



FEDERAL ELECTION COMMISSION
Washington, DC 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

OCT 21 2016

Cleta Mitchell, Esq.
Foley & Lardner LLP
3000 K St. NW # 500
Washington, DC 20007

RE: MUR 6823
Tea Party Patriots Citizens Fund
Jenny Beth Martin, Chairman

Dear Ms. Mitchell:

This is in reference to the complaint that your clients, Tea Party Patriots Citizens Fund and Jenny Beth Martin, Chairman, filed with the Federal Election Commission ("Commission") on May 15, 2014. On June 27, 2016, the Commission found reason to believe that Mississippi Conservatives and Brian Perry in his official capacity as treasurer ("Respondents") violated 52 U.S.C. § 30104(b), a provision of the Federal Election Campaign Act of 1971, as amended ("Act"), and 11 C.F.R. § 104.3(d)(1)(iv)-(v). The Commission found no reason to believe as to Trustmark National Bank and Harry M. Walker. On October 8, 2016, the Commission accepted a conciliation agreement signed by Respondents in settlement of their violations of the Act and Commission regulations. Accordingly, the Commission has closed the file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009). Copies of the executed conciliation agreement and the Commission's Factual and Legal Analyses as to Trustmark National Bank and Harry M. Walker are enclosed for your information.

If you have any questions, please contact me at (202) 694-1650.

Sincerely,

Saurav Ghosh
Attorney

Enclosures

Conciliation Agreement - Mississippi Conservatives and Brian Perry, Treasurer

Factual and Legal Analysis - Trustmark National Bank

Factual and Legal Analysis - Harry M. Walker

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 6823
Mississippi Conservatives and)
Brian Perry in his official capacity)
as treasurer)

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FEDERAL ELECTION COMMISSION

CONCILIATION AGREEMENT

This matter was initiated by a signed, sworn, and notarized complaint by Tea Party Patriots and its Chair, Jenny Beth Martin. The Federal Election Commission ("Commission") found reason to believe that Mississippi Conservatives and Brian Perry in his official capacity as treasurer (collectively, "MC" or "Committee") violated 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3(d)(1)(iv)-(v).

NOW, THEREFORE, the Commission and the Respondents, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 52 U.S.C. § 30109(a)(4)(A)(i).

II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondents enter voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. MC is an independent-expenditure-only political committee within the meaning of 52 U.S.C. § 30101(4); Advisory Op. 2010-11 (Commonsense Ten).
2. Brian Perry is MC's treasurer of record.

3. Political committees such as MC must disclose the contributions they receive, including the identity of any person who makes over \$200 in contributions within a calendar year, together with the date and amount of any such contribution. 52 U.S.C. § 30104(b)(2), (3). 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.” 52 U.S.C. § 30101(8); *see also* 11 C.F.R. § 100.52(a) (same).

4. “[T]he term *loan* includes a guarantee, endorsement, and any other form of security.” 11 C.F.R. § 100.52(b) (emphasis in original); *see also id.* § 100.52(d)(1) (provision of a security is an in-kind contribution). A “security” is “[c]ollateral given or pledged to guarantee the fulfillment of an obligation; esp., the assurance that a creditor will be repaid . . . any money or credit extended to a debtor.” BLACK’S LAW DICTIONARY, 1476-1477 (9th ed. 2009). Accordingly, a third party who pledges a collateral to ensure the repayment of a bank’s loan to a committee makes an in-kind contribution to that committee.

5. The Commission’s bank loan regulations provide that loans secured by “collateral owned by the candidate or committee receiving the loan” are not contributions, if they also meet other criteria. 11 C.F.R. § 100.82(e)(1)(i) (emphasis added). If the borrower does not own the collateral for the loan, other issues — such as contribution limits, prohibitions, and disclosure requirements — may be implicated. To illustrate this point, 11 C.F.R. § 100.82(e)(1)(ii) provides that loan “[a]mounts guaranteed by secondary sources of repayment,” that is, not secured by collateral that the loan recipient committee owns, “*such as* guarantors and cosigners, shall not exceed the contribution limits of 11 CFR part 110 or contravene the prohibitions of 11 CFR 110.4, 110.20, part 114 and part 115.” (emphasis added). *See also* 11 C.F.R. § 100.52(b)(3)

(endorsers and guarantors "shall be deemed to have contributed that portion of the total amount of the loan for which he or she agreed to be liable in a written agreement").

6. Commission regulations governing loans require committees to disclose, *inter alia*, "the types and value of traditional collateral or other sources of repayment that secure the loan," "whether that security interest is perfected," and "[a]n explanation of the basis upon which the loan was made . . . if not made on the basis of either traditional collateral or the other sources of repayment described in 11 CFR 100.82(e)(1) and (2) and 100.142(e)(1) and (2)." 11 CFR 104.3(d)(1)(iv). Political committees are also required to submit an appropriate certification from the lending institution regarding the loan. 11 C.F.R. § 104.3(d)(1)(v).

7. MC sought a loan from Trustmark National Bank in the amount of \$250,150. In order for MC to receive this loan, Haley Barbour executed an agreement with Trustmark providing that his CD would serve as collateral for the loan and be used to pay the loan if MC defaulted. This pledge of security for the loan was an in-kind contribution from Haley Barbour to MC. As such, the Act required MC to disclose the identity of the contributor, the date of the contribution, and the amount of the contribution.

8. In its April Quarterly Report filed on April 15, 2014, MC revealed the existence of the Trustmark loan, but failed to disclose that the loan was secured by collateral, failed to identify the person who provided the CD as security for the loan, and failed to state accurately that Trustmark had a perfected security interest in the collateral.

9. MC filed an April 30, 2014, Miscellaneous Report that attached some of the loan documents: the Promissory Note, the Board Resolution, and the Errors and Omissions Agreement. MC did not, however, attach the Assignment, the document indicating that it did not own the pledged CD.

