

MAY 21 2003

SENSITIVE

**FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463**

FIRST GENERAL COUNSEL'S REPORT

MUR: 5197
DATE COMPLAINT FILED: 04/16/01
DATES OF NOTIFICATION: 04/23/01
and 05/21/01
DATE ACTIVATED: 10/26/01¹

EXPIRATION OF STATUTE OF
LIMITATIONS: 05/15/03²

COMPLAINANT:

John Berthoud, President
National Taxpayers Union

RESPONDENTS:

Federal Home Loan Mortgage Corporation
("Freddie Mac")
Federal National Mortgage Association
("Fannie Mae")
National Republican Congressional Committee
and Christopher J. Ward, as treasurer³
National Republican Senatorial Committee and
Stan Huckaby, as treasurer⁴

¹ The attorney to whom this matter was originally assigned transferred from Enforcement to Policy. This matter was transferred to an attorney on a different team on December 3, 2001.

² The statute-of-limitations ("SOL") date listed in CMS is June 17, 2002, which was based on the first receipt of a challenged contribution referenced in the complaint. However, since the earliest date of any alleged activity supporting a finding of reason to believe is May 15, 1998, this Office intends to revise the SOL date in CMS to reflect an SOL date of May 15, 2003. Although a contribution of \$10,000, made on May 15, 1998, will be barred by the statute of limitations, no remaining activity will be barred before 2004. The latest statute-of-limitations date in this matter is May 30, 2007.

³ The National Republican Congressional Committee Contributions and Donna M. Anderson, as treasurer, were originally notified as respondents. The Reports Analysis Division has informed this Office that the National Republican Congressional Committee established two separately identified committees, the National Republican Congressional Committee Contributions and the National Republican Congressional Committee Expenditures, in order to make reporting easier on their part because their reports are extremely large. The National Republican Congressional Committee responded on behalf of the National Republican Congressional Committee Contributions in this matter and appears as the respondent. Additionally, Donna M. Anderson served as treasurer of this committee at the time the complaint was filed.

⁴ The NRSC-Non Federal and its treasurer and the National Republican Senatorial Committee Building Fund and D. Jan McBride, as assistant treasurer, were originally notified as respondents. Both were non-federal accounts of the National Republican Senatorial Committee. The National Republican Senatorial Committee responded on behalf of its non-federal accounts in this matter and appears as the respondent.

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Republican National Committee and
Michael L. Retzer, as treasurer⁵
1997 Republican Senate-House Dinner Committee
and Trudy Matthes Barksdale, as treasurer
1998 Republican House-Senate Dinner Committee
and Trudy Matthes Barksdale, as treasurer
1999 Republican Senate-House Dinner Committee
and Christopher J. Ward, as treasurer
2000 Republican House-Senate Dinner Committee
and Christopher J. Ward, as treasurer
Democratic Congressional Campaign Committee
and James J. Bonham, as treasurer⁶
Democratic Senatorial Campaign Committee and
Andrew Grossman, as treasurer⁷
DNC Services Corporation/Democratic National
Committee and Andrew Tobias, as treasurer⁸

RELEVANT STATUTES:

2 U.S.C. § 431(8)(B)(viii)
2 U.S.C. § 441b(a)
11 C.F.R. § 104.8(e)
11 C.F.R. § 114.1(a)(2)(ix)

INTERNAL REPORTS CHECKED:

Disclosure Reports

⁵ The Republican National State Elections and RNC Committee to Preserve the Dwight D. Eisenhower National Republican Center were originally notified as respondents. Both were non-federal accounts of the Republican National Committee. The Republican National Committee responded on behalf of its non-federal accounts in this matter and appears as the respondent. Additionally, Robert M. Duncan served as treasurer of this committee at the time the complaint was filed.

⁶ The DCCCC Building Fund #1 and its treasurer were originally notified as respondents. The DCCCC Building Fund #1 was a non-federal account of the Democratic Congressional Campaign Committee-Contributions. The Reports Analysis Division has informed this Office that the Democratic Congressional Campaign Committee established two separately identified committees, the Democratic Congressional Campaign Committee-Contributions and the Democratic Congressional Campaign Committee-Expenditures, in order to make reporting easier on their part because their reports are extremely large. The Democratic Congressional Campaign Committee responded on behalf of the non-federal account of the Democratic Congressional Campaign Committee-Contributions in this matter and appears as the respondent. Additionally, Howard Wolfson served as treasurer of this committee at the time the complaint was filed.

⁷ Both the Democratic Senatorial Campaign Committee and the DSCC Non-Federal Building Fund were originally notified as respondents. The DSCC Non-Federal Building Fund was a non-federal account of the Democratic Senatorial Campaign Committee. The Democratic Senatorial Campaign Committee responded on behalf of its non-federal account in this matter and appears as the respondent. Additionally, James M. Jordan served as treasurer of this committee at the time the complaint was filed.

⁸ The DNC-Building Fund and its treasurer were notified as respondents. The DNC-Building Fund was a non-federal account of the DNC Services Corporation/Democratic National Committee. The DNC Services Corporation/Democratic National Committee responded on behalf of its non-federal account in this matter and appears as the respondent.

