



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

JUN 17 2003

Bobby R. Burchfield, Esq.
Timothy J. Keefer, Esq.
Covington & Burling
1201 Pennsylvania Avenue NW
Washington, DC 20004-2401

RE: MUR 5197
Federal Home Loan Mortgage
Corporation ("Freddie Mac")

Dear Messrs. Burchfield and Keefer:

On April 23, 2001, the Federal Election Commission notified your client, the Federal Home Loan Mortgage Corporation ("Freddie Mac"), of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, and information provided by you, the Commission, on June 10, 2003, found that there is reason to believe the Federal Home Loan Mortgage Corporation violated 2 U.S.C. § 441b(a), a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

In order to expedite the resolution of this matter, the Commission has also decided to offer to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Enclosed is a conciliation agreement that the Commission has approved. If you are interested in expediting the resolution of this matter by pursuing preprobable cause conciliation, and if you agree with the provisions of the enclosed agreement, please sign and return the agreement, along with the civil penalty, to the Commission. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

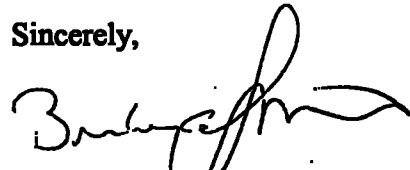
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Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you have any questions, please contact Michael E. Scurry, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Bradley A. Smith
Vice Chairman

Enclosures
Factual and Legal Analysis
Conciliation Agreement

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3
4 **RESPONDENT:** Federal Home Loan Mortgage Corporation MUR: 5197
5 ("Freddie Mac")
6
7

8 This matter was generated by a complaint filed with the Federal Election Commission by
9 John Berthoud, President of the National Taxpayers Union ("Complainant"), *see* 2 U.S.C.
10 § 437g(a)(1), and on the basis of information ascertained by the Commission in the normal
11 course of carrying out its supervisory responsibilities. *See* 2 U.S.C. § 437g(a)(2). Complainant
12 alleged that the Federal Home Loan Mortgage Corporation ("Respondent") violated provisions
13 of the Federal Election Campaign Act of 1971, as amended ("the Act").

14 **I. LAW¹**

15 The Act prohibits "any corporation organized by authority of any law of Congress" from
16 making "a contribution or expenditure in connection with any election to any political office."
17 2 U.S.C. § 441b(a). The Act also prohibits "any candidate, political committee, or other person"
18 from knowingly accepting or receiving "any contribution prohibited by this section." *Id.*

19 For purposes of Section 441b, the terms "contribution" and "expenditure" include "any
20 direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services,
21 or anything of value . . . to any candidate, campaign committee, or political party or organization,
22 in connection with any election to any of the offices referred to in" Section 441b.

23 The Act excludes from the definition of contribution:

24 any gift, subscription, loan, advance, or deposit of money or anything of

¹ The activity in this matter is governed by the Federal Election Campaign Act of 1971, as amended ("the Act"), and the regulations in effect during the pertinent time period, which precedes the amendments made by the Bipartisan Campaign Reform Act of 2002 ("BCRA"). All references to the Act and regulations in this Factual and Legal Analysis exclude the changes made by BCRA.

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value to a national or a State committee of a political party specifically designated to defray any cost for construction or purchase of any office facility not acquired for the purpose of influencing the election of any candidate in any particular election for Federal office.

2 U.S.C. § 431(8)(B)(viii). This is the so-called "building fund exemption." *See, e.g.*, Advisory Opinions 2001-12, 2001-1, 1998-8, 1998-7, 1997-14, and 1983-8. Funds falling under the building fund exemption are exempt from the prohibitions of 2 U.S.C. § 441b. *See* 11 C.F.R. § 114.1(a)(2)(ix); Advisory Opinions 2001-12, 2001-1, 1998-8, 1998-7, 1997-14, 1983-8, and 1979-17. Therefore, national and state committees of political parties may accept donations covered by the building fund exemption from corporations organized by authority of any law of Congress. *See id.* The provisions of the building fund exemption apply only to "a national or a State committee of a political party" and not to other committees, such as local party committees or PACs. *See* Advisory Opinions 1988-12, 1996-8, and 1978-78.

II. COMPLAINT

On April 23, 2001, Respondent was notified of the complaint. The complaint alleged that "two Congressionally-chartered corporations, the Federal Home Loan Mortgage Corporation (Freddie Mac) and the Federal National Mortgage Association (Fannie Mae)" made contributions to the non-federal accounts of several national party committees in violation of 2 U.S.C. § 441b(a). After a discussion of the applicable law, the complaint stated, "Fannie Mae and Freddie Mac are strictly prohibited from making contributions to the nonfederal accounts of national party committees which are used to influence federal, state, or local elections."

The complaint included "a 1997-2000 summary report of soft money donations to nonfederal accounts" by Freddie Mac and Fannie Mae,² which named the accounts involved in

² This summary report apparently was created by running a transaction query (data by individual) on the Commission's website. Complainant apparently used the names "Fannie Mae" and "Freddie Mac" as the last names in this individual search. The receipts generated were attached to the complaint. The complaint did not include

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1 the alleged violations and gave the dates and amounts of the contributions in question.