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10. On May 12, 2014, MC filed an amended April Quarterly Report, which repeated the misstatements that a CD had not been pledged as collateral, the value of the collateral was \$0.00, Trustmark did not have a secured interest in the collateral, and there were no secondarily liable parties. The Committee continued to leave blank the space provided on Schedule C-1 to explain how the loan's repayment was assured if the loan was not secured by collateral or future receipts. MC Amended April Quarterly Report at 26 (May 12, 2014). It also continued to represent that Trustmark had certified the accuracy of the information on the form and the loan's compliance with the Commission's regulations. *Id.*

11. MC filed its Second Amended April Quarterly Report on May 17, 2014, on which it checked "Yes" in response to the question on Schedule C-1 asking if the loan was collateralized by any one of various types of security, including a certificate of deposit. MC Second Amended April Quarterly Rpt. at 26 (May 17, 2014). In response to the form's direction, "If yes, specify," MC wrote "Certificate of Deposit." *Id.* But MC neither disclosed that it did not own the CD that secured the loan, nor did MC provide the loan document that showed that another party owned the CD, much less identify the owner of the CD. MC stated in response to another question on the Schedule C-1 that Trustmark had a perfected security interest in the collateral, but it continued to state that no other party was secondarily liable for Trustmark's loan to MC. MC Second Amended April Quarterly Rpt. at 26 (May 17, 2014).

12. MC repaid the loan by May 30, 2014, a few days short of its June 3 maturity date.

13. Respondents contend that they did not intend to violate the Act or the Commission's regulations. They contend that they inadvertently failed to initially disclose that the Trustmark loan was secured with collateral. They further contend that they failed to disclose the identity of

the person who pledged the collateral used to secure the loan because they misinterpreted the relevant reporting requirements.

V. Mississippi Conservatives and Brian Perry in his official capacity as treasurer did not disclose the identity of a contributor in violation of 52 U.S.C. § 30104(b)(2), (3), and disclosed incorrect information in Schedule C-1 of its April 2014 Quarterly Report in violation of 11 C.F.R. § 104.3(d)(1)(iv)-(v).

VI. 1. Respondents will pay a civil penalty to the Federal Election Commission in the amount of nineteen thousand dollars (\$19,000), pursuant to 52 U.S.C. § 30109(a)(5)(A).

2. Respondents will cease and desist from violating 52 U.S.C. § 30104(b)(2), (3) and 11 C.F.R. §§ 104.3(d)(1)(iv)-(v).

3. Respondents will amend all relevant disclosure reports to disclose the identity of the owner of the CD.

VII. The Commission, on request of anyone filing a complaint under 52 U.S.C. § 30109(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

IX. Respondent(s) shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirement(s) contained in this agreement and to so notify the Commission.

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

BY: Kathleen Guith
Kathleen Guith
Acting Associate General Counsel
for Enforcement

10-20-16
Date

FOR THE RESPONDENT(S):

Stefan C. Passantino
Stefan C. Passantino
Counsel to Respondents
Dentons US

9/21/16
Date

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT:

MUR: 6823

Trustmark National Bank

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission by Tea Party Patriots Fund and its Chair, Jenny Beth Martin. See 52 U.S.C. § 30109(a)(1) (formerly 2 U.S.C. § 437g(a)(1)). The Complaint, as amended, alleges that Trustmark National Bank ("Trustmark") made a prohibited national bank contribution when Trustmark loaned \$250,150 to Mississippi Conservatives ("MC") without Trustmark having a secured interest in a certificate of deposit ("CD") worth approximately \$250,543 that a Trustmark depositor pledged as collateral for the loan. The Amended Complaint also alleges that Trustmark certified a portion of an MC disclosure report that inaccurately described the collateral for the loan.

We recommend that the Commission find no reason to believe that Trustmark made a prohibited contribution to MC because the totality of the circumstances indicates that Trustmark was assured of repayment when it made the loan. Additionally, we conclude that the inaccurate certification does not constitute an independent violation of the Act or Commission regulations by Trustmark.

II. BACKGROUND

MC, which registered with the Commission on January 15, 2014, is an independent-expenditure-only committee supporting multiple candidates, including Sen. Thad Cochran (Miss.), who was a candidate in the June 3, 2014, Republican Senatorial primary. Brian Perry is the treasurer of MC and its sole director. Corporate Resolution to Borrow / Grant Collateral, Ex.

1 E to Trustmark Resp.; MC Board Minutes of Special Actions, Ex. E to Trustmark Resp.
2 Through October 15, 2014, MC had raised \$3,357,903.00 and disbursed \$3,020,285.90. MC
3 Pre-General Report at 2 (Oct. 23, 2014). MC engaged in less activity after the primary election;
4 since July 1, 2014, MC disclosed receipts of \$390,250, disbursements of \$84,901.35, and cash on
5 hand of \$337,617.10. *Id.*; Oct. Quarterly Rpt. at 2 (Oct. 15, 2014).

6 Trustmark National Bank ("Trustmark") is a nationally-chartered bank headquartered in
7 Jackson, Mississippi, and is MC's depository. Trustmark Resp. at 2; MC Statement of
8 Organization at 4 (Jan. 14, 2014). Harry M. Walker is Trustmark's Regional President of
9 Central Mississippi. Walker Aff. ¶¶ 1-2 (attached to Trustmark Resp.).

10 **A. Trustmark Loans \$250,150 to MC and Takes a Security Interest in an**
11 **Undisclosed Person's CD as Collateral**

12 On September 3, 2013, Trustmark created a \$250,000 CD with a nine-month term for an
13 unidentified customer. Book Entry - Certificate of Deposit Receipt, Trustmark Resp. Ex. A;
14 Jeremy Bond Aff. ¶ 3 (attached to Trustmark Resp.). Sometime before January 29, 2014, MC
15 asked this unidentified customer to provide collateral for a loan from Trustmark to MC.
16 Assignment of Deposit Account ("Assignment") at 1, Trustmark Resp. Ex. D. Further, Walker
17 received a request for Trustmark to loan \$250,000 to MC to be secured by the undisclosed
18 depositor's CD, which by that time was worth \$250,543.74. Walker Aff. ¶ 7. Walker directed
19 Jeremy Bond, a Vice President and Branch Manager at Trustmark's Jackson, Mississippi, main
20 office, to prepare the loan paperwork and process the loan. *Id.* ¶ 7, 8. Walker dictated the terms
21 of the loan to Bond, including the interest rate, amount, and maturity date. Bond Aff. ¶ 4.
22

23 In addition to the loan documents to be signed by MC, the loan paperwork included an
24 Assignment of Deposit Account ("Assignment"), by which the unknown person would pledge
25 the CD as collateral for Trustmark's loan to MC. *See* Boarding Data Sheet, Trustmark Resp. Ex.