1 FEDERAL AGENCIES CHECKED: None

2 I. GENERATION OF MATTER

3 This matter was initiated by a complaint filed on April 16, 2001, by John Berthoud,
4 President of the National Taxpayers Union ("Complainant"). Complainant alleged that Fannie
5 Mae and Freddie Mac made contributions to the non-federal accounts of several national party
6 committees in violation of 2 U.S.C. § 441b(a). Respondents were notified of the complaint on
7 April 23 and May 21, 2001. See footnotes 3-8, *supra*. The Commission received responses in
8 May, June, and July of 2001.

9 II. FACTUAL AND LEGAL ANALYSIS

10 A. The Law⁹

11 The Federal Election Campaign Act of 1971, as amended ("the Act"), prohibits "any
12 corporation organized by authority of any law of Congress" from making "a contribution or
13 expenditure in connection with any election to any political office." 2 U.S.C. § 441b(a). The
14 Act also prohibits "any candidate, political committee, or other person" from knowingly
15 accepting or receiving "any contribution prohibited by this section." *Id.*

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

20 The Act excludes from the definition of contribution:

21 any gift, subscription, loan, advance, or deposit of money or anything of
22 value to a national or a State committee of a political party specifically

⁹ 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 Report exclude the changes made by BCRA.

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1 designated to defray any cost for construction or purchase of any office
2 facility not acquired for the purpose of influencing the election of any
3 candidate in any particular election for Federal office.

4
5 2 U.S.C. § 431(8)(B)(viii). This is the so-called "building fund exemption." *See, e.g.*, Advisory
6 Opinions 2001-12, 2001-1, 1998-8, 1998-7, 1997-14, and 1983-8. Funds falling under the
7 building fund exemption are exempt from the prohibitions of 2 U.S.C. § 441b. *See* 11 C.F.R.
8 § 114.1(a)(2)(ix); Advisory Opinions 2001-12, 2001-1, 1998-8, 1998-7, 1997-14, 1983-8, and
9 1979-17. Therefore, national and state committees of political parties may accept donations
10 covered by the building fund exemption from corporations organized by authority of any law of
11 Congress. *See id.* The provisions of the building fund exemption apply only to "a national or a
12 State committee of a political party" and not to other committees, such as local party committees
13 or PACs. *See* Advisory Opinions 1988-12, 1996-8, and 1978-78.

14 National party committees must report receipts to the committee's non-federal account
15 aggregating in excess of \$200 in a memo Schedule A. *See* 11 C.F.R. § 104.8(e).

16 **B. The Complaint**

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

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1 The complaint included "a 1997-2000 summary report of soft money donations to
2 nonfederal accounts" by Freddie Mac and Fannie Mae,¹⁰ which named the accounts involved in
3 the alleged violations and gave the dates and amounts of the contributions in question.
4 Complainant stated that "some of these contributions may have been made to permissible
5 'building fund' accounts." Nevertheless, the complaint calculated that Fannie Mae's
6 "non-building soft money donations totaled almost \$340,000" and that "Freddie Mac's
7 non-building soft money donations totaled slightly in excess of \$400,000." The complaint
8 requested that the Commission "examine the building fund contributions (in excess of \$1 million
9 by Fannie Mae and in excess of \$2.4 million by Freddie Mac) to ensure that these funds were not
10 diverted to prohibited nonfederal accounts."

11 **C. The Responses**

12 **1. Fannie Mae**

13 Fannie Mae responded, through counsel, by letter dated May 9, 2001. The response
14 stated that after "a thorough independent audit of Fannie Mae's contributions to national party
15 nonfederal accounts from 1997-2000" it was "determined that almost all of these contributions
16 were designated specifically for and deposited into 'building fund' accounts." The response
17 included the results of this audit and supporting documentation as exhibits.

¹⁰ 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 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. See Attachment 1.

Furthermore, subsequent to the complaint, 1) one of the National Republican Congressional Committee's non-federal accounts, NRCCC-Non Federal #1, reported a contribution of \$25,000 from Fannie Mae as received on 05/30/02 (see discussion on page 14, *infra.*), and 2) 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 16, *infra.*).

1 The response stated that the audit uncovered that Fannie Mae's contributions "made to
2 the Republican Governors Association (RGA) for membership dues were deposited by the RGA
3 into an RNC Republican National State Elections Committee (RNSEC) account that could be
4 used to support candidates for state and local elections." According to the response, Fannie Mae
5 "was under the belief that the payments were being made to a non-party trade association and
6 that they would be deposited into an RGA account that is used to cover the costs of conferences,
7 dinners, and other benefits offered to RGA members." The response continued, "Fannie Mae
8 was unaware at the time these payments were made that these funds could be deposited into an
9 election-related nonfederal account used to support candidates for state and local offices." The
10 response attached as Exhibit 6 a copy of a letter Fannie Mae sent to the RGA "requesting that
11 each of its membership dues payments be refunded in full or be re-designated to a party building
12 fund account." The response continued, "These payments were returned in full to Fannie Mae
13 on April 12, 2001." The response stated that "the full refund of these membership dues
14 payments ensures that no Fannie Mae funds have been used for an impermissible purpose under"
15 the Act.

16 The response further stated, "For all but two of the donations to the accounts other than
17 the RNSEC, Fannie Mae located copies of cancelled checks and/or disbursement requests
18 verifying that the donations in question were designated specifically for party building fund
19 purposes and were deposited into building fund accounts."¹¹ The response continued, "These
20 donations are unquestionably lawful under" the Act and "there is no basis for any action against
21 Fannie Mae with respect to these donations."

