILING INFORMATION PACs AND PARTY COMMITTEES

PLEASE NOTE: The Commission provides reminders of upcoming filing dates as a courtesy to help committees comply with the filing deadlines set forth in the Act and Commission regulations. Committee treasurers must comply with all applicable filing deadlines established by law, and the lack of prior notice does not constitute an excuse for failing to comply with any filing deadline.

WHO MUST FILE

All Party Committees and PACs (Nonconnected Committees and Separate Segregated Funds) must file either quarterly or monthly reports in 2012. See 11 CFR 104.5(c). Before a committee can stop filing with the FEC, it must file a termination report with the Commission. See 11 CFR 102.3. Committees must continue to file reports until the Commission notifies them in writing that their termination report has been accepted.

METHODS OF FILING REPORTS

Electronic Filing

Reports filed electronically must be received and validated by the Commission by 11:59 p.m. Eastern Time on the filing deadline. See 11 CFR 104.5(e). See also 11 CFR 104.18 and 100.19.

- Web Page: Electronic Filing Page
- Campaign Guide: Nonconnected Committees (Nonconnected), pp. 51-53 [PDF]; Corporations and Labor Organizations (SSF), pp. 49-51 [PDF]; Political Party Committees (Party), pp. 69-71 [PDF].

Paper Filing -- Meeting the Filing Deadline

Paper report filing options – Registered, Certified or Overnight or First Class Mail. See 11 CFR 104.5(e). See also 11 CFR 100.19.

- Web Page: Link to Paper Forms (for downloading and printing)
- Campaign Guide: Nonconnected, pp. 47-48 [PDF]; SSF, pp. 45-46 [PDF]; Party, p. 65 [PDF].

CHANGE IN FILING FREQUENCY

Committees able to change their reporting schedule (for example, from monthly to quarterly) who wish to do so must notify the Commission in writing and may change their filing frequency no more than once per calendar year. See 11 CFR 104.5(c).

- Web Page: Filing Frequency by Type of Committee
- Campaign Guide: Nonconnected, p. 51 [PDF]; SSF, p. 49 [PDF]; Party, p. 67 [PDF].

2012 REPORTING SCHEDULE

- Web Page: 2012 Reporting Dates Page
- The Record:
 - FEC Record Blog: Reporting
 - January 2012 issue [PDF]
- Campaign Guide: Nonconnected, pp. 49-51 [PDF]; SSF, pp. 46-48 [PDF]; Party, pp. 67-68 [PDF].

PRE-ELECTION REPORTING

Quarterly filing committees that make contributions or expenditures (including independent expenditures) in connection with an election must also file a Pre-Election Report, if the activity was not previously reported. See 11 CFR 104.5(c)(1)(ii).

- Web Page: 2012 Congressional Pre-Primary Reporting Dates Page
- The Record:
 - FEC Record Blog: Reporting
 - January 2012 issue [PDF]
- Campaign Guide: Nonconnected, pp. 49-51 [PDF]; SSF, pp. 46-48 [PDF]; Party, pp. 67-68 [PDF].

COMPLIANCE

Treasurer Responsibility

Committee treasurers are responsible for both the timeliness and the accuracy of all reports. They may be subject to monetary penalties if reports are inaccurate or are not filed on time. See 11 CFR 104.14(d).

- Statement of Policy Regarding Treasurers Subject to Enforcement Proceeding [PDF]
- Campaign Guide: Nonconnected, pp. 3-4 [PDF]; SSF, pp. 1-2 [PDF]; Party, pp. 6-7 [PDF].

Administrative Fine Program

Failure to file reports on time may be subject to civil money penalties up to \$17,600 (or more for repeat late- or non-filers). See 11 CFR 111.43(b). See generally, 11 CFR Part 111 Subpart B. See also 11 CFR 111.43.

- Web Page: Administrative Fine Program Page
- Campaign Guide: Nonconnected, pp. 48-49 [PDF]; SSF, p. 46 [PDF]; Party, p. 66 [PDF].

DISCLOSURE OF LOBBYIST BUNDLING ACTIVITY

Party committees and Leadership PACs must file FEC Form 3L [PDF] if they receive two or more bundled contributions from lobbyists/registrants or lobbyist/registrant PACs that aggregate in excess of \$16,700 during the applicable reporting period (see page 1 of this notice). See 11 CFR 104.22 and 11 CFR 110.17(f).

- The Record: March 2009 issue [PDF]

48- AND 24-HOUR REPORTS OF INDEPENDENT EXPENDITURES

Any PAC or Party Committee that makes independent expenditures in 2012 may have to disclose this activity within 48- or 24-hours based upon the date and amount of the expenditure.

See 11 CFR 104.4(b)(2) and (c). See generally, 11 CFR 104.4.

- Web Page: State-by-state chart of 2012 48- and 24-hour periods for independent expenditures
- Campaign Guide: Nonconnected, pp. 72-74 [PDF]; SSF, pp. 65-67 [PDF]; Party, pp. 87-89 [PDF].

These reports are not required when a PAC or Party Committee makes a contribution directly to a candidate.

FOR INFORMATION, CALL: (800) 424-9530 or (202) 694-1100



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 31, 2012

RQ-7

GARY SMITH, TREASURER
GARY SMITH FOR CONGRESS
PO BOX 36287
ALBUQUERQUE, NM 871766287

IDENTIFICATION NUMBER: C00505685

REFERENCE: JULY QUARTERLY REPORT 5/17/2012 - 6/30/2012

DEAR TREASURER:

IT HAS COME TO THE ATTENTION OF THE FEDERAL ELECTION COMMISSION THAT YOU MAY HAVE FAILED TO FILE THE ABOVE REFERENCED REPORT OF RECEIPTS AND EXPENDITURES AS REQUIRED BY THE FEDERAL ELECTION CAMPAIGN ACT, AS AMENDED.

IT IS IMPORTANT THAT YOU FILE THIS REPORT IMMEDIATELY WITH THE FEDERAL ELECTION COMMISSION, 999 E STREET, N.W., WASHINGTON, D.C. 20463 FOR HOUSE CANDIDATES, OR THE SECRETARY OF THE SENATE, 232 HART SENATE OFFICE BUILDING, WASHINGTON, D.C. 20510 (MAILING ADDRESS: OFFICE OF PUBLIC RECORDS, P.O. BOX 77578, WASHINGTON, DC 20013-7578), FOR SENATE CANDIDATES. PLEASE NOTE THAT ELECTRONIC FILERS MUST SUBMIT THEIR REPORTS ELECTRONICALLY, AS PER 11 CFR §104.18. A COPY OF THE REPORT MUST ALSO BE FILED WITH THE SECRETARY OR STATE OR EQUIVALENT STATE OFFICER UNLESS THE STATE IS EXEMPT FROM THE FEDERAL REQUIREMENT TO RECEIVE AND MAINTAIN PAPER COPIES. YOU CAN VERIFY THE COMMISSION'S RECEIPT OF ANY DOCUMENTS SUBMITTED BY YOUR COMMITTEE ON THE FEC WEBSITE AT WWW.FEC.GOV.

THE FAILURE TO TIMELY FILE THIS REPORT MAY RESULT IN CIVIL MONEY PENALTIES, AN AUDIT OR LEGAL ENFORCEMENT ACTION. THE CIVIL MONEY PENALTY CALCULATION FOR LATE REPORTS DOES NOT INCLUDE A GRACE PERIOD AND BEGINS ON THE DAY FOLLOWING THE DUE DATE FOR THE REPORT. DUE TO HEIGHTENED SECURITY SCREENING MEASURES, DELIVERY OF MAIL BY THE US POSTAL SERVICE MAY BE DELAYED. THE COMMISSION RECOMMENDS THAT YOU SUBMIT YOUR REPORT VIA OVERNIGHT DELIVERY OR COURIER SERVICE.

IF YOU HAVE ANY QUESTIONS REGARDING THIS MATTER, PLEASE CONTACT MARLENE COLUCCI AT OUR TOLL FREE NUMBER (800)424-9530. OUR DIRECT LOCAL NUMBER IS (202)694-1130.