1 C; Assignment of Deposit Account, Trustmark Ex. D. The Assignment provides that it grants
2 Trustmark "a security interest" in the CD "to secure" MC's debt to Trustmark, and describes
3 Trustmark as a secured creditor under Mississippi law.¹ Assignment at 2-3; Trustmark Resp.
4 at 3-5, 8.

5 On January 29, 2014, MC's Brian Perry met with Bond to execute the loan documents,
6 Bond Aff. ¶ 10, and Trustmark disbursed \$250,000 to MC. Boarding Data Sheet, Trustmark
7 Resp. Ex. C.² MC used the loan funds for a \$219,540 independent expenditure it made two days
8 later for communications opposing candidate Chris McDaniel, Sen. Cochran's opponent in the
9 primary. Compl. at 4; MC Independent Expenditure Rpt. (January 31, 2014) (disclosing that an
10 expenditure was made or obligation incurred on January 31, 2014, for communications opposing
11 McDaniel); MC Amended Apr. Quarterly Rpt. at 17 (May 17, 2014) (describing MC's receipt of
12 \$250,150 in loan funds from Trustmark as "IE Loan"); *id.* at 2, 6, 11, 13 (May 17, 2014)
13 (disclosing no cash on hand at the start of the reporting period and the receipt of a total of four
14 itemized contributions before January 31, 2014, totaling \$160,000).

15 Trustmark, however, did not receive the signed Assignment from the CD's owner until
16 February 5, Bond Aff. ¶ 11—one week *after* it had disbursed the loan proceeds to MC.³

¹ Under the Assignment, Trustmark had the power to take all funds in the CD and apply them to the loan if MC defaulted. The Assignment also established that Trustmark possessed the CD; in the event of MC's default on its loan, Trustmark could transfer title to all or part of the CD; the CD's owner, designated the "grantor", "irrevocably appoint[ed] [Trustmark] as Grantor's attorney-in-fact to execute endorsements, assignments and instruments in the name of Grantor (and each of them if more than one) as shall be necessary or reasonable"; and Trustmark enjoyed the rights and remedies of a "secured creditor." Ex. B to Bond Aff. The CD's owner was also prohibited from transferring or encumbering the CD. *Id.*

² The Promissory Note, dated January 29 and signed by Perry, specifies that the loan principal was \$250,150, it had a maturity date of June 3, 2014, and the annualized interest rate was 2.650%. The Boarding Data Sheet indicates that the loan had a 2.864 % interest rate. Bond explained that the two rates were calculated using different formulas. Bond Aff. ¶ 7. The extra \$150 of the loan principal in the promissory note was for a processing fee.

³ The Assignment bears a pre-printed date of January 29, the date Bond generated the loan documents and the date that Perry met with Bond to sign them. It bears Perry's signature below the CD owner's signature, which Trustmark obscured.

1 According to Bond, "it is not unusual for a bank to close on a loan without the complete set of
2 signed loan documentation when, as here, there is an existing banking relationship with the
3 individual whose signature is requested, where the individual has committed to sign the
4 paperwork, and where there is no reason to believe that the paperwork will not be signed." *Id.* ¶
5 12.

6 **B. MC Inaccurately Discloses the Trustmark Loan**

7 On April 15, 2014, MC filed its first quarterly report disclosing the Trustmark loan,
8 which contained a number of errors and omissions. MC Apr. Quarterly Rpt. at 26. Committees
9 must disclose details about their loans on FEC Schedule C-1 and answer certain questions about
10 these loans. The Schedule C-1 regarding the Trustmark loan inaccurately reported that a CD had
11 *not* been pledged as collateral for the loan, and it erroneously listed the value of the collateral for
12 the loan as "\$0.00." *Id.* MC also reported that no other parties were secondarily liable for the
13 loan. *Id.* The form Schedule also asked if the Committee had pledged its future receipts as
14 collateral, and MC correctly responded "No." The Schedule also asked, "If neither of the types
15 of collateral described above was pledged for this loan, or if the amount pledged does not equal
16 or exceed the loan amount, state the basis upon which this loan was made and the basis on which
17 it assures repayment." MC did not answer this question, nor did it attach the loan agreement, as
18 the Schedule directs.

19 The Schedule C-1 includes both Perry's electronic signature as MC's treasurer as well as
20 what purports to be Walker's electronically-signed certification, on behalf of Trustmark, that the
21 disclosures on the Schedule were accurate, Trustmark was aware that loans had to be made on a

1 basis that assures repayment, and the loan complied with the requirements set forth at 11 C.F.R.
2 §§ 100.82 and 100.142.⁴

3 MC filed an April 30, 2014, Miscellaneous Report that attached some of the loan
4 documents: the Promissory Note, the Board Resolution, and the Errors and Omissions
5 Agreement. MC did not, however, attach the Assignment, the document indicating that it did not
6 own the pledged CD. Although the Promissory Note states that the collateral for the loan was
7 "certificates of deposit described in an Assignment of Deposit Account dated January 29, 2014,"
8 the documents MC disclosed do not indicate that a third party owned the CD, and MC's
9 Schedule C-1 erroneously states that there was *no* collateral and no secondarily liable party.
10 Trustmark certified these inaccurate representations as true.

11 On May 12, 2014, MC filed an amended April Quarterly Report, which repeated the
12 misstatements that a CD had not been pledged as collateral, the value of the collateral was \$0.00,
13 Trustmark did not have a secured interest in the collateral, and there were no secondarily liable
14 parties. MC continued to leave blank the space provided to explain how the loan's repayment
15 was assured if the loan was not secured by collateral or future receipts. MC Amended Apr.
16 Quarterly Rpt. at 26 (May 12, 2014). It also continued to represent that Trustmark had certified
17 the accuracy of the information on the form and the loan's compliance with the Commission's
18 regulations. *Id.*

19 On May 15, 2014, the Complainant filed the original Complaint, which relied on the
20 Schedule C-1 in MC's April Quarterly Report stating that there was no collateral for the loan.
21 The Complaint alleged that Trustmark made a prohibited national bank contribution to MC

⁴ This Schedule C-1, bearing what purports to be Walker's electronic signature and filed by MC with its original April Quarterly Report, is dated January 29, 2014 – the date that Trustmark disbursed the loan funds to MC. *Id.* About two weeks later, MC submitted, as part of a Miscellaneous Report, the original Schedule C-1 hand-signed by Walker, which was also dated January 29. *See* MC Miscellaneous Rpt. at 1 (Apr. 30, 2014). But in his sworn affidavit, Walker avers that he was not given the C-1 to sign until April 15. Walker Aff. ¶ 16.