¹¹ This statement is not wholly correct. Two of the cancelled checks included in Exhibit 2.A totaling \$150,000 were not specifically designated for building fund purposes by Fannie Mae. Neither the \$50,000 check dated June 29, 1999 to the "1999 Republican Senate-House Dinner Dinner" nor the \$100,000 check dated May 19, 2000 to the "2000 Republican Senate-House Dinner" contained a designation.

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1 In reference to the two donations to accounts other than the RNSEC for which Fannie
2 Mae failed to locate cancelled checks or disbursement requests, the response stated that "Fannie
3 Mae used alternative means to confirm that these donations were deposited into building fund
4 accounts." The response stated that the first such donation was "a \$700 payment to the NRCCC
5 Nonfederal Account on June 16, 1999." The response stated that "Fannie Mae sought
6 confirmation from the NRCC that this amount was deposited into a building fund account"
7 through a letter attached as Exhibit 4 and that the "NRCC's general counsel, Don McGahn,
8 confirmed by telephone that the \$700 payment was deposited into the NRCC's building fund
9 account." The response stated that the second donation referenced was "a \$25,000 donation on
10 July 7, 1999 to the NRSC Building Fund account." The response stated that "a memorandum to
11 Fannie Mae from the 1999 Republican Senate House Dinner" states that this donation was
12 "transferred to the NRSC Building Fund from the \$50,000 donation that Fannie Mae made to the
13 1999 Republican Senate/House Dinner Nonfederal Building Fund on the same date" and that
14 "donations to the Dinner Committee's Building Fund are distributed only to the building funds of
15 the NRCC and NRSC."

16 **2. Freddie Mac**

17 Freddie Mac responded, through counsel, by letter dated June 11, 2001. The response
18 stated that "Freddie Mac's donations were specifically designated for building funds." The
19 response referenced Freddie Mac's corporate procedure, which was established in 1994, to
20 ensure compliance with the Act. The response stated that this procedure provides for "a cover
21 letter that notifies the recipient that the funds are to be used only for building fund purposes in
22 accordance with" the Act. The response stated that the "cover letter specifically cites and quotes
23 2 U.S.C. § 431(8)(B)(viii) and 11 C.F.R. § 114.1(a)(2)(ix)." The response included as exhibits

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1 the referenced corporate procedure and several cover letters for donations to the NRCC and
2 NRSC. The response also included the affidavit of Bruce S. Oliver, Esq., Freddie Mac's
3 Associate General Counsel and "the designated compliance officer responsible for reviewing
4 requests under" the corporate procedure to ensure compliance with the Act.¹²

5 The response stated that the "non-building soft money donations" referenced in the
6 complaint from Freddie Mac to the NRSC-Nonfederal and the NRCCC-Nonfederal Accounts
7 totaled \$430,000.¹³ The response stated that the complaint erroneously assumed "that the
8 donations listed under NRCCC [sic] – NON FED ACT and NRSC – NONFEDERAL are *not*
9 building fund accounts" (emphasis in original). According to the response, "[I]t appears that
10 'BUILDING FUND' was merely inadvertently omitted from the title by the reporting entity."

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

¹² 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."

¹³ 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. See Attachment 1 and discussion in Analysis, *infra*.

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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 **3. National Republican Congressional Committee (“NRCC”)**

4 By letter dated May 14, 2001, the NRCC, through counsel, submitted a response to
5 Complainant’s allegations. The response stated, “All donations from Freddie Mac and Fannie
6 Mae are put into the NRCC building fund, and that fund is maintained in strict compliance with
7 Federal law.” The response stated that these donations were “not used in any way to influence
8 federal, state or local elections” and that no money was “diverted from the building fund into
9 other non-federal accounts, contrary to the complaint’s baseless claim.” The response included
10 an affidavit from the NRCC’s treasurer, which “confirms all Freddie Mac and Fannie Mae
11 donations went to the building fund.”¹⁴ The response stated that “each and every donation to the
12 NRCC cited in the attachments to the complaint were building fund donations.”

13 **4. National Republican Senatorial Committee (“NRSC”)**

14 By letter dated July 11, 2001, the NRSC, through counsel, submitted a response to
15 Complainant’s allegations against the NRSC-Building Fund and the NRSC-Nonfederal accounts.
16 The response first addressed the donations from Fannie Mae to the NRSC-Building Fund. The
17 response stated that each of these donations “was deposited into the NRSC’s Building Fund
18 account, which is used exclusively for the purpose of construction or purchase of a building, in
19 accordance with 2 U.S.C. 431(8)(B)(viii).” The response stated that “none of these contributions
20 were used to impact federal, state, or local election related activities” or “diverted to prohibited,

¹⁴ The affidavit of the NRCC’s treasurer stated, “I have personally confirmed that each and every donation to the NRCC cited in the complaint in this MUR was placed in the NRCC building fund,” and, “All donations from these two entities [Fannie Mae and Freddie Mac] were made to the NRCC Building Fund.”

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1 or non-federal accounts.” The response stated that the complaint’s “allegation that the NRSC
2 violated federal law by accepting impermissible donations from Fannie Mae is baseless.”