SINCERELY,

Debbie Chacona

DEBBIE CHACONA
ASSISTANT STAFF DIRECTOR
REPORTS ANALYSIS DIVISION (RAD)

13092683184
12030870640



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

2012 NOV -6 PM 4: 34

SENSITIVE

November 6, 2012

MEMORANDUM

To: The Commission

Through: Alec Palmer *AP*
Staff Director

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

Dayna C. Brown *DCB*
Reviewing Officer
Office of Administrative Review

Subject: Reviewing Officer Recommendation in AF# 2545 – Gary Smith for Congress and Gary Smith, in official capacity as Treasurer, (C00505685)

The attached Reviewing Officer Recommendation is being circulated on an informational basis. A copy was also sent to the respondents in accordance with 11 C.F.R. § 111.36(f). The respondents may file with the Commission Secretary a written response within 10 days of transmittal of the recommendation.

After the 10 day period, the Reviewing Officer Recommendation and the respondents' written response, if any, will be circulated to the Commission to make a final determination.

Attachment

13092683185



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 6, 2012

**REVIEWING OFFICER RECOMMENDATION
OFFICE OF ADMINISTRATIVE REVIEW ("OAR")**

AF# 2545 – Gary Smith for Congress and Gary Smith, in official capacity as Treasurer (C00505685)

Summary of Recommendation

Make a final determination that the respondents violated 2 U.S.C. § 434(a) and assess a \$990 civil money penalty.

Reason-to-Believe Background

On September 12, 2012, the Commission found reason to believe ("RTB") that the respondents violated 2 U.S.C. § 434(a) for failing to file the 2012 July Quarterly Report and made a preliminary determination that the civil money penalty was \$7,150 based on the schedule of penalties at 11 C.F.R. § 111.43. A letter, dated September 13, 2012, was mailed to the respondents' address of record by the Reports Analysis Division ("RAD") to notify them of the Commission's RTB finding and civil money penalty. The letter was undeliverable at the respondents' post office box address of record; therefore on September 20 a copy of the letter was mailed to an alternate address provided by the Treasurer. It was successfully delivered on September 21, 2012.

Legal Requirements

The Federal Election Campaign Act ("Act") states that the treasurer of a principal campaign committee of a candidate shall file a report for the period ending June 30 no later than July 15. 2 U.S.C. § 434(a)(4)(A)(i) and 11 C.F.R. § 104.5(a)(1)(i). Reports sent by certified or registered mail, Priority or Express Mail with delivery confirmation, or by an overnight delivery service with an on-line tracking system must be postmarked or deposited with the mailing service no later than July 15 to be timely filed. Reports sent by first class mail must be received by the close of business on the filing date to be timely filed. 2 U.S.C. § 434(a)(5), and 11 C.F.R. §§ 100.19(b) and 104.5(e). The treasurer shall be personally responsible for the timely filing of reports. 11 C.F.R. § 104.14(d).

Respondents' Challenge

On October 17, 2012, the Commission received the written response ("challenge") from the Treasurer, who is also the Candidate, stating that he is challenging because the Commission has been and is assisting him in the filing of the reports and there should be no penalty.

Analysis

In a letter filed along with an amended 2012 April Quarterly Report on October 25, 2012, the Candidate states that in March 2012, his Campaign Manager quit, taking all of his staff with him, leaving the Candidate the sole representative of the Committee. Commission records

13092683186

indicate that on April 19, 2012, nearly three months before the July Quarterly Report was due, the Candidate filed an amended Statement of Organization disclosing himself as Treasurer.

The Commission sent the respondents notification of the July Quarterly filing requirement before and after the July 15 filing deadline. On June 21, 2012, the Commission sent the Prior Notice for the 2012 July Quarterly Report to "gary@garysmith2012.com," the email address listed on the April 19 Statement of Organization. Additionally, on July 31, 2012, the Commission sent a non-filer notice to their address of record, informing them that they failed to file the July Quarterly Report.

According to RAD telecoms (written records of telephone conversations), in early June the Treasurer spoke with RAD three times for assistance with filing an Amended April Quarterly Report and a Termination Report. In the third conversation with the Reports Analyst, which took place on June 8, 2012, the Analyst walked the Treasurer through how to print the FEC Form 3 from the Commission's website so that he could file a Termination Report. The Treasurer stated that he would call the Analyst the following week for assistance with filling out the Termination Report, however, Commission records indicate that the Treasurer did not call the Commission again until September 20, when he returned the RAD Compliance Analyst's phone call requesting a viable address for the mailing of their July Quarterly Report RTB letter. During this conversation with the Compliance Analyst, the Treasurer (who is also the Candidate), stated that his campaign was over and indicated that he was working on filing the report, but had not finished because he did not know how to use the computer. After providing the Compliance Analyst with a viable address, he was transferred to his assigned Reports Analyst for further assistance.

During the September 20 conversation with his Reports Analyst, the Treasurer indicated that he did not know he had to file the July Quarterly Report. The Analyst reminded him of their June 8 conversation in which he stated he was going to print copies of the FEC Form 3 and call the Analyst the following week for assistance, but did not do so. Commission records indicate that the Treasurer spoke with the Reports Analyst 14 times between September 20 and October 15 to receive assistance with filing amendments and the October Quarterly Termination Report. Although the Treasurer advised the Analyst in early June, more than a month before the July Quarterly Report was due, that he would need assistance with filing reports, it appears as though he did not follow up with the Analyst, in earnest, to receive this assistance until he was notified of the RTB finding and proposed penalty.

On October 25, the Treasurer filed the October Quarterly Termination Report covering April 1 through September 30, 2012. This report included the April 1 through June 30 July Quarterly coverage dates, resulting in the activity being disclosed 102 days after the July 15 filing deadline.

The Committee did not file the July Quarterly Report before the September 12 RTB finding, therefore an estimated level of activity (\$227,839) was used to calculate the fine. 11 C.F.R. § 111.43(d)(2)(i). The October Quarterly Termination Report, including the July Quarterly coverage dates, was filed on October 25 and is considered not filed for purposes of the civil money penalty calculation. 11 C.F.R. § 111.43(e)(1). The report discloses \$1,966 in receipts for the July Quarterly reporting period and \$43,213 in disbursements for the July

Quarterly reporting period, resulting in an actual level of activity of \$45,179. Therefore, using the schedule of penalties at 11 C.F.R. § 111.43(a), for respondents with no previous violations, and the level of activity bracket of \$25,000 - \$49,999.99, the civil money penalty is $\$990 \times [1 + (.25 \times 0)]$ or \$990, reduced from the RTB civil money penalty of \$7,150.

Negligence, inexperience of the treasurer and a committee's failure to know filing dates are included at 11 C.F.R. § 111.35(d) as examples of circumstances that are not considered reasonably unforeseen and beyond the respondents' control. The respondents challenge fails to address any of the three valid grounds for challenging the RTB finding or proposed penalty at 11 C.F.R. § 111.35(b). These are: (i) the RTB finding is based on factual errors; and/or (ii) the improper calculation of the civil money penalty; and/or (iii) they used best efforts to file on time but were prevented from doing so by reasonably unforeseen circumstances that were beyond their control and they filed the report no later than 24 hours after the end of these circumstances. Therefore, the Reviewing Officer recommends that the Commission make a final determination that the respondents violated 2 U.S.C. § 434(a) and assess a civil money penalty of \$990.

OAR Recommendations

- (1) Adopt the Reviewing Officer recommendation for AF# 2545 involving Gary Smith for Congress and Gary Smith, in official capacity as Treasurer, in making the final determination;
- (2) Make a final determination in AF# 2545 that Gary Smith for Congress and Gary Smith, in official capacity as Treasurer, violated 2 U.S.C. § 434(a) and, based on the actual level of activity disclosed on the July Quarterly Report (\$45,179), assess a civil money penalty of \$990 (reduced from the RTB civil money penalty of \$7,150); and
- (3) Send the appropriate letter.