1 because its loan to MC violated the Commission's regulations at 11 C.F.R. § 100.82, which
2 require a lender to have an assurance of repayment. Compl. at 4-7.

3 Two days later, MC filed its Second Amended April Quarterly Report on which it
4 checked "Yes" in response to the question asking if the loan was collateralized by any one of
5 various types of security, including a certificate of deposit. MC Second Amended Apr.
6 Quarterly Rpt. at 26 (May 17, 2014). In response to the form's direction, "If yes, specify," MC
7 wrote "Certificate of Deposit." *Id.* But MC neither disclosed that it did not own the CD that
8 secured the loan, nor did MC provide the loan document that showed that another party owned
9 the CD, much less identify the owner of the CD. MC stated in response to another question on
10 the form that Trustmark had a perfected security interest in the collateral, but it continued to state
11 that no other party was secondarily liable for Trustmark's loan to MC.⁵ MC Second Amended
12 Apr. Quarterly Rpt. at 26 (May 17, 2014).

13 The Amended Complaint, filed on May 19, alleges that Trustmark violated the
14 Commission's regulations because it lacked a perfected security interest in the CD serving as
15 collateral for the loan. *Id.* at 5.

16 MC repaid the loan by May 30, 2014, a few days short of its June 3 maturity date. To
17 date, MC and Trustmark have not identified the owner of the pledged CD.

18 As to Trustmark's allegedly prohibited contribution to MC by making the loan,
19 Trustmark responds that the loan was not a contribution because Trustmark complied with the
20 Act and the Commission's regulations, but even if it was a contribution to MC, the prohibition
21 on national bank contribution is unconstitutional following *Citizens United*. Trustmark Resp. at

⁵ This Amended Report also purported to bear Walker's electronic signature on the amended form's certification. But Walker avers that "it is my understanding that [MC] has filed multiple versions of the Schedule C-1 with the [Commission], all of which purport to include an electronic version of my signature. I was never consulted by [MC] prior to its making these additional C-1 filings." Walker Aff. ¶ 17.

1 5-9. According to Trustmark, the pledged CD assured it of repayment and thus the loan was not
2 a contribution from Trustmark to MC. Trustmark Resp. at 5-11.

3 **III. ANALYSIS**

4 **A. Trustmark's Loan Was Not a Contribution to MC Because it was Fully** 5 **Secured**

6 The Amended Complaint alleges that Trustmark made a prohibited contribution to MC
7 by loaning it \$250,150 without having a perfected security interest in the CD later pledged as
8 collateral. Amend. Compl. at 5.

9 The Act prohibits national banks from making contributions and prohibits political
10 committees from knowingly receiving them. 52 U.S.C. § 30118(a) (formerly 2 U.S.C.
11 § 441b(a)). Contributions include "loans" or "anything of value" made for the purpose of
12 influencing an election, 52 U.S.C. § 30101(8)(A)(i) (formerly 2 U.S.C. § 431(8)(A)(i)), but do
13 not include bank loans made in the ordinary course of business "on a basis which assures
14 repayment," that are "evidenced by a written instrument and subject to a due date or amortization
15 schedule," and which are made at a usual and customary interest rate for the lender for the
16 category of loan involved. 52 U.S.C. § 30101(8)(B)(vii) (formerly 2 U.S.C. § 431(8)(B)(vii));
17 *see also* 11 C.F.R. § 100.82(a) (a bank loan is not a contribution if it has those characteristics).
18 The record establishes that the loan was made through a written instrument with a due date.
19 Further, there is no allegation or information in the record suggesting that the interest rate
20 (2.86%) on the loan was not Trustmark's usual and customary rate applicable to a loan backed
21 by collateral on deposit equal in value to the loan.

22 The Complaint alleges, however, that Trustmark's loan to MC was not made on a basis
23 that assures repayment because there was no collateral for the loan, Compl. at 6, or, alternatively,
24 Trustmark did not have a perfected security interest in the loan. Amended Compl. at 4-5. For a

1 loan to be considered "made on a basis that assures repayment," the Commission's regulations
2 require that the lender (a) "has perfected a security interest in collateral *owned by the candidate*
3 *or political committee receiving the loan*"; (b) that "the fair market value of the collateral is
4 equal to or greater than the loan amount and any senior liens as determined on the date of the
5 loan"; and (c) "the political committee provides *documentation* to show that the lending
6 institution has a perfected security interest in the collateral." 11 C.F.R. § 100.82(e)(1)(i)
7 (emphasis added).

8 The transaction between Trustmark and MC clearly did not meet the section
9 100.82(e)(1)(i)(a) criterion because MC did not own the collateral for the loan.⁶ If, as in this
10 matter, a loan does not meet the requirements in 100.82(e), "the Commission will consider the
11 totality of the circumstances on a case-by-case basis in determining whether a loan was made on
12 a basis that assures repayment." 11 C.F.R. § 100.82(e)(3).⁷ In past matters, the Commission has
13 concluded that a bank loan did not constitute a prohibited contribution under the totality of the
14 circumstances when the bank made the loan while intending that it would be assured of
15 repayment. See General Counsel's Rpt. No. 2 at 3-8, MUR 5496 (Huffman) (loan that was not
16 secured by collateral for a period of 90 days nonetheless was assured of repayment under the
17 totality of the circumstances because the bank intended that repayment be assured where, *inter*

⁶ Further, it is questionable whether the loan satisfied 100.82(e)(1)(i)(c) because Trustmark did not receive the signed documentation pledging the CD as collateral for the loan until seven days after it disbursed the loan funds to MC. Trustmark instead relied on a *verbal* pledge from the CD's owner to provide collateral for the loan until the bank received the Assignment, which one of Trustmark's affiants asserted was not unusual. Bond Aff. ¶ 12. (Upon its later receipt of the Assignment, Trustmark obtained a perfected security interest under Mississippi law in the CD because it was both pledged as collateral and on deposit with Trustmark. See Miss. Code Ann. 75-9-314; Trustmark Resp. at 8.)

