FIRST GENERAL COUNSEL'S REPORT

MUR: 6661
COMPLAINT FILED: October 9, 2012
NOTIFICATION: October 12, 2012
SUPPLEMENT: September 16, 2014
LAST RESPONSE: July 10, 2015
DATE ACTIVATED: April 23, 2013

LIMITATIONS PERIOD EXPIRES:²
   Earliest: October 2, 2013
   Latest: July 22, 2017

COMPLAINANT:
Melanie Sloan, Citizens for Responsibility and Ethics in Washington

RESPONDENTS:
Robert E. Murray
Murray Energy Corporation
Murray Energy Corporation PAC and Michael G. Ruble in his official capacity as treasurer

STATUTES AND REGULATIONS:
52 U.S.C. § 30118
52 U.S.C. § 30122
11 C.F.R. § 114.2
11 C.F.R. § 114.5

INTERNAL REPORTS:
Disclosure Reports

FEDERAL AGENCIES:

¹ The Respondents entered into a tolling agreement extending any applicable limitations period by a total of 108 days. See Consent to Extend the Time to Institute a Civil Law Enforcement Suit (Jan. 4, 2013).
I. INTRODUCTION

The Complaint in this matter alleges that Robert Murray, Murray Energy Corporation, and Murray Energy Corporation Political Action Committee ("MECPAC") engaged in coercive solicitation practices, used the company's bonus program to reimburse contributions, and consequently made prohibited corporate contributions in violation of the Federal Election Campaign Act of 1971, as amended (the "Act"). The Supplemental Complaint contains an allegation that a former Murray employee was wrongfully terminated as a result of her failure to respond to the coercive solicitation practices. The Respondents deny the allegations.

The available information indicates that Respondents' solicitations, follow-up memos, and tracking activities rise to the level of coercion. The Office of General Counsel therefore recommends that the Commission find reason to believe that Murray, Murray Energy, and MECPAC coerced employee contributions in violation of the Act and Commission regulations. We recommend taking no action at this time as to the allegations that Murray Energy used its bonus program to pay for PAC contributions and reimburse candidate contributions, and no action at this time as to whether any such reimbursements resulted in prohibited corporate contributions in violation of the Act. We further recommend that the Commission authorize an investigation to determine whether these coercion violations in fact occurred, the scope of the misconduct, if any, and what further action may be appropriate.
II. FACTUAL SUMMARY

Based in Ohio, Murray Energy reportedly is one of the largest privately held coal-mining companies in the United States, with eight mines in six states. Robert E. Murray is its Chairman, President, and CEO. Murray Energy has a separate segregated fund ("SSF") called the Murray Energy Corporation Political Action Committee ("MECPAC"), which received contributions totaling about $892,000 and made disbursements totaling about $1 million between 2008 and 2012. MECPAC solicits contributions from company personnel, and according to a declaration submitted in response to the Complaint by Michael Ruble, MECPAC's treasurer, in 2012, 151 of 354 management personnel contributed to MECPAC. In addition to MECPAC's solicitations, Murray personally solicits his employees for contributions to MECPAC, contributions to his preferred federal candidates, and to participate in fundraising events for his preferred federal candidates.

A. Complaint

1. Coercion Allegations

The Complaint alleges that since about 2007, Robert Murray, Murray Energy, and MECPAC have coerced Murray Energy employees into making contributions by "threatening employees with financial reprisals, including the loss of their jobs, if they failed to contribute" to MECPAC. In support of these allegations, the Complaint attaches an October 4, 2012, article

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5 Id.
6 See FEC Form 3X, Report of Receipts & Disbursements (year end reports filed on June 1, 2009 (for 2008), April 14, 2010 (for 2009), January 14, 2011 (for 2010), and April 18, 2013 (for 2011 and 2012)).
7 Resp., Ex. 2 ¶ 5 (Apr. 4, 2013) ("Declaration of Michael Ruble").
8 Compl. at 3-5.
from the *New Republic* and a September 15, 2010, letter from Murray to employees, which is also discussed in the *New Republic* article.⁹

The *New Republic* article examines Murray Energy’s campaign finance activity over the past six years.¹⁰ It notes that employees of Murray Energy, its subsidiaries, their family members, and MECPAC have contributed more than $1.4 million to Republican candidates for federal office since 2007,¹¹ and that during the 2012 cycle Murray Energy employees contributed approximately $120,000 to presidential candidate Mitt Romney.¹² It then reports what have become the central allegations in this matter:

The accounts of two sources who have worked in managerial positions at the firm, and a review of letters and memos to Murray [Energy] employees, suggest that coercion may also explain Murray [Energy] staffers’ financial support for Romney. Murray, it turns out, has for years pressured salaried employees to give to [MECPAC] and to Republican candidates chosen by the company. Internal documents show that company officials track who is and is not giving. The sources say that those who do not give are at risk of being demoted or missing out on bonuses, claims Murray denies.¹³

The article does not identify the two Murray Energy sources but explains that they requested anonymity “for fear of retribution, [and] came forward separately.”¹⁴ The first source (“Source A”) reportedly said, “There’s a lot of coercion . . . . I just wanted to work, but you feel this constant pressure that, if you don’t contribute, your job’s at stake. You’re compelled to do

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⁹ *Id.*, Exs. A, B.
¹⁰ *Id.*, Ex. A.
¹¹ *Id.* at 2.
¹² *Id.* at 1.
¹³ *Id.*
¹⁴ *Id.*
this whether you want to or not.”\textsuperscript{15} The second source (“Source B”) was quoted saying, “They
will give you a call if you’re not giving . . . It’s expected you give Mr. Murray what he asks
for.”\textsuperscript{16} As Source A reportedly explains, employees targeted with repeated solicitations feel
pressure either to comply or provide explanations to management why they have not:

“People are very upset about being constantly asked for the checks, because
people have lives and families and expenses,” says [Source A,] a political
independent. “They say, ‘This isn’t right . . . . I don’t think they’re allowed to do
this.’ Most people do it grudgingly.”

Those who decline, [Source A] says, prepare to be questioned. “When they’re
pressuring people to write checks, if they haven’t by the deadline, you hear people
making excuses — I just had to repair my car, I had an unexpected bill, I just had
to pay tuition.”\textsuperscript{17}

The article references several Murray, Murray Energy, and MECPAC documents
“show[ing] just how upset Murray becomes when employees fail to join the giving.”\textsuperscript{18} The first
document is a March 7, 2012, interoffice memorandum from Murray apparently to his
managerial personnel in which he complained:

What is so difficult about asking a well-paid salaried employee to give us three
(3) hours of his/her time every two months? We have been insulted by every
salaried employee who does not support our efforts. More importantly, we are
going to lose what friends we have in Washington, D.C. at this very critical time,
while mines are closing all around us . . . . I do not recall ever seeing the attached
list of employees [redacted] at one of our fundraisers.\textsuperscript{19}

\textsuperscript{15} Id. at 1-2.
\textsuperscript{16} Id. at 2.
\textsuperscript{17} Id. at 3.
\textsuperscript{18} Id.
\textsuperscript{19} Resp., Ex. 9 (attaching memorandum); see also Compl., Ex. A at 2. (partially quoting memorandum). The recipients of this memorandum are unidentified because the document provided to the Commission was redacted.
The second document is an earlier interoffice memorandum from Murray regarding an upcoming fundraiser, dated August 3, 2011, and apparently directed to his management staff:

I am asking you to rally all of your salaried employees and have them make their contribution to our event as soon as possible. . . . We need both their contribution and their attendance . . . . Please see that our salaried employees ‘step up’ for their own sakes and those of their employees.20

The third document is a September 15, 2010, letter from Murray apparently to management personnel in which he followed up on an August 28, 2010, letter seeking MECPAC contributions: “The response to [the August 28] letter of appeal has been poor. . . . If we do not win [this election], the coal industry will be eliminated and so will your job, if you want to remain in this industry. Please positively respond to our request.”21 In the referenced August 28, 2010, letter, Murray writes of “the need for additional funding of MECPAC,” and requests “a one-time contribution to MECPAC as soon as possible in the maximum amount that you can afford. Your contributions are strictly voluntary and will remain anonymous, except to the Chairman and Treasurer of the MECPAC.”22 The letter closes by noting that MECPAC’s treasurer, Michael Ruble, or another Murray Energy employee “will follow up with you.”23

Murray also sent employees several solicitations seeking contributions for presidential candidates Rick Perry and Mitt Romney, then-Senator Gordon Smith, and other federal candidates.