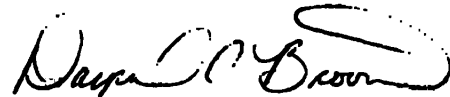
Reviewing Officer: Dayna C. Brown

Attachments

- Attachment 1 – Challenge Received from Respondents
- Attachment 2 – Declaration from RAD
- Attachment 3 – Declaration from OAR

DECLARATION OF DAYNA C. BROWN

1. I am the Reviewing Officer in the Office of Administrative Review for the Federal Election Commission ("Commission"). In my capacity as Reviewing Officer, I conduct research with respect to all challenges submitted in accordance with the Administrative Fine program.
2. The 2012 July Quarterly Report is due July 15, 2012. Reports sent by first class mail are considered filed on the date of receipt.
3. I hereby certify that I have searched the Commission's public records and that the documents identified herein are the true and accurate copies of:
 - a. Pages 1 and 3 of the amended Statement of Organization filed by Friends of Gary Smith and Gary Smith, in official capacity as Treasurer. According to the Commission's records, the document was received on April 19, 2012 and lists "gary@garysmith2012.com" as the Committee's email address. Line 8 lists Gary Smith as Treasurer;
 - b. A letter, dated October 15, 2012 from Gary D. Smith. According to Commission records, the letter was received on October 25, 2012; and
 - c. Page 1 of the Summary Page, 1 page of Schedule, 5 pages of Schedule B, and the Commission's Envelope Replacement Page for the 2012 October Quarterly Termination Report filed by Friends of Gary Smith and Gary D. Smith, in official capacity as Treasurer. According to the Commission's records, the report covers the period from April 1 through September 30, 2012, was sent on October 13 via first class mail, and received on October 25, 2012. Schedule A lists two receipts totaling \$1,966.53 on May 14 and June 21, 2012. Schedule B lists 12 disbursements totaling \$43,213.15 on April 6, 12, 21, 24, and 27; May 7, 14, and 20; and June 6 and 7, 2012.
4. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed at Washington on the 6th of November, 2012.



Dayna C. Brown
Reviewing Officer
Office of Administrative Review
Federal Election Commission

13092683189

FEC
FORM 1

STATEMENT OF
ORGANIZATION

RECEIVED

2012 APR 19 AM 9:45

FEC MAIL CENTER

Office Use Only

1. NAME OF
COMMITTEE (In full)

☐ (Check if name
is changed)

Example: If typing, type
over the lines.

12FE4M5

FRIENDS FOR GARY SMITH

ADDRESS (number and street)

P.O. BOX 36287

☐ (Check if address
is changed)

ALBUQUERQUE

NM

87176

CITY

STATE

ZIP CODE

COMMITTEE'S E-MAIL ADDRESS (Please provide only one e-mail address)

☐ (Check if address
is changed)

gary@garysmith2012.com

COMMITTEE'S WEB PAGE ADDRESS (URL)

☐ (Check if address
is changed)

2. DATE

04

12

2012

3. FEC IDENTIFICATION NUMBER

C00505685

4. IS THIS STATEMENT

☐

NEW (N)

OR

☒

AMENDED (A)

I certify that I have examined this Statement and to the best of my knowledge and belief it is true, correct and complete.

Type or Print Name of Treasurer

Gary Smith

Signature of Treasurer

Gary D. Smith

Date

04

12

2012

NOTE: Submission of false, erroneous, or incomplete information may subject the person signing this Statement to the penalties of 2 U.S.C. §437g.

ANY CHANGE IN INFORMATION SHOULD BE REPORTED WITHIN 10 DAYS.

Office
Use
Only

For further information contact:
Federal Election Commission
Toll Free 800-424-9530
Local 202-694-1100

FEC FORM 1
(Revised 02/2008)

6. Name of Any Connected Organization, Affiliated Committee, Joint Fundraising Representative, or Leadership PAC Sponsor

Mailing Address

Relationship: ☐ Connected Organization ☐ Affiliated Committee ☐ Joint Fundraising Representative ☐ Leadership PAC Sponsor

- Title or Position**

CITY

STATE

ZIP CODE

Telephone number

- ### of Treasurer

Mailing Address**Title or Position****Telephone number****ZIP CODE**

FEC Termination Letter
999 E St, NW
Wash., DC 20463

RECEIVED
2012 OCT 25 PM 12: 01
FEC MAIL CENTER

10-15-2012

Friends For Gary Smith
C00505685
AF#: 2545

FEC:

This Termination Report IS compelled, necessitated, and accentuated due to NOT having access to electronic filing caused by the following:

Q2 was NOT reported because during March 2012 the campaign imploded by the Campaign Manager acting like a little (he's NOT little) immature 5-yr old, temper tantrum boy AGAIN (he gets huffy and puffy, turns red in the face [the complexion of a tomato], and puffs out his "fish mouth" - he did this weekly, sometimes MORE than weekly), quitting and taking ALL his staff with him. EVERYONE left and I WAS the campaign ALL by myself - from the candidate to the janitor!!

The treasurer, who had possession of the campaign computer at her residence and/or car, refused, according to the Campaign Manager (which MAY have been a total falsehood by the Campaign Manager), to give back and return the campaign computer to the campaign (the Campaign Manager) for a complete month (FEB~MAR). It took the NM State Police to intervene with the treasurer (who WAS apparently caught off guard by knowledge of the computer needing to be returned) to persuade her to turn over the computer 4 hrs later. This ended up being of little value as the computer could NOT be ACCESSED because the treasurer refused to turn over codes to ME, the Campaign Manager, and others in Wash., DC to allow us to be able to use the computer.

The Apr Qtr report HAD to be redone due to miscalculations because of NOT having the original electronic files and I being able to make corrections only manually. This also caused "incorrect" "cash on hand" and inflated the "numbers" in general. The remaining Funds were used to repay the candidate and I FORGIVE the rest of my personal remaining outstanding loans of \$75,644.09. I HAVE NO ACCESS to the campaign computer and old files and am filing on PAPER!!


GARY D. SMITH

13092683192
12030933381

FEC
FORM 3

REPORT OF RECEIPTS
AND DISBURSEMENTS

For An Authorized Committee

FEC
PLC
DIVISION
2012 OCT 25 PM 10:23
Office Use Only

1. NAME OF
COMMITTEE (in full)

TYPE OR PRINT ▼

Example: If typing, type
over the lines.

12FE4M5

FRIENDS FOR GARY SMITH

ADDRESS (number and street)

PO BOX 36287



Check if different
than previously
reported. (ACC)

ABO

NM

871761-

2. FEC IDENTIFICATION NUMBER ▼

CITY ▲

STATE ▲

ZIP CODE ▲

STATE ▼ DISTRICT

C00505685

3. IS THIS
REPORT



NEW
(N)

OR



AMENDED
(A)

NM

01

4. TYPE OF REPORT (Choose One)

(a) Quarterly Reports:



April 15 Quarterly Report (Q1)



July 15 Quarterly Report (Q2)



October 15 Quarterly Report (Q3)



January 31 Year-End Report (YE)



Termination Report (TER)

(b) 12-Day PRE-Election Report for the:



Primary (12P)



General (12G)



Runoff (12R)



Convention (12C)



Special (12S)

Election on

10/15/12

10/15/12

10/15/12

In the
State of

NM

(c) 30-Day POST-Election Report for the:



General (30G)



Runoff (30R)



Special (30S)

Election on

10/15/12

10/15/12

10/15/12

In the
State of

NM

5. Covering Period

09

01

2012

through

09

30

2012

I certify that I have examined this Report and to the best of my knowledge and belief it is true, correct and complete.

Type or Print Name of Treasurer

TANNA JAMES

Signature of Treasurer

CANDIDATE Gary D. Smith

Date

10

15

2012

NOTE: Submission of false, erroneous, or incomplete information may subject the person signing this Report to the penalties of 2 U.S.C. 437g.

Office
Use
Only

FEC FORM 3
(Revised 02/2003)

FESAND18

13092683193

12030932135

SCHEDULE A (FEC Form 3)
ITEMIZED RECEIPTS

Use separate schedule(s)
for each category of the
Detailed Summary Page

FOR LINE NUMBER: **PAGE 5 OF 16**

(check only one)
11a ☐ 11b ☐ 11c ☐ 11d ☒
12 ☐ 13a ☐ 13b ☐ 14 ☐ 15 ☐

Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.

NAME OF COMMITTEE (in Full)

FFGS

Full Name (Last, First, Middle Initial)

PNM

Mailing Address

ALVARADO Sq.

City

ABQ

State **NM**

Zip Code **87158**

FEC ID number of contributing federal political committee.