⁷ See also Factual and Legal Analysis at 2-7, MUR 5766 (Amalgamated Bank) (Commission took no further action after investigation revealed that bank loan that failed to meet regulation's requirements was nevertheless made on a basis assuring repayment under the totality of the circumstances); General Counsel's Rpt. No. 2 at 4-10, MUR 5685 (BancorpSouth Bank) (same); General Counsel's Rpt. No. 4 at 10-16, MUR 5652 (First Bank) (same); First General Counsel's Report at 20-25, MUR 5381 (Bishop) (bank assured of repayment for candidate's line of credit under the totality of the circumstances).

1 *alia*, the candidate verbally pledged to use retirement savings to repay the loan); First General
2 Counsel's Rpt. at 5-10, MUR 5262 (Second National Bank) (under the totality of the
3 circumstances, bank intended to assure repayment of the loan and therefore did not make a
4 prohibited contribution where it required a cosigner, and the cosigner had a suitable credit
5 history and relationship with the bank).

6 The available information indicates that Trustmark was assured of repayment when it
7 made the loan to MC. Trustmark prepared the Assignment at the same time that it prepared the
8 remainder of the loan documents, obtained a verbal pledge that a CD on deposit with Trustmark
9 worth approximately the same as the loan principal would serve as the loan's collateral, and
10 received the executed Assignment from the CD's owner one week after the loan was made. The
11 Commission therefore finds no reason to believe that Trustmark violated Section 30118(a)
12 (formerly 441b(a)).⁸

13 **B. Trustmark and Walker's Inaccurate Schedule C-1 Certifications are not**
14 **Independent Violations of the Act**

15 Complainant also alleges that Trustmark violated the Act's disclosure requirements
16 because it certified MC's inaccurate statements about the loan on the original Schedule C-1.
17 Amended Compl. at 7, 9. There is no dispute that the bank's certification was inaccurate, but

⁸ Because we recommend that the Commission find no reason to believe that Trustmark made a contribution, it is not necessary to reach Trustmark's argument that the national bank contribution prohibition is unconstitutional in light of *Citizens United*. Trustmark Resp. at 9. We note, however, that *Citizens United* did not address the prohibition against contributions by national banks in Section 30118. The Commission has consistently indicated that this prohibition remains undisturbed by *Citizens United*. See *Independent Expenditures and Electioneering Communications by Corporations and Labor Organizations*, 79 Fed. Reg. 62,797, 62,801 (Oct. 21, 2014) (maintaining existing prohibitions against contributions and expenditures by national banks); *Independent Expenditures and Electioneering Communications by Corporations and Labor Organizations*, 76 Fed. Reg. 8083, 8085 n.6 (proposed Dec. 27, 2011) (Commission's proposed rulemaking to implement *Citizens United* states that "Corporations that are foreign nationals, government contractors, or national banks, and corporations that are organized by authority of any law of Congress continue to be prohibited from making independent expenditures or electioneering communications: 2 U.S.C. 441b, 441c and 441c.").

1 neither the Act nor the regulations attaches liability to the bank certifying the false statements.

2 Instead, the party filing the relevant report is responsible for its accuracy.

3 The Commission's regulations at 11 C.F.R. § 104.3(d)(1)(v) require committees
4 borrowing funds to submit a certification from the lending institution that (1) the borrower's
5 statements on the Schedule C-1 are accurate, to the best of the lender's knowledge; (2) the loan or
6 line of credit was made or established on terms and conditions no more favorable at the time than
7 those imposed for similar credit granted to borrowers of comparable credit worthiness, and
8 (3) the institution is aware of the requirement for terms which assure repayment and the bank has
9 complied with 11 C.F.R. § 100.82 and 100.142.⁹ See 11 C.F.R. § 104.3(d)(1)(v); AO 1994-26 at
10 4 (Scott Douglass Cunningham Campaign Committee). As the Commission explained when it
11 promulgated these regulations, in addition to helping banks avoid making prohibited
12 contributions, these lender certifications serve an important and public role by ensuring the
13 reliability of committee loan disclosures based on information exclusively in the possession of
14 the banks. See *Loans from Lending Institutions to Candidates and Political Committees*, 56 Fed.
15 Reg. 67,118, 67,122. (Dec. 27, 1991) ("Explanation and Justification").

16 Trustmark acknowledges that some of Walker's certifications were inaccurate, and
17 explains that Walker focused on the statements on the schedule regarding the loan amount and
18 interest rate, but not the other statements. They state that Walker believed MC was "versed in
19 FEC regulations," so he assumed the other statements on the form were accurate. Trustmark
20 Resp. at 4, 14. It also argues that the errors in the Schedule C-1 were *de minimis*. Trustmark

⁹ Schedule C-1 accordingly states that by signing the form, the lending institution is certifying that "To the best of this institution's knowledge, the terms of the loan and other information regarding the extension of the loan are accurate as stated" on the form, the loan was made on terms "no more favorable at the time than those imposed for similar extensions of credit to other borrowers of comparable credit worthiness," and that "This institution is aware of the requirement that a loan must be made on a basis which assures repayment, and [the lender] has complied with the requirements set forth at 11 CFR 100.82 and 100.142 in making this loan."

1 Resp. at 1, 14. The bank's excuses are weak, and the suggestion that the Commission should
2 overlook the bank's negligence conflicts with the Commission's statements in the Explanation
3 and Justification.

4 Nevertheless, a false or inaccurate certification, standing alone, is not a violation by the
5 lender of a duty imposed by the Act or Commission regulations. The Commission's regulations,
6 rather, impose a duty *on committees* to file accurate Schedule C-1s with properly reviewed
7 lender's certifications. Accordingly, the Commission finds that there is no reason to believe that
8 Trustmark violated the Act or Commission regulations when Walker certified the inaccurate
9 Schedule C-1.

10 IV. CONCLUSION

11 Therefore, there is no reason to believe that Trustmark made a prohibited national bank
12 contribution to MC in violation of 52 U.S.C. § 30118 (formerly 2 U.S.C. § 441b), or that
13 Trustmark violated the Act or the Commission's regulations when Walker certified MC's
14 inaccurate disclosures regarding Trustmark's loan to MC.

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT:

Harry M. Walker

MUR: 6823

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission by Tea Party Patriots Fund and its Chair, Jenny Beth Martin. *See* 52 U.S.C. § 30109(a)(1) (formerly 2 U.S.C. § 437g(a)(1)). The Complaint, as amended, alleges that Harry M. Walker, a regional president of Trustmark National Bank ("Trustmark"), consented to the making of a prohibited national bank contribution when Trustmark loaned \$250,150 to Mississippi Conservatives ("MC") without Trustmark having a secured interest in a certificate of deposit ("CD") worth approximately \$250,543 that a Trustmark depositor pledged as collateral for the loan. The Amended Complaint also alleges that Walker, acting on behalf of Trustmark, certified a portion of an MC disclosure report that inaccurately described the collateral for the loan.