3 The response next addressed 8 of the 12 donations from Freddie Mac to the NRSC-
4 Building Fund referenced in the complaint.¹⁵ The response stated that each of these eight
5 donations “was deposited into the NRSC’s Building Fund account, which is used exclusively for
6 the purpose of construction or purchase of a building, in accordance with 2 U.S.C.
7 431(8)(B)(viii).”

8 Finally, the response addressed the donation from Freddie Mac to the NRSC-Nonfederal
9 referenced in the complaint and one additional donation from Freddie Mac to the NRSC-
10 Nonfederal not referenced in the complaint. See Attachment 1. The donation referenced in the
11 complaint was a \$100,000 donation from Freddie Mac reported as received by the NRSC-
12 Nonfederal on October 14, 1999. The response stated that this donation “was deposited into the
13 NRSC’s non-federal account for use in offsetting compliance costs, such as legal and accounting
14 expenses.” The response stated that “the NRSC believes that this contribution was erroneously
15 deposited to the NRSC non-federal account.” The donation not referenced in the complaint was
16 a \$30,000 donation from Freddie Mac reported as received by the NRSC-Nonfederal on July 17,
17 2000. The response stated that “this contribution was also incorrectly deposited to the NRSC
18 non-federal account in apparent violation of 2 U.S.C. Sec. 441(b).” The response stated that it
19 brought this donation to the attention of the Commission “in the interest of full disclosure and in
20 an attempt to demonstrate our good faith intent to resolve this complaint.”¹⁶

¹⁵ The response failed to address four donations referenced in the complaint from Freddie Mac to the NRSC-Building Fund totaling \$450,000. See discussion in Analysis, *infra*.

¹⁶ The response failed to address a \$250 donation from Freddie Mac to the NRSC-Nonfederal (not included in the complaint) reported as received on July 18, 2000. See discussion in Analysis, *infra*.

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1 The response concluded that, "To the extent that the NTU complaint has merit, it is with
2 respect to the contribution dated October 14, 1999 (in the amount of \$100,000) and the
3 contribution dated July 17, 2000 (in the amount of \$30,000)." According to the response, the
4 NRSC refunded the \$130,000 amount to Freddie Mac "as soon as it was brought to our
5 attention" that a violation occurred. The NRSC's August 2001 disclosure report confirms that
6 this amount was refunded on July 11, 2001.

7 **5. Republican National Committee ("RNC")**

8 By letter dated May 10, 2001, the RNC, through counsel, submitted a response to the
9 complaint.¹⁷ With regard to Fannie Mae's payments to the RGA, see discussion of Fannie Mae
10 response, *supra*, the response explained that the RGA "operates within and reports through the
11 Republican National State Elections Committee ('RENSEC'). RENSEC is the RNC's
12 non-federal component." The response then stated that from 1998 to 2000 the RGA deposited
13 \$51,470 in contributions from Fannie Mae in the RENSEC account.¹⁸ The response stated that
14 the RNC refunded \$51,470 to Fannie Mae after receiving a fax from Fannie Mae on April 19,
15 2001, which it included as Attachment 1 to its response. The response stated that this fax
16 requested the \$51,470 amount "be either redesignated to the Eisenhower Building Fund, or be
17 refunded." The response included, as Attachment 2, copies of the refund letter and check to

¹⁷ The response included a signed copy of the RNC's "Commitment to Submit Matter to ADR Program."

¹⁸ This \$51,470 amount includes the \$40,000 in total contributions from Fannie Mae addressed in the complaint as well as \$11,470 not addressed in the complaint. The RNC reported \$10,000 of this \$11,470 as received from Fannie Mae on March 30, 2000. The RNC apparently did not report the remaining \$1,470. See Attachment 1.

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1 Fannie Mae. The RNC claimed that it "at no point knowingly accepted or received any
2 contribution prohibited by 2 U.S.C. § 441b(a)."¹⁹

3 **6. 1997 Republican Senate-House Dinner Committee ("1997 Dinner**
4 **Committee"), 1998 Republican House-Senate Dinner Committee**
5 **("1998 Dinner Committee"), 1999 Republican Senate-House Dinner**
6 **Committee ("1999 Dinner Committee"), and 2000 Republican House-Senate**
7 **Dinner Committee ("2000 Dinner Committee")**

8
9 By separate letters dated May 10, 2001, the 1997, 1998, 1999, and 2000 Dinner
10 Committees, through the same counsel, submitted nearly identical responses to Complainant's
11 allegations.²⁰ The responses stated that the Dinner Committees were joint fundraising
12 committees established pursuant to 11 C.F.R. § 102.17 by the NRSC and NRCC. The responses
13 continued, "As such, the Dinner Committee[s] established accounts to" receive donations for the
14 NRSC and NRCC "before transferring all proceeds, minus expenses, to the participating
15 Committees." The responses stated that the Dinner Committees "established several non-federal
16 accounts in accordance with 11 C.F.R. § 102.17(c)(3), including a building fund account."
17 According to the responses, the donations from Freddie Mac and Fannie Mae were deposited
18 into the Dinner Committees' building fund accounts and then distributed to the NRSC's and
19 NRCC's building fund accounts. The responses stated that the "donations were not used by the
20 Dinner Committee in connection with any election at the federal, state or local level."
21

¹⁹ The response acknowledged that it received donations to the RNC Committee to Preserve the Dwight D. Eisenhower National Republican Center ("Eisenhower Building Fund") from Freddie Mac. According to the response, "[T]he RNC does not use the Eisenhower Building Fund for any activity in connection with any election to any political office."