C00505685

Name of Employer

ELECTRIC REFUND

Occupation

Receipt For:

☒ Primary ☐ General
☐ Other (specify)

Election Cycle-to-Date

Date of Receipt

05' 14' 2013

Amount of Each Receipt this Period

1065.65

**PURPOSE: ELECTRICITY
ORIGIN DATE: 1-18-12**

Full Name (Last, First, Middle Initial)

BEST BUY

Mailing Address

55 HOTEL CIR

City

ABQ

State **NM**

Zip Code **87123**

FEC ID number of contributing federal political committee.

C00505685

Name of Employer

BEST BUY REFUND

Occupation

Receipt For:

☒ Primary ☐ General
☐ Other (specify)

Election Cycle-to-Date

Date of Receipt

06' 27' 2013

Amount of Each Receipt this Period

900.88

**PURPOSE: COMPUTER +
PRINTER
ORIGIN DATE: 1-30-12**

Full Name (Last, First, Middle Initial)

CASH

Mailing Address

P.O. Box 36287

City

ABQ

State **NM**

Zip Code **87176**

FEC ID number of contributing federal political committee.

C

Name of Employer

DEPOSIT

Occupation

Receipt For:

☒ Primary ☐ General
☐ Other (specify)

Election Cycle-to-Date

Date of Receipt

08' 06' 2013

Amount of Each Receipt this Period

705.00

1966.53

SUBTOTAL of Receipts This Page (optional)

TOTAL This Period (last page this line number only)

2671.53

13092683194

12030932139

**SCHEDULE B (FEC Form 3)
ITEMIZED DISBURSEMENTS**

Use separate schedule(s)
for each category of the
Detailed Summary Page

FOR LINE NUMBER:
(check only one)

PAGE **8** OF **16**

☒ 17 ☐ 18 ☐ 19a ☐ 19b
20a 20b 20c 21

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NAME OF COMMITTEE (in Full)

FFGS

Full Name (Last, First, Middle Initial)

U-haul

Mailing Address

4020 SAN MATEO

City

ABQ

State
NM

Zip Code

87110

Purpose of Disbursement

MOVE out of office

Candidate Name

GARY Smith

Category/
Type

Office Sought:

☒ House
☐ Senate
☐ President

Disbursement For:

☒ Primary ☐ General
☐ Other (specify) **2012**

State: **NM**

District: **01**

Full Name (Last, First, Middle Initial)

Date of Disbursement

04 / **06** / **2012**

Amount of Each Disbursement this Period

659.00

B. EXTRA SPACE

Mailing Address

201 EUBANK SE

City

ABQ

State
NM

Zip Code

87123

Purpose of Disbursement

STORAGE UNIT

Candidate Name

GARY Smith

Category/
Type

Office Sought:

☒ House
☐ Senate
☐ President

Disbursement For:

☒ Primary ☐ General
☐ Other (specify) **2012**

State: **NM**

District: **01**

Full Name (Last, First, Middle Initial)

Date of Disbursement

04 / **06** / **2012**

Amount of Each Disbursement this Period

20.00

C. GAIN

Mailing Address

~~2401 SAN MATEO~~ **2401 SAN MATEO**

City

ABQ

State
NM

Zip Code

87111

Purpose of Disbursement

GAS

Candidate Name

GARY Smith

Category/
Type

Office Sought:

☒ House
☐ Senate
☐ President

Disbursement For:

☒ Primary ☐ General
☐ Other (specify) **2012**

State: **NM**

District: **01**

Full Name (Last, First, Middle Initial)

Date of Disbursement

04 / **06** / **2012**

Amount of Each Disbursement this Period

15.00

SUBTOTAL of Disbursements This Page (optional)

TOTAL This Period (last page this line number only)

100.90

13092683195
12030932142

**SCHEDULE B (FEC Form 3)
ITEMIZED DISBURSEMENTS**

Use separate schedule(s)
for each category of the
Detailed Summary Page

FOR LINE NUMBER:
(check only one)

PAGE 9 OF 16

☒ 17
20a ☐ 18
20b ☐ 19a
20c ☐ 19b
21

Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, either than using the name and address of any political committee to solicit contributions from such committee.

NAME OF COMMITTEE (in Full)

FFGS

Full Name (Last, First, Middle Initial)

A. WAL-MART

Mailing Address

301 SAN MATEO SE

City

ABO

State
NM

Zip Code

87108

Purpose of Disbursement

SANDISK DRIVE

Candidate Name

GARY SMITH

Office Sought

☒ House
☐ Senate
☐ President

Disbursement For:

☒ Primary ☐ General
☐ Other (specify) 2012

State: NM

District: 01

Date of Disbursement

09/13/2012

Amount of Each Disbursement this Period

856

B. NMGC

Mailing Address

P.O. BOX 173341

City

DENVER

State
CO

Zip Code

80217

Purpose of Disbursement

GAS

Candidate Name

GARY SMITH

Office Sought

☒ House
☐ Senate
☐ President

Disbursement For:

☒ Primary ☐ General
☐ Other (specify) 2012

State: NM

District: 01

Date of Disbursement

09/21/2012

Amount of Each Disbursement this Period

6218

C. Postmaster

Mailing Address

2502 GRACELAND

City

ABO

State
NM

Zip Code

87110

Purpose of Disbursement

STAMPS

Candidate Name

GARY SMITH

Office Sought

☒ House
☐ Senate
☐ President

Disbursement For:

☒ Primary ☐ General
☐ Other (specify) 2012

State: NM

District: 01

Date of Disbursement

09/29/2012

Amount of Each Disbursement this Period

4500

SUBTOTAL of Disbursements This Page (optional)

TOTAL This Period (last page this line number only)

11574

**SCHEDULE B (FEC Form 3)
ITEMIZED DISBURSEMENTS**

Use separate schedule(s)
for each category of the
Detailed Summary Page

FOR LINE NUMBER:
(check only one)

PAGE **10** of **16**

☒ 17 ☐ 18 ☐ 19a ☐ 19b
20a 20b 20c 21

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NAME OF COMMITTEE (in Full)

FFGS

Full Name (Last, First, Middle Initial)

A. FEDEX

Mailing Address **2400 LOUISIANA**

City **ABQ** State **NM** Zip Code **87110**

Purpose of Disbursement
PHONES RETURN SHIPMENT

Candidate Name
GARY Smith

Office Sought: ☒ House ☐ Senate ☐ President

Disbursement For: ☒ Primary ☐ General ☐ Other (specify) **2012**

State: **NM** District: **01**

Full Name (Last, First, Middle Initial)

Date of Disbursement

04' 07' 2012

Amount of Each Disbursement this Period

154.01

B. EXTRA SPACE

Mailing Address **201 EUBANK SE**

City **ABQ** State **NM** Zip Code **87123**

Purpose of Disbursement
STORAGE UNIT

Candidate Name
GARY Smith

Office Sought: ☒ House ☐ Senate ☐ President

Disbursement For: ☒ Primary ☐ General ☐ Other (specify) **2012**

State: **NM** District: **01**

Full Name (Last, First, Middle Initial)

Date of Disbursement

05' 07' 2012

Amount of Each Disbursement this Period

81.00

C. FIESTA DEL NORTE

Mailing Address **6001 SAN MATEO**

City **ABQ** State **NM** Zip Code **87110**

Purpose of Disbursement
OFFICE TERMINATION

Candidate Name
GARY Smith

Office Sought: ☒ House ☐ Senate ☐ President

Disbursement For: ☒ Primary ☐ General ☐ Other (specify) **2012**

State: **NM** District: **01**

Date of Disbursement

05' 14' 2012

Amount of Each Disbursement this Period

250.00

SUBTOTAL of Disbursements This Page (optional)

TOTAL This Period (last page this line number only)

2735.01

**SCHEDULE B (FEC Form 3)
ITEMIZED DISBURSEMENTS**

Use separate schedule(s)
for each category of the
Detailed Summary Page

FOR LINE NUMBER:
(check only one)

PAGE 11 OF 16

☒ 17 20a ☐ 18 20b ☐ 19a 20c ☐ 19b 21

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NAME OF COMMITTEE (in Full)

FFGS

Full Name (Last, First, Middle Initial)