We recommend that the Commission find no reason to believe that Walker consented to a prohibited contribution to MC because the totality of the circumstances indicates that Trustmark was assured of repayment when it made the loan. Additionally, we conclude that Walker's inaccurate certification does not constitute an independent violation of the Act or Commission regulations by Walker.

II. BACKGROUND

MC, which registered with the Commission on January 15, 2014, is an independent-expenditure-only committee supporting multiple candidates, including Sen. Thad Cochran (Miss.), who was a candidate in the June 3, 2014, Republican Senatorial primary. Brian Perry is

1 the treasurer of MC and its sole director. Through October 15, 2014, MC had raised
2 \$3,357,903.00 and disbursed \$3,020,285.90. MC Pre-General Report at 2 (Oct. 23, 2014). MC
3 engaged in less activity after the primary election; since July 1, 2014, MC disclosed receipts of
4 \$390,250, disbursements of \$84,901.35, and cash on hand of \$337,617.10. *Id.*; Oct. Quarterly
5 Rpt. at 2 (Oct. 15, 2014).

6 Trustmark National Bank ("Trustmark") is a nationally-chartered bank headquartered in
7 Jackson, Mississippi, and is MC's depository. MC Statement of Organization at 4 (Jan. 14,
8 2014). Harry M. Walker is Trustmark's Regional President of Central Mississippi. Walker Aff.
9 ¶¶ 1-2.

10 **A. Trustmark Loans \$250,150 to MC and Takes a Security Interest in an**
11 **Undisclosed Person's CD as Collateral**

12 The available information establishes that on September 3, 2013, Trustmark created a
13 \$250,000 CD with a nine-month term for an unidentified customer. Sometime before January
14 29, 2014, MC asked this unidentified customer to provide collateral for a loan from Trustmark to
15 MC. Further, Walker received a request — from a person he did not identify — for Trustmark to
16 loan \$250,000 to MC to be secured by the undisclosed depositor's CD, which by that time was
17 worth \$250,543.74. Walker Aff. ¶ 7. Walker directed Jeremy Bond, a Vice President and
18 Branch Manager at Trustmark's Jackson, Mississippi, main office, to prepare the loan paperwork
19 and process the loan. *Id.* ¶ 7, 8. Walker dictated the terms of the loan to Bond, including the
20 interest rate, amount, and maturity date.

21 In addition to the loan documents to be signed by MC, the loan paperwork included an
22 Assignment of Deposit Account ("Assignment"), by which the unknown person would pledge
23 the CD as collateral for Trustmark's loan to MC. The Assignment provides that it grants
24

1 Trustmark "a security interest" in the CD "to secure" MC's debt to Trustmark, and describes
2 Trustmark as a secured creditor under Mississippi law.¹

3 On January 29, 2014, MC's Brian Perry met with Bond to execute the loan documents,
4 and Trustmark disbursed \$250,000 to MC.² MC used the loan funds for a \$219,540 independent
5 expenditure it made two days later for communications opposing candidate Chris McDaniel, Sen.
6 Cochran's opponent in the primary. Compl. at 4; MC Independent Expenditure Rpt. (January 31,
7 2014) (disclosing that an expenditure was made or obligation incurred on January 31, 2014, for
8 communications opposing McDaniel); MC Amended Apr. Quarterly Rpt. at 17 (May 17, 2014)
9 (describing MC's receipt of \$250,150 in loan funds from Trustmark as "IE Loan"); *id.* at 2, 6, 11,
10 13 (May 17, 2014) (disclosing no cash on hand at the start of the reporting period and the receipt
11 of a total of four itemized contributions before January 31, 2014, totaling \$160,000).

12 Trustmark, however, did not receive the signed Assignment from the CD's owner until
13 February 5—one week *after* it had disbursed the loan proceeds to MC.³ The available
14 information indicates that it is not unusual for a bank to close on a loan without the complete set
15 of signed loan documentation when, as here, there is an existing banking relationship with the

¹ Under the Assignment, Trustmark had the power to take all funds in the CD and apply them to the loan if MC defaulted. The Assignment also established that: Trustmark possessed the CD; in the event of MC's default on its loan, Trustmark could transfer title to all or part of the CD; the CD's owner, designated the "grantor", "irrevocably appoint[ed] [Trustmark] as Grantor's attorney-in-fact to execute endorsements, assignments and instruments in the name of Grantor (and each of them if more than one) as shall be necessary or reasonable"; and Trustmark enjoyed the rights and remedies of a "secured creditor." The CD's owner was also prohibited from transferring or encumbering the CD.

² The Promissory Note, dated January 29 and signed by Perry, specifies that the loan principal was \$250,150, it had a maturity date of June 3, 2014, and the annualized interest rate was 2.650%. The Boarding Data Sheet indicates that the loan had a 2.864 % interest rate. Bond explained that the two rates were calculated using different formulas. The extra \$150 of the loan principal in the promissory note was for a processing fee.

³ The Assignment bears a pre-printed date of January 29, the date Bond generated the loan documents and the date that Perry met with Bond to sign them. It bears Perry's signature below the CD owner's signature, which Trustmark obscured.

1 individual whose signature is requested, where the individual has committed to sign the
2 paperwork, and where there is no reason to believe that the paperwork will not be signed.

3 **B. MC Inaccurately Discloses the Trustmark Loan**

4 On April 15, 2014, MC filed its first quarterly report disclosing the Trustmark loan,
5 which contained a number of errors and omissions. MC Apr. Quarterly Rpt. at 26. Committees
6 must disclose details about their loans on FEC Schedule C-1 and answer certain questions about
7 these loans. The Schedule C-1 regarding the Trustmark loan inaccurately reported that a CD had
8 *not* been pledged as collateral for the loan, and it erroneously listed the value of the collateral for
9 the loan as "\$0.00." *Id.* MC also reported that no other parties were secondarily liable for the
10 loan. *Id.* The form Schedule also asked if the Committee had pledged its future receipts as
11 collateral, and MC correctly responded "No." The Schedule also asked, "If neither of the types
12 of collateral described above was pledged for this loan, or if the amount pledged does not equal
13 or exceed the loan amount, state the basis upon which this loan was made and the basis on which
14 it assures repayment." MC did not answer this question, nor did it attach the loan agreement, as
15 the Schedule directs.