2 Complainant stated that "some of these contributions may have been made to permissible

3 'building fund' accounts." Nevertheless, the complaint calculated that Fannie Mae's

4 "non-building soft money donations totaled almost \$340,000" and that "Freddie Mac's

5 non-building soft money donations totaled slightly in excess of \$400,000." The complaint

6 requested that the Commission "examine the building fund contributions (in excess of \$1 million

7 by Fannie Mae and in excess of \$2.4 million by Freddie Mac) to ensure that these funds were not

8 diverted to prohibited nonfederal accounts."

9 **III. RESPONSE**

10 Freddie Mac responded, through counsel, by letter dated June 11, 2001. The response

11 stated that "Freddie Mac's donations were specifically designated for building funds." The

12 response referenced Freddie Mac's corporate procedure, which was established in 1994, to

13 ensure compliance with the Act. The response stated that this procedure provides for "a cover

14 letter that notifies the recipient that the funds are to be used only for building fund purposes in

15 accordance with" the Act. The response stated that the "cover letter specifically cites and quotes

16 2 U.S.C. § 431(8)(B)(viii) and 11 C.F.R. § 114.1(a)(2)(ix)." The response included as exhibits

17 the referenced corporate procedure and several cover letters for donations to the National

18 Republican Congressional Committee and National Republican Senatorial Committee. The

19 response also included the affidavit of Bruce S. Oliver, Esq., Freddie Mac's Associate General

receipts generated using "FannieMae" as the last name or "Mac, Fannie" and "Mac, Freddie" as the last and first names, which would have included more Fannie Mae and Freddie Mac donations. This caused the complaint to exclude \$496,250 in receipts reported from Fannie Mae and Freddie Mac from 1997-2000.

Furthermore, subsequent to the complaint, the Republican National Committee's non-federal account reported a contribution of \$250,000 from Freddie Mac as received on 12/20/01. See discussion on page 5, *infra*.

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1 Counsel and "the designated compliance officer responsible for reviewing requests under" the
2 corporate procedure to ensure compliance with the Act.³

3 The response stated that the "non-building soft money donations" referenced in the
4 complaint from Freddie Mac to the NRSC-Nonfederal and the NRCCC-Nonfederal Accounts
5 totaled \$430,000.⁴ The response stated that the complaint erroneously assumed "that the
6 donations listed under NRCCC [sic] – NON FED ACT and NRSC – NONFEDERAL are *not*
7 building fund accounts" (emphasis in original). According to the response, "[I]t appears that
8 'BUILDING FUND' was merely inadvertently omitted from the title by the reporting entity."

9 The response stated that for all Freddie Mac donations referenced in the complaint,
10 "Freddie Mac directed that in accordance with federal law, the funds could be used only for the
11 purchase or construction of office facilities not acquired for the purpose of influencing the
12 election of any candidate." However, the response stated that one of the donations in question,
13 the \$3,000 contribution to the National Republican Congressional Committee received on
14 May 12, 2000, "[W]as not accompanied by the standard cover letter when it was sent." The
15 response included a letter sent to the National Republican Congressional Committee dated
16 March 29, 2001, which explained that the funds should go towards the building fund only. The
17 response also stated that Freddie Mac's understanding is "that *all amounts* given by Freddie Mac
18 to the NRCC, including the \$3,000 check, were placed in an NRCC Building Fund" (emphasis in
19 original). The response stated, "All other donations listed in the NTU Complaint were

³ The affidavit of Freddie Mac's Associate General Counsel stated, "I have reviewed all of the donations in question in the Complaint filed with the Federal Election Commission by NTU. My review indicates that all of the donations were made for building fund purposes."

⁴ The response did not address four donations not referenced in the complaint made by Freddie Mac from 1997-2000 to various committees, which totaled \$330,250.

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1 accompanied by a contemporaneous cover letter notifying the recipient that the funds could be
2 used only for appropriate building fund purposes.”

3 **IV. ANALYSIS**

4 Based on the complaint and the responses, it appears that Freddie Mac may have violated
5 2 U.S.C. § 441b(a) by failing to designate certain contributions for building fund purposes.
6 Freddie Mac is a corporation organized by authority of a law of Congress, 12 U.S.C. § 1451 *et*
7 *seq.*, and therefore may not make any contribution in connection with any election to any
8 political office. 2 U.S.C. § 441b(a). It may, however, make donations under the building fund
9 exemption because they are not considered contributions.⁵

10 Following receipt of the response, the Republican National Committee reported, in its
11 2001 Year End Report, filed on 01/30/02 and amended on 04/26/02, a \$250,000 contribution
12 received on 12/20/01 from Freddie Mac by its non-federal account, the Republican National
13 State Elections Committee, which was not a building fund account. There is no information in
14 hand indicating that Freddie Mac designated this \$250,000 contribution for building fund
15 purposes, thereby placing this contribution outside of the “building fund exemption” of 2 U.S.C.
16 § 431(8)(B)(viii).

17 With one exception, Freddie Mac presented information showing that all of its other
18 donations to the respondent committees addressed in the complaint were designated for building
19 funds. In its response, Freddie Mac concedes that the \$3,000 contribution to the National
20 Republican Congressional Committee reported as received on May 12, 2000 was not designated
21 for building fund purposes at the time it was made.

⁵ In the Analysis, the term “donation” is used to refer to the permissible transfers from Freddie Mac pursuant to the so-called “building fund exemption” and the term “contribution” is used to refer to contributions as defined by the Act.

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- 1 Therefore, there is reason to believe that the Federal Home Loan Mortgage Corporation
2 violated 2 U.S.C. § 441b(a).

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