²⁰ The responses stated that the 1997 Dinner Committee terminated on March 19, 1999, the 1998 Dinner Committee terminated on August 27, 1999, and the 1999 Dinner Committee terminated on August 25, 2000. The 2000 Dinner Committee terminated on September 14, 2001.

1 **7. Democratic Congressional Campaign Committee ("DCCC") and Democratic**
2 **Senatorial Campaign Committee ("DSCC")**

3
4 By letter dated June 1, 2001, the DCCC, DCCCC Building Fund #1, DSCC, and DSCC
5 Non-Federal Building Fund, through counsel, submitted a response to Complainant's allegations.
6 The response stated that "Freddie Mac and Fannie Mae have made lawful contributions to the
7 building funds of the DCCC and the DSCC." The response continued, "The complaint does not
8 allude to any facts in support of its fanciful theory that money from the building funds is being
9 surreptitiously funneled to state party committees for illicit election-influencing purposes." The
10 response then claimed that "[n]o such facts exist."

11 **8. DNC Services Corporations/Democratic National Committee ("DNC")**

12 By letter dated June 14, 2001, the DNC, through counsel, responded to the complaint.
13 The response stated, "A careful review of the complaint reveals that no contribution made by
14 either Freddie Mac or Fannie Mae to the DNC, that is listed in the complaint has been deposited
15 into any account other than the DNC's Building Fund" (emphasis in original). According to the
16 response, "[S]uch contributions are perfectly legal since contributions to a party building fund
17 are not subject to the prohibitions of 2 U.S.C. § 441b." The response stated that the complaint
18 "also requests that the Commission investigate whether funds contained in party building funds
19 had been diverted for prohibited uses." The response stated, "All expenditures made by the
20 DNC Building Fund have been in full compliance with the requirements of the FECA, the
21 Commission's regulations and its Advisory Opinions, and the Complaint does not suggest
22 otherwise."
23

FILED IN CHARGE

1 **D. Analysis**

2 **1. Apparent Violations of 2 U.S.C. § 441b(a)**

3 **a. Fannie Mae**

4 Based on the complaint and the responses, it appears that Fannie Mae may have violated
5 2 U.S.C. § 441b(a) in connection with its contributions to the RGA and the NRCC and by failing
6 to designate certain contributions for building fund purposes. Fannie Mae is a corporation
7 organized by authority of a law of Congress, 12 U.S.C. § 1716 *et seq.*, and therefore may not
8 make any contribution in connection with any election to any political office. 2 U.S.C.
9 § 441b(a). It may, however, make donations under the building fund exemption because they are
10 not considered contributions.²¹

11 Following receipt of the response, the NRCC reported, in its 2002 July Quarterly Report,
12 filed on 07/15/02, a \$25,000 contribution received on 05/30/02 from Fannie Mae by one of its
13 non-federal accounts, the NRCCC-Non Federal #1. This non-federal account was separate from
14 the NRCC's building fund, the NRCCC-Non Federal Building Fund. See footnote 23, *infra*.
15 There is no information in hand indicating that Fannie Mae designated this \$25,000 contribution
16 for building fund purposes, thereby placing this contribution outside of the "building fund
17 exemption" of 2 U.S.C. § 431(8)(B)(viii).

18 Fannie Mae's response conceded that its contributions to the RGA in 1998, 1999, and
19 2000 were ultimately deposited into an RNSEC account that might have been used to support
20 state or local candidates for election. In addition, information from Fannie Mae's response also
21 indicates that it made other contributions without designating them for building fund purposes,

²¹ In the Analysis, the term "donation" is used to refer to the permissible transfers from Congressionally chartered corporations 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 thereby losing the "building fund exemption" from prohibited contributions set forth in 2 U.S.C.
2 § 431(8)(B)(viii).

3 In Exhibit 2 to its response, Fannie Mae included copies of internal disbursement requests
4 and the fronts and backs of cancelled checks relating to the donations in issue. In two cases,
5 involving a \$50,000 check dated June 29, 1999 to the "1999 Republican Senate-House Dinner"
6 and a \$100,000 check dated May 19, 2000 to the "2000 Republican Senate-House Dinner,"
7 neither the check front nor the disbursement request designates the contribution for a building
8 fund purpose; in both cases the check backs show the checks were deposited into the respective
9 Dinner Committee building funds. In contrast, in 1997, both the disbursement request and the
10 check were designated for the "Republican Senate-House Dinner Bldg. Fund."