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20 Resp., Ex. 8 (attaching memorandum); see also Compl., Ex. A at 3 (partially quoting memorandum). The recipients of this memorandum are unidentified because the document provided to the Commission lists the recipients only as “Those Listed.”

21 Compl., Ex. A at 3 (partially quoting letter); see also Compl., Ex. B (attaching letter); Resp., Ex. 1 (same). The recipients of this letter are unidentified because the document provided to the Commission was redacted.

22 Resp., Ex. 3 at 1-2.

23 Id., Ex. 3 at 2.
candidates. According to Sources A and B, “Murray sends letters to employees’ homes. . . . The letters feature suggested amounts depending on their salary level. . . . The letters come with great frequency. Before the 2008 election, there were nine fund-raisers in less than three months.”

The Respondents submit a joint Response in which they challenge the Complaint on three grounds. First, they argue that the Complaint is inadequate because it is “founded on anonymous sources.” Second, they contend that although “[a] manager here or there may have been bothered, annoyed, frustrated, or philosophically or politically perturbed,” Murray’s “colorful language” did not rise to the level of threats of detrimental job action, financial reprisal, or force, and therefore were not coercive. The Response includes six solicitation letters, three other Murray Energy documents, and a declaration by Michael Ruble, who is the MECPAC treasurer and Human Resources Director at American Energy Corporation, a Murray Energy subsidiary. Respondents acknowledge that “some tracking takes place to ascertain who has responded to previous solicitations and that follow-up requests are sometimes made,” but contend that there

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24 Compl., Ex. A at 3; see also Resp., Ex. 5 (Sept. 29, 2008, solicitation for contributions to Gordon Smith), Ex. 6 (Aug. 27, 2011, solicitation for contributions to Rick Perry), Ex. 7 (Apr. 6, 2012, solicitation for contributions to Mitt Romney).
25 Compl., Ex. A at 3.
26 Resp. at 12.
27 Id. at 13, 14.
28 Id., Exs. 1-10.
29 Id. at 13.
is nothing "unusual about tracking whether people solicited have given so that follow-up
requests might be made by Mr. Murray or someone who helps him."\textsuperscript{30}

In his declaration, Ruble states that "care is taken to include the required notice to those
solicited," including that MECPAC contributions are voluntary and that the specified
contribution amount "is just a suggestion and such a decision is voluntary."\textsuperscript{31} Ruble concedes,
however, that the September 15, 2010, letter discussed in the \textit{New Republic} article "did not itself
contain the disclaimer about voluntariness" but that the August 28 letter it referenced did.\textsuperscript{32}

Ruble also states, "To my knowledge, no employee has suffered any reprisals for not
contributing to MECPAC or for contributing less than requested."\textsuperscript{33} He makes the same
statement with regard to candidate contributions.\textsuperscript{34} Ruble also states that in 2012,
"approximately 354 management personnel were solicited for the PAC, but only 151
contributed."\textsuperscript{35}

\textsuperscript{30} Supp. Resp. at 2. This evidence and the Supplemental Response are inconsistent with a Murray Energy
statement to a reporter attached to the Supplemental Response, which states that "As Mr. Murray has repeatedly
stated that he deliberately never knows who gives to his fundraisers and who does not." \textit{Id.}, Attach. 1. Further, in
response to a question about company policy with respect to "encouraging employee campaign contributions," the
company spokesperson claimed that "[t]hese are Mr. Murray's personal fundraisers, which have nothing to do with
Murray Energy Corporation." \textit{Id.} Yet the solicitation by Murray attached to the wrongful termination complaint
2014) (attached to Supplemental Complaint) ("Cochenour Civil Complaint"), apparently sent to employees of a
company Murray recently acquired, refers to candidates appearing at a fundraiser as "[o]ur important guests,"
references "our Century Mine," and states that "[w]e are requesting" two hundred dollar contributions to each of the
candidates using separate checks. \textit{Id.}, Ex. A.

\textsuperscript{31} Declaration of Michael Ruble ¶ 2.

\textsuperscript{32} \textit{Id.} ¶ 3.

\textsuperscript{33} \textit{Id.} ¶ 6.

\textsuperscript{34} \textit{Id.} ¶ 7.

