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FEDERAL ELECTION COMMISSION  
Washington, D.C. 20463

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2017 JAN 13 AM 11: 29

1 TO: The Commission  
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5  
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16 SUBJECT: Fast-Track Resolution of Pre-MUR 592 (Miami Association of Realtors)  
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20 I. INTRODUCTION

21 The Miami Association of Realtors ("Miami Association") and the Realtors Political Action  
22 Committee ("RPAC") filed a *sua sponte* submission ("Submission") disclosing potential violations  
23 of the Federal Election Campaign Act of 1971, as amended (the "Act"), arising out of  
24 reimbursements made by the Miami Association to individuals who contributed to RPAC. The  
25 Submission indicates that the Miami Association violated the Act by using corporate treasury funds  
26 to make contributions in the name of others when it reimbursed certain members for travel expenses  
27 they incurred while attending meetings of the Florida Realtors Association Board of Directors on the  
28 condition that they made a contribution, or pledged to make a contribution, to RPAC. We believe  
29 that it is appropriate to resolve this matter with the Miami Association through Fast-Track  
30 Resolution

31 II. DISCUSSION

32 RPAC is the separate segregated fund ("SSF") of the National Association of Realtors  
33 ("NAR"), a 501(c)(6) nonprofit corporation.<sup>1</sup> RPAC is registered with the Commission as a  
34 multi-candidate political committee. The Miami Association and the Florida Realtors

<sup>1</sup> Realtors PAC and the Miami Association of Realtors *Sua Sponte* Submission at 2 (Mar. 9, 2016), Pre-MUR 592 (National Association of Realtors PAC) ("Submission").

1 Association ("Florida Association") are affiliates of NAR and assist with NAR's fundraising  
2 efforts.<sup>2</sup> The Miami Association is a not-for-profit corporation registered in Florida.<sup>3</sup> According  
3 to the Submission, a number of members of the Miami Association also serve on the Board of  
4 Directors of the Florida Association.<sup>4</sup>

5 In 2011, the Miami Association adopted a policy allowing it to reimburse members for  
6 travel expenses incurred while attending meetings of the Florida Association Board of  
7 Directors.<sup>5</sup> Travel expenses would only be reimbursed to directors who made a contribution, or  
8 pledged to make a contribution, to RPAC.<sup>6</sup> The Submission included samples of the Miami  
9 Association's "Application to Serve as a State Director" completed by Florida Director  
10 applicants. The application states that the Miami Association would "reimburse RPAC Investors  
11 at the following levels for attending the two (2) Florida Realtors meetings":<sup>7</sup>

Amount of Contribution to RPAC	Amount of Reimbursement
\$1,000	\$750 per meeting, or \$1,500 total
\$500	\$500 per meeting, or \$1,000 total
\$250	\$350 per meeting, or \$700 total
\$100	\$150 per meeting, or \$300 total
\$0	[Left blank on application] <sup>8</sup>

12 The application further asked applicants to specify whether their contribution was paid or  
13 pledged, and provided a deadline for the payment of pledged contributions.<sup>9</sup>

14 The Submission admits that the Miami Association made reimbursements under this  
15 policy from 2012 to 2015.<sup>10</sup> The Miami Association reimbursed eighty-two Participating Florida

2 Submission at 2.

3 FLORIDA DEP'T OF STATE, DIVISION OF CORPORATIONS, <http://search.sunbiz.org/Inquiry/CorporationSearch/ByName> (Search "Miami Association of Realtors").

4 Submission at 2.

5 *Id.* at 3.

6 *Id.* Members who participated in the reimbursement program will hereinafter be referred to as "Participating Florida Directors."

7 *Id.*, Ex. C.

8 *Id.*

9 *Id.*

10 *Id.*

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1 Directors for travel expenses because they contributed or pledged to contribute to RPAC.<sup>11</sup> A  
2 total of \$55,668.16 was reimbursed using this arrangement.<sup>12</sup> Specifically, the Miami  
3 Association reimbursed the following amounts of RPAC contributions during each year that the  
4 arrangement was in place:

- 5 • 2012 – \$12,421.20 reimbursed of \$14,474.40 total contributions;
- 6 • 2013 – \$13,856.70 reimbursed of \$13,856.70 total contributions;
- 7 • 2014 – \$13,846.14 reimbursed of \$14,309.56 total contributions;
- 8 • 2015 – \$15,544.12 reimbursed of \$15,544.12 total contributions.<sup>13</sup>