A. Sprint

Mailing Address

P.O. Box 660075

City

DALLAS

State

TX

Zip Code

75266

Purpose of Disbursement

APP PHONE bill

Candidate Name

GARY Smith

Office Sought

☒ House

☐ Senate

☐ President

Disbursement For:

☒ Primary

☐ General

☐ Other (specify)

2012

State: **NM**

District: **01**

Full Name (Last, First, Middle Initial)

Date of Disbursement

05 ' 20 ' 2012

Amount of Each Disbursement this Period

130.75

B. Sprint

Mailing Address

P.O. Box 660075

City

DALLAS

State

TX

Zip Code

75266

Purpose of Disbursement

MAY PHONE bill

Candidate Name

GARY Smith

Office Sought

☒ House

☐ Senate

☐ President

Disbursement For:

☒ Primary

☐ General

☐ Other (specify)

2012

State: **NM**

District: **01**

Full Name (Last, First, Middle Initial)

Date of Disbursement

06 ' 03 ' 2012

Amount of Each Disbursement this Period

130.75

C. WAL-MART

Mailing Address

8000 ACADEMY Rd.

City

ABQ

State

NM

Zip Code

87111

Purpose of Disbursement

plastic folding TABLES AND METAL CHAIRS

Candidate Name

GARY Smith

Office Sought

☒ House

☐ Senate

☐ President

Disbursement For:

☒ Primary

☐ General

☐ Other (specify)

2012

State: **NM**

District: **01**

Full Name (Last, First, Middle Initial)

Date of Disbursement

07 ' 19 ' 2012

Amount of Each Disbursement this Period

170.86

**SHOULD HAVE BEEN
REPORTED ON Q1, 2012
(4-18-12)**

SUBTOTAL of Disbursements This Page (optional)

432.36

TOTAL This Period (last page this line number only)

3384.01

**SCHEDULE B (FEC Form 3)
ITEMIZED DISBURSEMENTS**

Use separate schedule(s)
for each category of the
Detailed Summary Page

FOR LINE NUMBER:
(check only one)

PAGE **13** OF **16**

☐ 17 ☐ 18 ☒ 19a ☐ 19b
☐ 20a ☐ 20b ☐ 20c ☐ 21

Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.

NAME OF COMMITTEE (in Full)

FFGS

Full Name (Last, First, Middle Initial)

A. GARY Smith

Mailing Address

P.O. Box 1400

City

ALEX.

State

VA

Zip Code

22313

Purpose of Disbursement

CANDIDATE REFUND

Candidate Name

GARY Smith

Category/
Type

Office Sought:

☒ House
☐ Senate
☐ President

Disbursement For:

☒ Primary ☐ General
☐ Other (specify) **2012**

State: **NM**

District: **01**

Date of Disbursement

09 / 10 / 2012

Amount of Each Disbursement this Period

2355.91

Full Name (Last, First, Middle Initial)

B. GARY Smith

Mailing Address

P.O. Box 1400

City

ALEX.

State

VA

Zip Code

22313

Purpose of Disbursement

LOAN REPAYMENT

Candidate Name

GARY Smith

Category/
Type

Office Sought:

☒ House
☐ Senate
☐ President

Disbursement For:

☒ Primary ☐ General
☐ Other (specify) **2012**

State: **NM**

District: **01**

Date of Disbursement

06 / 06 / 2012

Amount of Each Disbursement this Period

40000.00

C.

Mailing Address

City

State

Zip Code

Purpose of Disbursement

Candidate Name

Category/
Type

Office Sought:

☐ House
☐ Senate
☐ President

Disbursement For:

☐ Primary ☐ General
☐ Other (specify)

State:

District:

Date of Disbursement

00 / 00 / 0000

Amount of Each Disbursement this Period

000000.00

SUBTOTAL of Disbursements This Page (optional)

42355.91

TOTAL This Period (last page this line number only)

42355.91

Federal Election Commission
ENVELOPE REPLACEMENT PAGE FOR INCOMING DOCUMENTS
The FEC added this page to the end of this filing to indicate how it was received.

<input type="checkbox"/> Hand Delivered	Date of Receipt
<input checked="" type="checkbox"/> USPS First Class Mail	Postmarked <i>10/13/11</i>
<input type="checkbox"/> USPS Registered/Certified	Postmarked (R/C)
<input type="checkbox"/> USPS Priority Mail	Postmarked
Delivery Confirmation™ or Signature Confirmation™ Label <input type="checkbox"/>	
<input type="checkbox"/> USPS Express Mail	Postmarked
<input type="checkbox"/> Postmark Illegible	
<input type="checkbox"/> No Postmark	
<input type="checkbox"/> Overnight Delivery Service (Specify):	Shipping Date
Next Business Day Delivery <input type="checkbox"/>	
<input type="checkbox"/> Received from House Records & Registration Office	Date of Receipt
<input type="checkbox"/> Received from Senate Public Records Office	Date of Receipt
<input type="checkbox"/> Received from Electronic Filing Office	Date of Receipt
<input type="checkbox"/> Other (Specify):	Date of Receipt or Postmarked
<i>Jmw</i> PREPARER (3/2005)	<i>10/25/11</i> DATE PREPARED

13092683200

12030932151



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

VIA OVERNIGHT DELIVERY

November 7, 2012

Gary Smith, in official capacity as Treasurer
Gary Smith for Congress
P.O. Box 36287
Albuquerque, NM 87176

C00505685
AF#: 2545

Dear Mr. Smith:

On September 12, 2012, the Federal Election Commission ("Commission") found reason to believe ("RTB") that Gary Smith for Congress and you, in official capacity as Treasurer ("respondents"), violated 2 U.S.C. § 434(a) for failing to file the 2012 12 July Quarterly Report. The Commission also made a prelininary determination that the civil money penalty was \$7,150 based on the schedule of penalties at 11 C.F.R. § 111.43.

After reviewing the written response and any supplemental information submitted by the Committee and Commission staff, the Reviewing Officer has recommended that the Commission make a final determination in this matter. A copy of the Reviewing Officer's recommendation is attached.

You may file with the Commission Secretary a written response to the recommendation within 10 days of the date of this letter. Your written response should be sent to the Commission Secretary, 999 E Street, NW, Washington, DC 20463. As a result of the anthrax threat in the Washington, DC area, US Postal Service mail delivery to federal agencies, including the Commission, has been interrupted. Until regular mail delivery resumes, you may also file your written response with the Commission Secretary via facsimile (202-208-3333) or by courier at the same address (if you use an overnight delivery service, please use zip code 20004 instead of zip code 20463). Please include the AF # in your response. Your response may not raise any arguments not raised in your original written response or not directly responsive to the Reviewing Officer's recommendation. 11 C.F.R. § 111.36(f). The Commission will then make a final determination in this matter.

Please contact me at the toll free number 800-424-9530 (press 0, then press 1660) or 202-694-1660 if you have any questions.

Sincerely,

Dayna C. Brown
Reviewing Officer
Office of Administrative Review

Attachment

13092683201

Commission Secretary
999 E ST. NW
Wash, D.C. 20463

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

11-15-12

2012 NOV 21 A 11:26

AF# 2545

I don't HAVE TIME to write a formal letter SO will MAKE bullet replies ONLY.

- The Mission of the FEC IS NOT to penalize the MESSENGER, the disabled, the disadvantaged, the handicapped and the elderly.
- The FEC CAN SET ASIDE (if it so chooses).
- I ONLY took up this task (of submitting reports) to facilitate (HELP) the FEC because the responsible parties (Campaign Manager and Treasurer) refused to MEET their obligations and commitments (as referred to in Ltr dtd 10-15-12).
- It is in fact the FEC who filed the reports (NOT ME). IF it HAD NOT been for the FEC's assistance (repeatedly) there STILL would BE NO reports. The FEC HELPED ME and told ME what numbers to put where (along with much other information) in order for the reports TO BE completed!
- I was NOT AWARE of "committee" 9 months ago – It's just a bank account to ME (money)! I tried to Right AN administrative action and bank account (money) ONLY ("committee" to you in your FEC language)!
- I only tried TO Right A WRONG caused by others! I wish the FEC would focus your attention on and should go after the responsible party – the Campaign MANAGER! They cheated ME and NOW the SAME thing IS happening AGAIN.
-
- I RAN for office because only wanted to SERVICE my country ONE MORE time only and was taken advantage of by other corrupt individuals! I only tried TO Right A WRONG caused by others!
-
- I would ASK that the FEC SET ASIDE any and ALL fines or penalties. (I've BEEN through enough already)! I used my best efforts to accomplish THIS TASK.