11 In two other cases, Fannie Mae's response noted that Fannie Mae had been unable to
12 locate either a cancelled check or a disbursement request indicating that payment had been made
13 to a non-federal building account fund. In one case, involving a \$700 payment to the NRCC's
14 non-federal account on June 16, 1999, which Fannie Mae traced to a registration fee to the
15 National Republican Conference for two employees, the response stated that the NRCC
16 confirmed to Fannie Mae in 2001 that the \$700 had been deposited into the NRCC's building
17 fund. There is no information in hand, however, that Fannie Mae designated the \$700 for this
18 purpose. In the other case, involving a \$25,000 contribution reported as received by the NRSC
19 building fund account on July 7, 1999, the response traced this contribution to the \$50,000 check
20 dated June 29, 1999 to the 1999 Dinner Committee, discussed in the preceding paragraph. As
21 noted, that contribution was not designated for building account purposes.²²

²² A memorandum dated May 18, 1999, from counsel to the NRSC Building Fund on letterhead from the 1999 Republican Senate-House Dinner (Exhibit 5 to the Fannie Mae response), advised, "The Dinner Committee will distribute all building fund contributions only to the building fund accounts of the NRSC and NRCC." However, the memorandum further stated:

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1 Based on the above, this Office recommends that the Commission find reason to believe
2 that the Federal National Mortgage Association violated 2 U.S.C. § 441b(a) in connection with
3 its \$227,170 in total contributions to the RGA, the NRCC's non-federal account, and the 1999
4 and 2000 Dinner Committees discussed above.

5 **b. Freddie Mac**

6 Freddie Mac is a corporation organized by authority of a law of Congress. 12 U.S.C.
7 § 1451 *et seq.* Following receipt of the response, the RNC reported, in its 2001 Year End
8 Report, filed on 01/30/02 and amended on 04/26/02, a \$250,000 contribution received on
9 12/20/01 from Freddie Mac by its non-federal account, the Republican National State Elections
10 Committee, which was not a building fund account. There is no information in hand indicating
11 that Freddie Mac designated this \$250,000 contribution for building fund purposes, thereby
12 placing this contribution outside of the "building fund exemption" of 2 U.S.C. § 431(8)(B)(viii).

13 With one exception, Freddie Mac presented information showing that all of its other
14 donations to the respondent committees addressed in the complaint were designated for building
15 funds. In its response, Freddie Mac concedes that the \$3,000 contribution to the NRCC reported
16 as received on May 12, 2000 was not designated for building fund purposes at the time it was
17 made. Therefore, this Office recommends that the Commission find reason to believe that the
18 Federal Home Loan Mortgage Corporation violated 2 U.S.C. § 441b(a) in connection with its
19 \$253,000 in total contributions to the NRCC and RNC.

20

To ensure that your contribution will be deposited into the building fund account and will only be distributed to the NRSC and NRCC building accounts and expended to defray the costs associated with the NRSC's and NRCC's headquarters, please make your contributions payable to the "1999 Republican Senate House Dinner Committee Building Fund."

1 c. The NRCC

2 The response and affidavit of the NRCC and its treasurer addressed all donations from
3 Freddie Mac and Fannie Mae, not just the donations referenced in the complaint, and both state
4 that all donations from these two sources were deposited into the NRCC's building fund.²³
5 However, subsequent to its response, the NRCC reported, in its 2002 July Quarterly Report,
6 receipt by an account other than its building fund, the NRCCC-Non Federal Building Fund, of a
7 \$25,000 contribution from Fannie Mae dated 05/30/02. There is no information in hand
8 indicating that this \$25,000 contribution has been either redesignated to a building fund account
9 or refunded to Fannie Mae. Therefore, this Office recommends that the Commission find reason
10 to believe that the National Republican Congressional Committee and Christopher J. Ward, as
11 treasurer, violated 2 U.S.C § 441b(a) in connection with the \$25,000 contribution from Fannie
12 Mae deposited into its non-building fund account.

13 d. The NRSC

14 The NRSC's response conceded that two donations from Freddie Mac—a \$100,000
15 donation received on October 14, 1999 and a \$30,000 donation dated July 17, 2000—were
16 improperly deposited into the NRSC's non-federal account for use in offsetting compliance
17 costs, such as legal and accounting expenses. It appears that one additional Freddie Mac
18 donation—a \$250 donation received on July 18, 2000—was also improperly deposited by the

²³ The NRCC apparently maintained one non-federal account for contributions until 2001. This account was known as the "NRCCC-Non Fed Act," as referenced in the complaint. This account reported all non-federal funds, not just donations to the building fund, including donations from Freddie Mac and Fannie Mae. There was no separate account devoted solely to donations for the building fund on record with the Commission. Therefore, Freddie Mac's assumption that building fund "was merely inadvertently omitted from the title by the reporting entity" was incorrect. In 2001, the NRCC replaced this one-account system and established three non-federal contribution accounts: the NRCCC-Non Federal #1, the NRCCC-Non Federal #2, and the NRCCC-Non Federal Building Fund. The NRCC's 2001 Mid-Year Report reflected this change. After that time, the NRCC reported donations to the building fund in the NRCCC-Non Federal Building Fund.

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1 NRSC for the same purpose.²⁴ Accordingly, this Office recommends that the Commission find
2 reason to believe that the National Republican Senatorial Committee and Stan Huckaby, as
3 treasurer, violated 2 U.S.C. § 441b(a) in connection with these \$130,250 in donations made by
4 Freddie Mac.²⁵

5 e. The RNC

6 The RNC deposited \$51,470 of Fannie Mae's contributions to the RGA into an RNSEC
7 account that might have been used to support state or local candidates for election in violation of
8 2 U.S.C. § 441b(a). The \$51,470 contribution from Fannie Mae consists of \$40,000 referenced
9 in the complaint, another \$10,000 not referenced in the complaint but reported by the RNC as
10 having been received on 03/30/00, and \$1,470 not reported by the RNC. The responses of
11 Fannie Mae and the RNC brought this \$1,470 non-reported amount to the attention of this
12 Office. The RNC appears to have violated the Commission's regulation at 11 C.F.R. § 104.8(e)
13 by failing to report this \$1,470 receipt in a memo Schedule A.