9 NAR states that it first learned of the reimbursement arrangement on October 15, 2015.<sup>14</sup>  
10 NAR and RPAC, upon learning of the arrangement, contacted the Florida Association and the  
11 Miami Association and began a “review of the nature, extent, and origins of RPAC contributions  
12 by members of the Miami Association who were Florida Directors.”<sup>15</sup> NAR and RPAC also  
13 spoke with the Florida Association’s legal counsel.<sup>16</sup> The Submission states that NAR  
14 recommended that the Miami Association terminate the reimbursement arrangement, that the  
15 Miami Association followed this recommendation, and that as such, the Miami Association did  
16 not use the arrangement in 2016.<sup>17</sup> NAR and RPAC say that they also confirmed with the  
17 Florida Association that no other realtor associations in Florida had adopted a similar  
18 reimbursement arrangement.<sup>18</sup> RPAC has refunded all of the contributions made to it under this  
19 arrangement to the eighty-two Participating Florida Directors.<sup>19</sup>

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11 *See* Realtors PAC and the Miami Association of Realtors Supplemental Submission, fn. 2 (Sept. 28, 2016),  
Pre-MUR 592 (National Association of Realtors PAC) (“Supp. to Submission”). The original Submission  
incorrectly states that eighty-three directors contributed in exchange for reimbursement. *See id.*; Submission at 5.

12 Submission at 5.

13 Though the policy was adopted in 2011, the Miami Association did not reimburse any contributions in  
2011.

14 *Id.* at 4.

15 *Id.*

16 *Id.*

17 *Id.*

18 *Id.* at 5.

19 RPAC’s October 2016 monthly report confirms that RPAC refunded amounts that are consistent with the  
refunded contribution amounts set forth in Exhibit G.

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1                   **A. Legal Analysis**

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3                   **1. The Miami Association Made Corporate Contributions**

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5                   The Act prohibits corporations from making contributions to any federal candidate or  
6 political committee.<sup>20</sup> Corporations may nonetheless use treasury funds for the establishment,  
7 administration, and solicitation of contributions to a SSF.<sup>21</sup> Corporations may not use that  
8 process, however, "as a means of exchanging treasury monies for voluntary contributions."<sup>22</sup> In  
9 this respect, Commission regulations specify that a corporation may not pay a contributor for his  
10 contribution "through a bonus, expense account, or other form of direct or indirect  
11 compensation."<sup>23</sup>

12  
13                   Here, the Miami Association provided the Participating Florida Directors with  
14 compensation in exchange for a contribution or pledge of a contribution to RPAC, which on its  
15 face violates 52 U.S.C. § 30118. Moreover, because the Miami Association provided a direct  
16 financial benefit to the individual contributing to the SSF by exchanging corporate funds for  
17 voluntary contributions, the reimbursement arrangement here is unlike the incentive programs  
18 that the Commission has found to involve permissible solicitation expenses.<sup>24</sup>

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20                   **2. The Miami Association Made Contributions in the Name of Another**

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22                   The Act and Commission regulations prohibit a person from making a contribution in the  
23 name of another or knowingly permitting his or her name to be used to effect such a  
24 contribution.<sup>25</sup> The Act and the Commission's implementing regulations provide that a person  
25 who reimburses another with funds for the purpose of making a contribution in fact makes the

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20                   52 U.S.C. § 30118(a). The Act provides that a contribution includes "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office." *Id.* § 30101(8)(A). The term "person" for purposes of the Act and Commission regulations includes partnerships, corporations, and "any other organization or group of persons." *Id.* § 30101(11); 11 C.F.R. § 100.10.

21                   See 52 U.S.C. § 30118(b)(2); 11 C.F.R. § 114.1(a)(2)(iii), 114.2(f)(1), 114.5(b). The Commission's regulations define the terms "establishment, administration, and solicitation costs" as the costs of office space, phones, salaries, utilities, supplies, legal and accounting fees, fundraising and other expenses incurred in setting up and running a SSF established by a corporation. 11 C.F.R. § 114.1(b).

22                   *Id.* § 114.5(b).

23                   *Id.* § 114.5(b)(1).