Sincerely,

Gary D. Smith

Mr. Gary D. Smith



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

2012 NOV 30 PM 3: 11

SENSITIVE

November 30, 2012

MEMORANDUM

To: The Commission

Through: Alec Palmer *AP*
Staff Director

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

Rhiannon Magruder *RM*
Acting Reviewing Officer
Office of Administrative Review

Subject: Final Determination Recommendation in AF# 2545 – Gary Smith for Congress
and Gary Smith, in his official capacity as Treasurer (C00505685)

On September 12, 2012, the Commission found reason to believe ("RTB") that the respondents violated 2 U.S.C. § 434(a) for failing to file the 2012 July Quarterly Report and made a preliminary determination that the civil money penalty was \$7,150 based on the schedule of penalties at 11 C.F.R. § 111.43.

On October 17, 2012, the Commission received their written response ("challenge"). After reviewing the challenge, the Reviewing Officer's recommendation ("ROR") dated November 5, 2012, was forwarded to the Commission, a copy was forwarded to the respondents, and is hereby incorporated by reference. The Reviewing Officer recommended that the Commission make a final determination that they violated 2 U.S.C. § 434(a) and, based on the actual level of activity disclosed for the July Quarterly reporting period (\$45,179), assess a \$990 civil money penalty (reduced from the RTB civil money penalty of \$7,150) because they submitted no evidence that a factual error was made in the RTB finding, that the penalty was miscalculated at RTB or that they used best efforts to file on time. 11 C.F.R. § 111.35(b).

Within 10 days of transmittal of the recommendation, they may file a written response with the Commission Secretary which may not raise any arguments not raised in their challenge or not directly responsive to the ROR. 11 C.F.R. § 111.36(f).

On November 14, 2012, the Commission received the written response from the Treasurer/Candidate which reiterates the main points raised in the challenge and addressed in the ROR: The Campaign Manager and former Treasurer left the campaign "and refused to meet

13092683203

their obligations," leaving the Candidate as the sole representative of the Committee. The Candidate filed the report after Commission staff provided repeated assistance, and he requests the civil money penalty be waived.

As discussed in the ROR, the Candidate filed an amended Statement of Organization on April 19, 2012, disclosing himself as Treasurer nearly three months before the July Quarterly Report was due. As Treasurer, he was personally responsible for the timely filing of the July Quarterly Report. 11 C.F.R. § 104.14(d).

Although the Candidate initially informed his RAD Analyst in early June that he would need assistance filing reports, he did not contact the RAD Analyst for this assistance until September 20, after he was notified of the RTB finding and proposed penalty for failing to file the July Quarterly Report. The RAD Analyst then assisted the Candidate with completing several reports, including the October Quarterly Termination Report. The report included the April 1 through June 30 July Quarterly coverage dates and was received on October 25, 102 days late.

It should be noted that the Candidate asserts in his November 14, 2012 written response that he is facing health challenges. While the Reviewing Officer is sympathetic, because these issues were not raised in the challenge and, therefore, are not directly responsive to the Reviewing Officer's recommendation, the Reviewing Officer does not address these issues within this memorandum. 11 C.F.R. § 111.36(f).

The Reviewing Officer, therefore, recommends that the Commission make a final determination that the respondents violated 2 U.S.C. § 434(a) and assess a civil money penalty of \$990.

OAR Recommendations

- (1) Adopt the Reviewing Officer recommendation for AF# 2545 involving Gary Smith for Congress and Gary Smith, in official capacity as Treasurer, in making the final determination;
- (2) Make a final determination in AF# 2545 that Gary Smith for Congress and Gary Smith, in official capacity as Treasurer, violated 2 U.S.C. § 434(a) and, based on the actual level of activity disclosed on the July Quarterly Report (\$45,179), assess a civil money penalty of \$990 (reduced from the RTB civil money penalty of \$7,150); and
- (3) Send the appropriate letter.

Attachment

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Final Determination Recommendation:) AF 2545
Gary Smith for Congress and Gary)
Smith, in his official capacity as)
Treasurer (C00505685))

CERTIFICATION

I, Shawn Woodhead Werth, Secretary and Clerk of the Federal Election Commission, do hereby certify that on December 12, 2012, the Commission decided by a vote of 5-0 to take the following actions in AF# 2545:

1. Adopt the Reviewing Officer recommendation for AF# 2545 involving Gary Smith for Congress and Gary Smith, in official capacity as Treasurer, in making the final determination.
2. Make a final determination in AF# 2545 that Gary Smith for Congress and Gary Smith, in official capacity as Treasurer, violated 2 U.S.C. § 434(a) and, based on the actual level of activity disclosed on the July Quarterly Report (\$45,179), assess a civil money penalty of \$990 (reduced from the RTB civil money penalty of \$7,150).
3. Send the appropriate letter.

Commissioners Bauerly, Hunter, McGahn II, Petersen, and Walther voted affirmatively for the decision. Commissioner Weintraub did not vote.

Attest:

December 13, 2012
Date

Shawn Woodhead Werth
Shawn Woodhead Werth
Secretary and Clerk of the Commission

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 19, 2012

VIA OVERNIGHT DELIVERY

Gary Smith, in official capacity as Treasurer
Gary Smith for Congress
P.O. Box 36287
Albuquerque, NM 87176

C00505685
AF#: 2545

Dear Mr. Smith:

On September 12, 2012, the Federal Election Commission ("the Commission") found reason to believe ("RTB") that Gary Smith for Congress and you, in your official capacity as Treasurer ("respondents"), violated 2 U.S.C. § 434(a) for failing to file the 2012 July Quarterly Report. By letter dated September 13, 2012, the Commission sent you notification of the RTB finding that included a civil money penalty calculated at RTB of \$7,150 in accordance with the schedule of penalties at 11 C.F.R. § 111.43. On October 17, 2012, the Office of Administrative Review received your written response, challenging the RTB finding.

The Reviewing Officer reviewed the Commission's RTB finding with its supporting documentation and the written response. Based on this review, the Reviewing Officer recommended that the Commission reduce the RTB civil money penalty because it was calculated on an estimated level of activity, make a final determination that Gary Smith for Congress and you, in your official capacity as Treasurer, violated 2 U.S.C. § 434(a) and, based on the actual level of activity disclosed on the 2012 July Quarterly Report filed October 25, 2012 (\$45,179), assess a civil money penalty in the amount of \$990 in accordance with 11 C.F.R. § 111.43. The basis for the Reviewing Officer's recommendation was included in the Final Determination Report, a copy of which was sent to you on November 7, 2012.

On November 14, 2012, the Commission received your written response. On December 12, 2012, the Commission adopted the Reviewing Officer's recommendation and made a final determination that Gary Smith for Congress and you, in your official capacity as Treasurer, violated 2 U.S.C. § 434(a) and based on the level of activity disclosed on the 2012 July Quarterly Report (\$45,179), assessed a civil money penalty of \$990 (reduced from the RTB civil money penalty of \$7,150). It is based on the same factors used to calculate the civil money penalty at RTB except that the actual ~~monr~~ ~~than~~ the estimated level of activity was used. A copy of the final determination memorandum is attached.

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If You Choose to Appeal the Final Determination and/or Civil Money Penalty

If you choose to appeal the final determination, you should submit a written petition, within 30 days of receipt of this letter, to the district court of the United States for the district in which the committee or treasurer reside, or transact business, requesting that the final determination be modified or set aside. See 2 U.S.C. § 437g(a)(4)(C)(iii). Your failure to raise an argument in a timely fashion during the administrative process shall be deemed a waiver of the respondents' right to present such argument in a petition to the district court under 2 U.S.C. § 437g. 11 C.F.R. § 111.38.

If You Choose To Pay the Civil Money Penalty

If you should decide to pay the civil money penalty, send the enclosed form and payment to the address on page 3 within 30 days of receipt of this letter.

The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. The file will be made a part of the public record pursuant to 11 C.F.R. § 111.42(b). Although the file must be placed on the public record within 30 days from the date of the Commission's notification, this could occur at any time following certification of the Commission's vote.