16 The Schedule C-1 includes both Perry's electronic signature as MC's treasurer as well as
17 what purports to be Walker's electronically-signed certification, on behalf of Trustmark, that the
18 disclosures on the Schedule were accurate, Trustmark was aware that loans had to be made on a
19 basis that assures repayment, and the loan complied with the requirements set forth at 11 C.F.R.
20 §§ 100.82 and 100.142.⁴

⁴ This Schedule C-1, bearing what purports to be Walker's electronic signature and filed by MC with its original April Quarterly Report, is dated January 29, 2014 – the date that Trustmark disbursed the loan funds to MC. *Id.* About two weeks later, MC submitted, as part of a Miscellaneous Report, the original Schedule C-1 hand-signed by Walker, which was also dated January 29. See MC Miscellaneous Rpt. at 1 (Apr. 30, 2014). But in his sworn affidavit, Walker avers that he was not given the C-1 to sign until April 15. Walker Aff. ¶ 16.

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MC filed an April 30, 2014, Miscellaneous Report that attached some of the loan documents: the Promissory Note, the Board Resolution, and the Errors and Omissions Agreement. MC did not, however, attach the Assignment, the document indicating that it did not own the pledged CD. Although the Promissory Note states that the collateral for the loan was "certificates of deposit described in an Assignment of Deposit Account dated January 29, 2014," the documents MC disclosed do not indicate that a third party owned the CD, and MC's Schedule C-1 erroneously states that there was *no* collateral and no secondarily liable party. Trustmark certified these inaccurate representations as true.

On May 12, 2014, MC filed an amended April Quarterly Report, which repeated the misstatements that a CD had not been pledged as collateral, the value of the collateral was \$0.00, Trustmark did not have a secured interest in the collateral, and there were no secondarily liable parties. MC continued to leave blank the space provided to explain how the loan's repayment was assured if the loan was not secured by collateral or future receipts. MC Amended Apr. Quarterly Rpt. at 26 (May 12, 2014). It also continued to represent that Trustmark had certified the accuracy of the information on the form and the loan's compliance with the Commission's regulations. *Id.*

On May 15, 2014, the Complainant filed the original Complaint, which relied on the Schedule C-1 in MC's April Quarterly Report stating that there was no collateral for the loan. The Complaint alleged that Walker consented to Trustmark making a contribution to MC because Trustmark's loan to MC violated the Commission's regulations at 11 C.F.R. § 100.82, which require a lender to have an assurance of repayment. Compl. at 4-7.

Two days later, MC filed its Second Amended April Quarterly Report on which it checked "Yes" in response to the question asking if the loan was collateralized by any one of

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various types of security, including a certificate of deposit. MC Second Amended Apr. Quarterly Rpt. at 26 (May 17, 2014). In response to the form's direction, "If yes, specify," MC wrote "Certificate of Deposit." *Id.* But MC neither disclosed that it did not own the CD that secured the loan, nor did MC provide the loan document that showed that another party owned the CD, much less identify the owner of the CD. MC stated in response to another question on the form that Trustmark had a perfected security interest in the collateral, but it continued to state that no other party was secondarily liable for Trustmark's loan to MC.⁵ MC Second Amended Apr. Quarterly Rpt. at 26 (May 17, 2014).

The Amended Complaint, filed on May 19, alleges that Trustmark violated the Commission's regulations because it lacked a perfected security interest in the CD serving as collateral for the loan. *Id.* at 5.

MC repaid the loan by May 30, 2014, a few days short of its June 3 maturity date. To date, MC and has not identified the owner of the pledged CD.

III. ANALYSIS

A. Trustmark's Loan Was Not a Contribution to MC Because it was Fully Secured

The Amended Complaint alleges that Trustmark made a prohibited contribution to MC by loaning it \$250,150 without having a perfected security interest in the CD later pledged as collateral. Amend. Compl. at 5. The Complaint further alleges that Walker, as a bank officer approving a loan that was a prohibited contribution, violated 52 U.S.C. § 30118 (formerly §441b). Compl. at 6; Amended Compl. at 8-9.

⁵ This Amended Report also purported to bear Walker's electronic signature on the amended form's certification. But Walker avers that "it is my understanding that [MC] has filed multiple versions of the Schedule C-1 with the [Commission], all of which purport to include an electronic version of my signature. I was never consulted by [MC] prior to its making these additional C-1 filings." Walker Aff. ¶ 17.

1 The Act prohibits an officer of a national banks from consenting to the bank making
2 contributions. 52 U.S.C. § 30118(a) (formerly 2 U.S.C. § 441b(a)). Contributions include
3 "loans" or "anything of value" made for the purpose of influencing an election, 52 U.S.C. §
4 30101(8)(A)(i) (formerly 2 U.S.C. § 431(8)(A)(i)), but do not include bank loans made in the
5 ordinary course of business "on a basis which assures repayment," that are "evidenced by a
6 written instrument and subject to a due date or amortization schedule," and which are made at a
7 usual and customary interest rate for the lender for the category of loan involved. 52 U.S.C. §
8 30101(8)(B)(vii) (formerly 2 U.S.C. § 431(8)(B)(vii)); *see also* 11 C.F.R. § 100.82(a) (a bank
9 loan is not a contribution if it has those characteristics). The record establishes that the loan was
10 made through a written instrument with a due date. Further, there is no allegation or information
11 in the record suggesting that the interest rate (2.86%) on the loan was not Trustmark's usual and
12 customary rate applicable to a loan backed by collateral on deposit equal in value to the loan.

13 The Complaint alleges, however, that Trustmark's loan to MC was not made on a basis
14 that assures repayment because there was no collateral for the loan, Compl. at 6, or, alternatively,
15 Trustmark did not have a perfected security interest in the loan. Amended Compl. at 4-5. For a
16 loan to be considered "made on a basis that assures repayment," the Commission's regulations
17 require that the lender (a) "has perfected a security interest in collateral *owned by the candidate*
18 *or political committee receiving the loan*"; (b) that "the fair market value of the collateral is
19 equal to or greater than the loan amount and any senior liens as determined on the date of the
20 loan"; and (c) "the political committee provides *documentation* to show that the lending
21 institution has a perfected security interest in the collateral." 11 C.F.R. § 100.82(e)(1)(i)
22 (emphasis added).