24                   See, e.g., MUR 6873 (Wal-Mart Stores, Inc., *et al.*) (dismissing allegations that Wal-Mart provided corporate contributions to SSF because employees making contributions to the SSF did not receive a benefit or compensation in return for their SSF contributions); Advisory Op. 2003-04 (Freeport) (permitting corporate matching program where "each contributor to the PAC will be given written notice that he or she cannot receive any tangible benefit from the charitable entity in exchange for the matching contribution."); Advisory Op. 1994-03 (EnviroSource, Inc.) (permitting matching program where "PAC contributors will not receive any financial benefit from either the corporation or the charity as a result of his or her participation").

25                   52 U.S.C. § 30122; 11 C.F.R. § 110.4(b)(1)(i)-(iii).

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1 resulting contribution.<sup>26</sup>

2 In this matter, the Miami Association reimbursed the Participating Florida Directors for a  
3 total of \$55,668.16 of travel expenses in exchange for contributions, or pledges of contributions,  
4 to RPAC. The formal designation of the reimbursement itself—whether the payment is  
5 classified as a reimbursement or a bonus, for instance—is immaterial. In MUR 6465 (Fiesta  
6 Bowl, *et al.*) the Commission found reason to believe that the respondent corporation violated 52  
7 U.S.C. §§ 30118 and 30122 when it provided reimbursements to employee contributors in the  
8 form of bonuses and checks for purported expense reimbursements.<sup>27</sup> In MUR 6618 (United  
9 Power, *et al.*), the Commission found reason to believe that the respondent corporation violated 2  
10 U.S.C. §§ 441b and 441f (now 52 U.S.C. §§ 30118 and 30122) when it reimbursed its directors,  
11 using per diem expense accounts, for contributing to the SSF of the corporation's national trade  
12 association.<sup>28</sup> Similarly, the Miami Association promised funds for reimbursement only once an  
13 individual made, or pledged to make, a contribution to RPAC, and then reimbursed the  
14 Participating Florida Directors \$55,668.16 for their RPAC contributions in violation of 52 U.S.C.  
15 § 30122.

16 **3. The Commission Should Take No Action Against RPAC or the**  
17 **Participating Florida Directors**

18 The Act and Commission regulations prohibit a person from knowingly accepting a  
19 contribution made by one person in the name of another person.<sup>29</sup> No available information  
20 suggests that RPAC was aware during the relevant period that the Miami Association reimbursed  
21 the Participating Florida Directors for contributions they made to RPAC, or that RPAC knew  
22 that it was receiving prohibited contributions or contributions made in the name of another. In  
23 particular, the Submission asserts that RPAC only became aware of the potential violations in  
24 October 2015, and then took immediate corrective action. Similarly, no information suggests  
25 that any of the eighty-two Participating Florida Directors who received reimbursements knew  
26 they were making a prohibited contribution or were otherwise involved in carrying out the  
27 program.<sup>30</sup> Further, the largest amount contributed by any director in exchange for  
28 reimbursement was \$2,817.32, and most directors contributed substantially less than that  
29 amount.<sup>31</sup> Based on the low individual amounts in violation, and consistent with usual

<sup>26</sup> *United States v. O'Donnell*, 608 F.3d 546, 555 (9th Cir. 2010). Moreover, the "key issue . . . is the source of the funds" and, therefore, the legal status of the funds when conveyed from a conduit to the ultimate recipient is "irrelevant to a determination of who 'made' the contribution for the purposes of [Section 30122]." *United States v. Whittemore*, 776 F.3d 1074, 1080 (9th Cir. 2015).

<sup>27</sup> Certification (Dec. 16, 2011), MUR 6465 (Fiesta Bowl, *et al.*); First General Counsel's Rpt. at 9 (Nov. 21, 2011), MUR 6465 (Fiesta Bowl, *et al.*). In MUR 6465, at least one reimbursement was purportedly for childcare, and contribution amounts did not necessarily match the reimbursement amounts. See Second General Counsel's Rpt. at 7 (July 18, 2012), MUR 6465 (Fiesta Bowl, *et al.*).

<sup>28</sup> Certification (July 31, 2012), MUR 6618 / Pre-MUR 527 (United Power, Inc.).

<sup>29</sup> 52 U.S.C. § 30122; 11 C.F.R. § 110.4(b)(1)(iv).

<sup>30</sup> See *supra* note 11.

<sup>31</sup> See Supp. to Submission, Ex. G.

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31           Given the purpose of Fast-Track resolution, we plan to negotiate with Respondent's  
32 counsel for a limited period of time. If our negotiations prove successful and we receive a signed

- 1 agreement, we will recommend that the Commission approve the negotiated agreement. If
- 2 negotiations are unsuccessful, we will make appropriate recommendations.

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