14 In addition, subsequent to its response, the RNC reported, in its 2001 Year End Report,
15 receipt by an account other than its building fund account of a \$250,000 contribution from
16 Freddie Mac dated 12/20/01. There is no information in hand indicating that this \$250,000
17 contribution has been either redesignated to a building fund account or refunded to Freddie Mac.
18 Disclosure reports indicate that the RNC placed this \$250,000 contribution into its non-federal
19 account during the same year it refunded \$51,470 from the very same account to Fannie Mae.
20 Therefore, this Office recommends that the Commission find reason to believe that the

²⁴ See Attachment 1. There is no information in hand that the NRSC refunded this \$250 amount to Freddie Mac.

²⁵ The NRSC did not address \$450,000 in donations from Freddie Mac to its building fund referenced in the complaint. However, the NRSC's reported deposit of these donations to its building fund indicates that these donations were used in compliance with the Act. The complaint and other responses do not present any information to the contrary.

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1 Republican National Committee and Michael L. Retzer, as treasurer, violated 2 U.S.C. § 441b(a)
2 in connection with the \$51,470 amount from Fannie Mae and the \$250,000 amount from Freddie
3 Mac deposited into its non-building fund account and 11 C.F.R. § 104.8(e) in connection with
4 the \$1,470 amount from Fannie Mae not reported in a memo Schedule A.

5 **2. Other Respondents**

6 **a. The Dinner Committees**

7 The Dinner Committees were joint fundraising vehicles of the NRSC and the NRCC and,
8 according to their responses and disclosure reports, transferred Fannie Mae's and Freddie Mac's
9 donations from their building fund accounts to the NRSC and NRCC building fund accounts.²⁶
10 As such, it appears that the donations were deposited and used for permissible purposes.
11 Accordingly, this Office recommends that the Commission find no reason to believe that the
12 1997 Republican Senate-House Dinner Committee and Trudy Matthes Barksdale, as treasurer;
13 the 1998 Republican House-Senate Dinner Committee and Trudy Matthes Barksdale, as
14 treasurer; the 1999 Republican Senate-House Dinner Committee and Christopher J. Ward, as
15 treasurer; and the 2000 Republican House-Senate Dinner Committee and Christopher J. Ward, as
16 treasurer, violated 2 U.S.C. § 441b(a) and close the file as to them.

17 **b. The DCCC, the DNC, and the DSCC**

18 Based on the responses of the DCCC, the DNC, the DSCC, Fannie Mae, Freddie Mac,
19 and the disclosure reports filed with the Commission, it appears that these recipient committees

²⁶ The Dinner Committee responses stated that prior to transferring the funds, they established depository building fund accounts pursuant to 11 C.F.R. §§ 102.17(c)(3) and 114.1(a)(2)(ix), and 2 U.S.C. § 431(8)(B)(viii). The building fund exemption applies only to "a national or a State committee of a political party" and not to other committees. The Reports Analysis Division has indicated that the Dinner Committees raised and transferred both federal and non-federal funds (including building funds) to the NRSC and the NRCC, which were permitted to receive building fund donations. Since the Dinner Committees were the joint fundraising representatives of the NRSC and the NRCC, the Reports Analysis Division has not questioned the transfer of building funds from the Dinner Committees to the NRSC and NRCC building fund accounts. In the interest of not further complicating this analysis, and due to BCRA's elimination of building funds for national party committees, this Office is not pursuing this issue.

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1 deposited all donations from Fannie Mae and Freddie Mac into accounts referred to as building
2 fund or building accounts. Therefore, this Office recommends that the Commission find no
3 reason to believe that the Democratic Congressional Campaign Committee and James J.
4 Bonham, as treasurer; the Democratic Senatorial Campaign Committee and Andrew Grossman,
5 as treasurer; and the DNC Services Corporation/Democratic National Committee and Andrew
6 Tobias, as treasurer, violated 2 U.S.C. § 441b(a) and close the file as to them.

7 The complaint also requested that the Commission examine the donations to building
8 funds made by Fannie Mae and Freddie Mac to ensure that these funds were not diverted to
9 prohibited uses. In view of the specific denials by the NRSC, the RNC, the NRCC, the Dinner
10 Committees, the DCCC, the DNC, and the DSCC that there were any such diversions, and the
11 lack of any specific information in the complaint suggesting otherwise, this Office believes that
12 the requested investigation (which would probably necessitate an audit of several committees) is
13 not warranted.