If you have any questions regarding the payment of the civil money penalty, please contact Rhiannon Magruder on our toll free number (800) 424-9530 (press 0, then ext. 1660) or (202) 694-1660.

On behalf of the Commission,



Caroline C. Hunter
Chair

Attachment

ADMINISTRATIVE FINE PAYMENT INSTRUCTIONS

In accordance with the schedule of penalties at 11 C.F.R. § 111.43, the civil money penalty is \$990 for 2012 July Quarterly Report.

This penalty should be paid by check or money order, made payable to the Federal Election Commission. It should be sent by mail to:

Federal Election Commission
PO Box 979058
St. Louis, MO 63197-9000

If you choose to send your payment by courier or overnight delivery, please use this address:

U.S. Bank - Government Lockbox
FEC # 979058
1005 Convention Plaza
Attn: Government Lockbox, SL-MO-C2GL
St. Louis, MO 63101

The form and payment are due within 30 days of receipt of this letter.

PAYMENTS BY PERSONAL CHECK

Personal checks will be converted into electronic funds transfers (EFTs). Your account will be electronically debited for the amount on the check, usually within 24 hours, and the debit will appear on your regular statement. We will destroy your original check and keep a copy of it. In case the EFT cannot be processed for technical reasons, you authorize us to process the copy in lieu of the original check. Should the EFT not be completed because of insufficient funds, we may try to make the transfer twice.

PLEASE DETACH AND RETURN THE PORTION BELOW WITH YOUR PAYMENT

FOR: Gary Smith for Congress

FEC ID#: C00505685

AF#: 2545

PAYMENT AMOUNT DUE: \$990

**U.S. Department of the Treasury
Financial Management Service
Debt Collection Programs**

(Cross-Servicing Program and Treasury Offset Program)

Calendar Year 2013 Annual Debt Certification Agreement for Federal Nontax Debts

This Annual Debt Certification Agreement for Federal Nontax Debts (Certification Agreement) is submitted by: (Creditor Agency) Federal Election Commission (FEC).

Section I: Background

- A. The U.S. Department of the Treasury, Financial Management Service (FMS), provides debt collection services to Federal agencies that are owed delinquent debt.
- B. Federal agencies are generally required to submit debts that have been delinquent for 180 days to FMS for debt collection services, and may submit debts sooner if the necessary prerequisites are met. See 31 U.S.C. §§ 3711(g) and 3716(c).
- C. Upon submitting debts to FMS for debt collection services, Federal agencies are required to certify to FMS, among other things, that the debts are valid, legally enforceable, there are no bars to collection, and all requisite due process has been completed, as set forth in this Certification Agreement.
- D. The definitions of terms used in this Certification Agreement are in Attachment A, Definitions of Terms Used in Certification Agreement.

Section II: General Provisions

The Creditor Agency understands and agrees to the following:

- A. **Scope.** The provisions of this Certification Agreement apply to all Debts submitted by Electronic Transmission on or after the date of the Certification Agreement by the Creditor Agency to FMS for collection through the Cross-Servicing Program and/or the Treasury Offset Program.
- B. **Certification Authority.** Only an individual with delegated authority to certify a Debt on behalf of the Creditor Agency will submit a Debt to FMS via an Add Record or Update Record. The Creditor Agency will provide a copy of this Certification Agreement to any such individual.

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C. Changes to Debt Information.

1. The Creditor Agency understands its obligation to notify FMS: (a) of any change in the amount, validity, or legal enforceability of the Debt; and (b) if the Debt becomes subject to circumstances that legally preclude or bar collection.
2. The Creditor Agency authorizes FMS to Update Records on its behalf, in accordance with criteria established by FMS, for the purpose of adding alias Debtor name information for a Debt certified by the Creditor Agency. Creditor Agency will notify FMS as soon as it learns that any such updates are incorrect.

Section III: Debt Certification

The Creditor Agency understands that by submitting a Debt to FMS via an Add Record or Update Record, the individual submitting the Debt is certifying to FMS, in writing, under penalty of perjury, that, to the best of his or her knowledge and belief, the following is true and correct:

A. General Prerequisites for Collection.

1. **Valid Debts.** The Creditor Agency has made a final determination that the Debt is valid and legally enforceable in the amount stated, and that the Debt is not subject to any circumstances that legally preclude or bar collection.
2. **Delinquent Debts.** The Debt is delinquent, and the Debtor is not paying the Debt in accordance with any repayment plan agreed to by the Creditor Agency.
3. **Interest, Penalties, and Administrative Costs.** The Creditor Agency has complied with all of the provisions of 31 U.S.C. § 3717 and 31 CFR 901.9, as well as other statutes, regulations, and policies applicable to Creditor Agency's assessment of interest, penalties, and administrative costs on the Debt. The Creditor Agency has provided a written notice to the Debtor explaining the Creditor Agency's requirements concerning the assessment of interest, penalties, and administrative costs.
4. **Debtor Disputes.** The Creditor Agency has considered any and all evidence presented by the Debtor disputing the Creditor Agency's determination about the Debt, and there are no pending appeals of such determination that would preclude collection of the Debt.
5. **Collection Efforts.** The Creditor Agency has made reasonable efforts to obtain payment of the Debt, including, at a minimum, by demanding payment of the Debt.
6. **Creditor Agency Profile Form.** The Creditor Agency Profile Form has been completed by the Creditor Agency and is accurate and up-to-date.

B. General Prerequisites for Collection by Offset, including Tax Refund Offset. If, in the Creditor Agency Profile Form, the Creditor Agency has authorized FMS to collect the Debt by offsetting Federal and State tax and nontax payments:

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1. ***Compliance with Offset Laws.*** The Creditor Agency has complied with all of the provisions of 31 U.S.C. §§ 3716 and 3720A, 31 CFR Part 285, and the Federal Claims Collection Standards (31 CFR Parts 900-904), as may be amended, as well as other statutes, regulations and policies applicable to the collection of the Debt by offset.
 2. ***Due Process Prerequisites.*** At least 60 days prior to the Certification Date, the Creditor Agency has provided, or made a reasonable attempt to provide, in accordance with applicable offset regulations, each Debtor with:
 - a. a written notification, at the Debtor's most current known address, of the nature and the amount of the Debt, the intention of the Creditor Agency to collect the Debt through offset, including offset of Federal and State payments, and an explanation of the rights of the Debtor;
 - b. an opportunity to inspect and copy the records of the Creditor Agency with respect to the Debt;
 - c. an opportunity for review of the Creditor Agency's determination with respect to the Debt, including an opportunity to present evidence that all or part of the Debt is not delinquent or legally enforceable; and
 - d. an opportunity to enter into a written repayment agreement with the Creditor Agency.
 3. ***Due Process Prerequisites for Certain Older Debts.*** For a Debt outstanding more than ten years on or before December 28, 2009, the Creditor Agency sent the notice described in Section III.B.2.a to the last known address of the Debtor after the Debt was outstanding for more than ten years, and afforded the Debtor the opportunities described in Sections III.B.2.b. - III.B.2.d. at that time. This requirement does not apply to any Debt that could be collected by offset without regard to any time limitation prior to December 28, 2009.

C. *Prerequisites for Collection by Federal Salary Offset.* If, through a Salary Offset Instruction, the Creditor Agency has authorized FMS to collect the Debt by offsetting Federal salary payments:

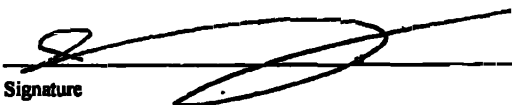
1. ***Compliance with Federal Salary Offset Laws.*** The Creditor Agency has complied with all of the provisions of 5 U.S.C. § 5514, 5 CFR §§ 550.1101-1110, and 31 CFR 285.7, as may be amended, as well as other statutes, regulations and policies applicable to collection by salary offset; and
2. ***Due Process Prerequisites.*** At least 60 days prior to the Certification Date, the Creditor Agency has provided, or made a reasonable attempt to provide, in accordance with applicable offset regulations, each Debtor with the notification and opportunities required by Sections III.B.2. and III.B.3., and any other notices, opportunities, or considerations required for Federal salary offset.