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1 The transaction between Trustmark and MC clearly did not meet the section
2 100.82(e)(1)(i)(a) criterion because MC did not own the collateral for the loan.⁶ If, as in this
3 matter, a loan does not meet the requirements in 100.82(e), "the Commission will consider the
4 totality of the circumstances on a case-by-case basis in determining whether a loan was made on
5 a basis that assures repayment." 11 C.F.R. § 100.82(e)(3).⁷ In past matters, the Commission has
6 concluded that a bank loan did not constitute a prohibited contribution under the totality of the
7 circumstances when the bank made the loan while intending that it would be assured of
8 repayment. See General Counsel's Rpt. No. 2 at 3-8, MUR 5496 (Huffman) (loan that was not
9 secured by collateral for a period of 90 days nonetheless was assured of repayment under the
10 totality of the circumstances because the bank intended that repayment be assured where, *inter*
11 *alia*, the candidate verbally pledged to use retirement savings to repay the loan); First General
12 Counsel's Rpt. at 5-10, MUR 5262 (Second National Bank) (under the totality of the
13 circumstances, bank intended to assure repayment of the loan and therefore did not make a
14 prohibited contribution where it required a cosigner, and the cosigner had a suitable credit
15 history and relationship with the bank).

16 The available information indicates that Trustmark was assured of repayment when it
17 made the loan to MC. Trustmark prepared the Assignment at the same time that it prepared the

⁶ Further, it is questionable whether the loan satisfied 100.82(e)(1)(i)(c) because Trustmark did not receive the signed documentation pledging the CD as collateral for the loan until seven days after it disbursed the loan funds to MC. Trustmark instead relied on a *verbal* pledge from the CD's owner to provide collateral for the loan until the bank received the Assignment, which one of Trustmark's affiants asserted was not unusual. (Upon its later receipt of the Assignment, Trustmark obtained a perfected security interest under Mississippi law in the CD because it was both pledged as collateral and on deposit with Trustmark. See Miss. Code Ann. 75-9-314.)

⁷ See also Factual and Legal Analysis at 2-7, MUR 5766 (Amalgamated Bank) (Commission took no further action after investigation revealed that bank loan that failed to meet regulation's requirements was nevertheless made on a basis assuring repayment under the totality of the circumstances); General Counsel's Rpt. No. 2 at 4-10, MUR 5685 (BancorpSouth Bank) (same); General Counsel's Rpt. No. 4 at 10-16, MUR 5652 (First Bank) (same); First General Counsel's Report at 20-25, MUR 5381 (Bishop) (bank assured of repayment for candidate's line of credit under the totality of the circumstances).

1 remainder of the loan documents, obtained a verbal pledge that a CD on deposit with Trustmark
2 worth approximately the same as the loan principal would serve as the loan's collateral, and
3 received the executed Assignment from the CD's owner one week after the loan was made. The
4 Commission therefore finds no reason to believe that Walker violated Section 30118(a)
5 (formerly 441b(a)).

6 **B. Trustmark and Walker's Inaccurate Schedule C-1 Certifications are not**
7 **Independent Violations of the Act**

8 Complainant also alleges that Walker violated the Act's disclosure requirements because
9 he certified MC's inaccurate statements about the loan on the original Schedule C-1. Amended
10 Compl. at 7, 9. There is no dispute that the bank's certification was inaccurate, but neither the
11 Act nor the regulations attaches liability to the bank officer certifying the false statements.
12 Instead, the party filing the relevant report is responsible for its accuracy.

13 The Commission's regulations at 11 C.F.R. § 104.3(d)(1)(v) require committees
14 borrowing funds to submit a certification from the lending institution that (1) the borrower's
15 statements on the Schedule C-1 are accurate, to the best of the lender's knowledge; (2) the loan or
16 line of credit was made or established on terms and conditions no more favorable at the time than
17 those imposed for similar credit granted to borrowers of comparable credit worthiness, and
18 (3) the institution is aware of the requirement for terms which assure repayment and the bank has
19 complied with 11 C.F.R. § 100.82 and 100.142.⁸ See 11 C.F.R. § 104.3(d)(1)(v); AO 1994-26
20 at 4 (Scott Douglass Cunningham Campaign Committee). As the Commission explained when it

⁸ Schedule C-1 accordingly states that by signing the form, the lending institution is certifying that "To the best of this institution's knowledge, the terms of the loan and other information regarding the extension of the loan are accurate as stated" on the form, the loan was made on terms "no more favorable at the time than those imposed for similar extensions of credit to other borrowers of comparable credit worthiness," and that "This institution is aware of the requirement that a loan must be made on a basis which assures repayment, and [the lender] has complied with the requirements set forth at 11 CFR 100.82 and 100.142 in making this loan."

1 promulgated these regulations, in addition to helping banks avoid making prohibited
2 contributions, these lender certifications serve an important and public role by ensuring the
3 reliability of committee loan disclosures based on information exclusively in the possession of
4 the banks. *See Loans from Lending Institutions to Candidates and Political Committees*, 56 Fed.
5 Reg. 67,118, 67,122. (Dec. 27, 1991) ("Explanation and Justification").

6 Walker acknowledges that some of Walker's certifications were inaccurate. Walker
7 Resp. at 3. He argues that he is not liable for the errors in the Schedule C-1 and that they were
8 *de minimis*. Walker Resp. at 9-12.

9 Nevertheless, a false or inaccurate certification, standing alone, is not a violation by the
10 officer of a lender of a duty imposed by the Act or Commission regulations. The Commission's
11 regulations, rather, impose a duty on committees to file accurate Schedule C-1s with properly
12 reviewed lender's certifications. Accordingly, the Commission finds that there is no reason to
13 believe that Walker violated the Act or Commission regulations when Walker certified the
14 inaccurate Schedule C-1.

15 IV. CONCLUSION

16 Therefore, there is no reason to believe that Harry M. Walker consented to making a
17 prohibited national bank contribution to MC in violation of 52 U.S.C. § 30118 (formerly 2
18 U.S.C. § 441b), or that Walker violated the Act or the Commission's regulations when he
19 certified MC's inaccurate disclosures regarding Trustmark's loan to MC.