14 **III. DISCUSSION OF CONCILIATION AND CIVIL PENALTIES**

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1 **IV. RECOMMENDATIONS**

- 2 1. Find reason to believe that the Federal Home Loan Mortgage Corporation violated
3 2 U.S.C. § 441b(a).
4
5 2. Find reason to believe that the Federal National Mortgage Association violated
6 2 U.S.C. § 441b(a).
7
8 3. Find reason to believe that the National Republican Congressional Committee and
9 Christopher J. Ward, as treasurer, violated 2 U.S.C. § 441b(a).
10
11 4. Find reason to believe that the National Republican Senatorial Committee and Stan
12 Huckaby, as treasurer, violated 2 U.S.C. § 441b(a).
13
14 5. Find reason to believe that the Republican National Committee and Michael L.
15 Retzer, as treasurer, violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 104.8(e).
16
17 6. Find no reason to believe that the 1997 Republican Senate-House Dinner Committee
18 and Trudy Matthes Barksdale, as treasurer, violated 2 U.S.C. § 441b(a) and close the
19 file as to them.
20
21 7. Find no reason to believe that the 1998 Republican House-Senate Dinner Committee
22 and Trudy Matthes Barksdale, as treasurer, violated 2 U.S.C. § 441b(a) and close the
23 file as to them.
24
25 8. Find no reason to believe that the 1999 Republican Senate-House Dinner Committee
26 and Christopher J. Ward, as treasurer, violated 2 U.S.C. § 441b(a) and close the file
27 as to them.
28
29 9. Find no reason to believe that the 2000 Republican House-Senate Dinner Committee
30 and Christopher J. Ward, as treasurer, violated 2 U.S.C. § 441b(a) and close the file
31 as to them.
32
33 10. Find no reason to believe that the Democratic Congressional Campaign Committee
34 and James J. Bonham, as treasurer, violated 2 U.S.C. § 441b(a) and close the file as to
35 them.
36
37 11. Find no reason to believe that the Democratic Senatorial Campaign Committee and
38 Andrew Grossman, as treasurer, violated 2 U.S.C. § 441b(a) and close the file as to
39 them.
40
41 12. Find no reason to believe that the DNC Services Corporation/Democratic National
42 Committee and Andrew Tobias, as treasurer, violated 2 U.S.C. § 441b(a) and close
43 the file as to them.
44
45 13. Approve the attached Factual and Legal Analyses.

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- 14. Enter into conciliation with the Federal Home Loan Mortgage Corporation prior to a finding of probable cause to believe.
- 15. Enter into conciliation with the Federal National Mortgage Association prior to a finding of probable cause to believe.
- 16. Enter into conciliation with the National Republican Congressional Committee and Christopher J. Ward, as treasurer, prior to a finding of probable cause to believe.
- 17. Enter into conciliation with the National Republican Senatorial Committee and Stan Huckaby, as treasurer, prior to a finding of probable cause to believe.
- 18. Enter into conciliation with the Republican National Committee and Michael L. Retzer, as treasurer, prior to a finding of probable cause to believe.
- 19. Approve the attached Conciliation Agreements.
- 20. Approve the appropriate letters.

Lawrence H. Norton
General Counsel

5/21/03
Date

BY: Rhonda J. Vosditch
Rhonda J. Vosditch
Associate General Counsel

Susan L. Lebeaux
Susan L. Lebeaux
Assistant General Counsel

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Attorney

Attachments:

- 1. Fannie Mae and Freddie Mac donations not referenced in complaint
- 2. Factual and Legal Analyses (5)
- 3. Conciliation Agreements (5)

ATTACHMENT 1

Fannie Mae and Freddie Mac donations not referenced in complaint, 1997-2000¹

FROM	TO	DATE	AMOUNT
Fannie Mae	DCCCE Building Account #1	11/12/1997	\$300
Fannie Mae	DCCCE Building Account #1	11/12/1997	\$25,000
Fannie Mae	DSCC Non-Federal Building Fund	06/19/1998	\$25,000
Freddie Mac	DSCC Non-Federal Building Fund	02/25/1999	\$50,000
Fannie Mae	NRCCC-Non Federal #1 ²	02/25/2000	\$350
Fannie Mae	NRCCC-Non Federal #1	03/07/2000	\$5,000
Fannie Mae	NRCCC-Non Federal #1	03/30/2000	\$100,000
Fannie Mae	RNC Republican National State Elections Committee	03/30/2000	\$10,000 ³
Freddie Mac	NRCCC-Non Federal #1	03/31/2000	\$250,000
Fannie Mae	NRCCC-Non Federal #1	05/22/2000	\$350
Freddie Mac	NRSC-Nonfederal	07/17/2000	\$30,000 ⁴
Freddie Mac	NRSC-Nonfederal	07/18/2000	\$250 ⁵

Total amount of donations not referenced in complaint = \$496,250

¹ This table does not include donations made by Fannie Mae and Freddie Mac reported as received in any years other than 1997-2000. This table includes only donations from 1997-2000 overlooked by Complainant in order to supplement the "1997-2000 summary report" attached to the complaint. Please note that, with the exceptions of the \$250,000 contribution from Freddie Mac to the RNC Republican National State Elections Committee reported as received on 12/20/01 and the \$25,000 contribution from Fannie Mae to the NRCCC-Non Federal #1 reported as received on 05/30/02, all reported donations during 2001 and 2002 from Fannie Mae and Freddie Mac were reported as received by building fund accounts.

² NRCCC-Non Federal #1 was formerly known as the NRCCC-Non Fed Act and listed as such in the complaint.

³ This contribution is part of the \$51,470 total amount in violation of 2 U.S.C. § 441b(a).

⁴ This donation is part of the \$130,250 amount in violation of 2 U.S.C. § 441b(a).

⁵ This donation is part of the \$130,250 amount in violation of 2 U.S.C. § 441b(a).

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