D. **Consumer Reporting Agencies.** If, in the Creditor Agency Profile Form, the Creditor Agency has authorized FMS to disclose Debts to consumer reporting agencies:

1. **Compliance with Consumer Reporting Agency Requirements.** The Creditor Agency has complied with all of the provisions of 31 U.S.C. § 3711(e) and the Federal Claims Collection Standards, as well as other statutes, regulations, and policies applicable to the reporting of a delinquent Debt to consumer reporting agencies.
2. **Notice Prerequisites.** At least 60 days prior to the Certification Date, the Creditor Agency provided the Debtor with:
 - a. notification that the Debt is overdue and the Creditor Agency intends to disclose that the Debtor is responsible for the Debt to a consumer reporting agency;
 - b. the specific information to be disclosed to the consumer reporting agency; and
 - c. the Debtor's rights to an explanation of the claim, dispute the information in the Creditor Agency's records about the claim, and an administrative repeal or review of the claim; and
3. **Review Prerequisites.** Upon the request of a Debtor, the Creditor Agency has provided for a review of the Debtor's claim(s), including an opportunity for reconsideration of the initial decision on the Debt.

Section IV: Certification

By signing below, I certify that I have delegated authority to execute this Certification Agreement on behalf of the head of Creditor Agency and understand this agreement applies to all debts submitted by Electronic Transmission on or after the date of the Certification Agreement to FMS for collection through the Cross-Servicing Program and/or the Treasury Offset Program.



Signature
Judy Berning

Print Name
Chief Finance Officer - Acting

Title
11/27/2012

Date

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U.S. Department of the Treasury
Financial Management Service
Debt Collection Programs

(Cross-Servicing Program and Treasury Offset Program)

Annual Debt Certification Agreement for Federal Nontax Debts

ATTACHMENT A

Definitions of Terms Used in Certification Agreement

For the purposes of this Certification Agreement:

1. **Add Records.** "Add Records" means the addition of new Debts, by Electronic Transmission, to the Cross-Servicing Program or TOP, by the Creditor Agency with an instruction by the Creditor Agency directing the Financial Management Service (FMS) to take collection action on the Debt, in accordance with the specification in the FMS Technical Guidance. "Add Records" occurs when the Creditor Agency submits a Debt to FMS unless the Creditor Agency explicitly instructs FMS not to take collection action (in accordance with the specifications of the FMS Technical Guidance). As further specified in the FMS Technical Guidance, "Add Records" can be accomplished either through a batch or manual process.
2. **Certification Date.** "Certification Date" means the date of the Electronic Transmission of the Debt.
3. **Creditor Agency Profile Form.** "Creditor Agency Profile Form" means the document(s) the Creditor Agency completes to provide information to FMS, including, among other things, what tools FMS is authorized to use to collect Debts on behalf of the Creditor Agency, and contact information for the Creditor Agency's personnel who are available to assist FMS with questions related to the transferred Debt. The Creditor Agency Profile Form is an FMS document that FMS sends to agencies for completion.
4. **Cross-Servicing Program.** "Cross-Servicing Program" means FMS's debt collection program in which FMS uses a variety of debt collection tools, including TOP, to collect delinquent nontax debts on behalf of Federal agencies.
5. **Debt.** "Debt" means any federal nontax debt, any information about such a debt, any information about the Debtor, associated with the debt, and any update, change, or modification to such information.
6. **Debtor.** "Debtor" means a person who owes a Debt.
7. **Debtor Detail Screen.** "Debtor Detail Screen" means the screen in the TOP Web Client (as defined in FMS Technical Guidance) on which a Debt can be entered.

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8. **Electronic Transmission.** "Electronic Transmission" means any transmission of information to FMS from the Creditor Agency via any form of electronic media including, but not limited to, tapes, diskettes, and on-line access through an Add Records, an Update Records, or a Salary Offset Instruction.
 9. **FMS Technical Guidance.** "FMS Technical Guidance" means the technical guidance issued by FMS that, among other things, instructs agencies how to Add Records and Update Records. "FMS Technical Guidance" includes:
 - a. ***Direct Referrals to TOP.*** For direct referrals to TOP, "FMS Technical Guidance" includes:
 - i. "Treasury Offset Program Agency Guide: The Official Federal Agency Guide to the Treasury Offset Program," version 2010.3, as updated from time-to-time;
 - ii. "Treasury Offset Program: Enhanced Record Layouts Version 3.2 with Definitions, Error Codes and Layout Mapping," as updated from time-to-time;
 - iii. "Integrated Agency Interface File Formats," version 3.30t, as updated from time-to-time;
 - iv. "Treasury Offset Program: The Online Client Agency User Guide," version 1.0, as updated from time-to-time; and
 - v. Any other guidance issued by FMS providing technical specifications for how to refer Debts directly to TOP.
 - b. ***Referrals to the Cross-Servicing Program.*** For referrals to the Cross-Servicing Program, "FMS Technical Guidance" includes:
 - i. "Integrated Agency Interface File Format For Cross-Servicing," version 3.30.1, as updated from time-to-time;
 - ii. "XDC FedDebt Referral File Format: Electronic Case Entry for Cross-Servicing," as updated from time-to-time;
 - iii. "FedDebt Online Functionality: Creating a Case Online," revised 12/2010, as updated from time-to-time;
 - iv. "Cross-Servicing Implementation Guide," revised August 2008, as updated from time-to-time; and
 - v. Any other guidance issued by FMS providing technical specifications for how to refer Debts to the Cross-Servicing Program.
 10. **Record Type 6.** "Record Type 6" means the record layout used for sending data to TOP, and includes information regarding what payments should be excluded from offset.
 11. **Salary Offset Instruction.** "Salary Offset Instruction" means the salary by-pass indicator used by the Creditor Agency to indicate to TOP whether or not a Debt should be collected through the offset of Federal salary payments. As further specified in the FMS Technical Guidance:
 - a. ***No Offset of Federal Salary Payments.*** To direct that FMS not collect a Debt through the offset of Federal salary payments, the Creditor Agency must:

- i. Transmit the file with a Record Type 6 containing an A in the Action Field and SAL in the Payment Bypass Indicator Field;
- ii. Indicate in the Creditor Agency's Agency Profile (i.e., the default settings established by the Creditor Agency) that Federal salary payments should not be offset;
- iii. Manually check the "salary by-pass" column online through the Debtor Detail Screen; or
- iv. Follow other relevant guidance in the FMS Technical Guidance regarding how to bypass salary payments.

b. **Offset Federal Salary Payments.** The Creditor Agency directs FMS to collect a Debt through the offset of Federal salary payments as follows:

- i. If the Creditor Agency submits a Debt to FMS without a specific indication that the Debt should not be collected through the offset of Federal salary payments (see paragraph 11.a. of this Attachment A, above), the Creditor Agency has indicated that the Debt should be collected through the offset of Federal salary payments;
- ii. If the Creditor Agency has previously indicated that Federal salary payments not be offset, to indicate that Federal salary payments be offset, the Creditor Agency must:
 - (a) Send a Record Type 6 with a D in the Action Field and SAL in the Payment Bypass Indicator Field;
 - (b) Send a Record Type 6 with a U in the Action Field and SAL in the Payment Bypass Indicator Field; or
 - (c) Indicate in the Creditor Agency's Agency Profile (i.e., the default settings established by the Creditor Agency) that Federal salary payments should be offset; or
- iii. The Creditor Agency must follow other relevant guidance in the FMS Technical Guidance regarding how to offset Federal salary payments.

12. **Treasury Offset Program or TOP.** "Treasury Offset Program" or "TOP" means the FMS's debt matching and payment offset program that uses payment and debt data received from Federal agencies and States to collect delinquent debt from payments disbursed by FMS and other Federal and State disbursing agencies.

13. **Update Records.** "Update Records" means any update, change or modification of information about a Debt previously transmitted by the Creditor Agency. Specifically, "Update Records" includes any update, change or modification of information about such a Debt that is submitted to FMS, by Electronic Transmission, through either a batch or manual process, as further specified by the FMS Technical Guidance.



FEDERAL ELECTION COMMISSION
Washington DC 20463

THIS IS THE END OF ADMINISTRATIVE FINE CASE # 2545

DATE SCANNED 5/3/13

SCANNER NO. 2

SCAN OPERATOR EEJ

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