\textsuperscript{35} \textit{Id.} ¶ 5.
The Supplemental Complaint filed on September 16, 2014, adds that a former Murray employee, Jean F. Cochenour, filed a wrongful termination complaint ("Cohenour Civil Complaint") alleging, among other things, that Murray solicited contributions for specific contribution amounts, and that a manager informed her and other forepersons that "failing to contribute as Mr. Murray requested could adversely affect their jobs." Cohenour alleges that she received frequent solicitations for contributions, that Murray was aware of or tracked who among his employees made contributions, and that "those who attend the Murray defendants' 'college' for managers [are told] that the managers are expected to voluntarily contribute 1% of their salary to Mr. Murray's political action committee[.]" Respondents deny the former employee's allegations, assert that Cohenour was fired for different reasons, and state that Cohenour's allegations are not based on personal knowledge and that "there is no evidence whatsoever" that Murray requires employees to make contributions. After a request by Commissioners for information about the discovery in the Cohenour case, Respondents provided redacted transcripts of the depositions of Cohenour and another witness. Cohenour states that she felt coerced into making political contributions on the basis of the solicitation letters she received from Murray requesting contributions and statements by Randy Tennant that "if we didn't contribute that it could affect our jobs." Tennant stated the following relating to the allegations: he attended a training for managers

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36 Cohenour Civil Compl. ¶¶ 12-22.
37 Id. ¶¶ 8, 16, 17, 22.
38 Supp. Resp. at 1-3.
11 (“Murray College”) where Murray solicited contributions and asked for a show of hands of who
2 contributed; he received solicitation letters and made contributions to the candidates supported
3 by Murray about 60 percent of the time; he never believed that he would get fired if he did not
4 contribute, but he did believe that election results could affect his job; he was never told by
5 anyone with any authority that if he did not contribute that it could affect his job; he could not
6 recall any conversations or rumors about Murray keeping lists of which employees made
7 contributions, and; he could not recall any complaints from vendors about pressure to make
8 contributions.

2. Corporate Reimbursement Allegations

The Complaint also alleges that Murray and Murray Energy violated the Act by
reimbursing employee contributions to the MECPAC with bonus payments. And in paying
those bonuses with corporate funds, the Complaint alleges, Murray and Murray Energy made
prohibited corporate contributions.

According to Sources A and B, “the pressure to give begins as soon as employees enter
the company,” but employees’ contributions are made up through Murray Energy’s bonus
program:

41 Deposition of Randy Tennant at 43 (Apr. 21, 2015).
42 Id. at 45.
43 Id. at 49-50.
44 Id. at 51.
45 Id. at 52, 171.
46 Id. at 176, 178-181.
47 Compl. at 4-6.
48 Id. at 6.
At the time of hiring, supervisors tell employees that they are expected to contribute to [MECPAC]... typically 1 percent of their salary, a level confirmed by a [June 27,] 2008 letter to employees from [MECPAC's] treasurer. (That letter also assures employees that they would not be "disadvantaged" by not giving.)...

"In the interview... I was told that I would be expected to make political contributions — that [Murray] just expected that," says [Source A]. "But I was told not to worry about it because my bonuses would more than make up what I would be asked to contribute."^49

Murray Energy attorney Mike McKown also commented regarding the company's solicitation practices: "We follow carefully the FEC... rules about what employees can be solicited and how they can be solicited," he says, adding that Bob Murray's encouragement for employees to contribute to individual candidates is the CEO's personal endeavor."^50 McKown also reportedly said, "It's my understanding that the employees are encouraged to give, and [Murray] is enthusiastic about people giving contributions."^51 And on the issue of bonus payments, he reportedly said that they are based on "Mr. Murray's view of what the employee's contribution was to the company that month."^52

The Respondents argue that there is insufficient evidence to find reason to believe that the company's bonus program amounted to a reimbursement scheme or constituted prohibited corporate contributions.53 Regarding the alleged reimbursement of contributions, Ruble states in his declaration that he is "not aware of any employee or prospective employee being told... that

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^49 Id., Ex. A at 3. The allegation that the suggested contribution level was 1% of salary matches the allegation in the Cochenour Civil Complaint included in the Supplemental Complaint, which alleges that managers are told during training that they "are expected to voluntarily contribute 1% of their salary to Mr. Murray's political action committee." Cochenour Civil Compl. ¶ 17.

^50 Compl., Ex. A at 3-4.

^51 Id. at 4.

^52 Id.

^53 Id. at 14.
he or she would be 'expected to' contribute . . . or that any suggested contribution amount such as 1% of salary would be 'made up' through bonus payments."

III. LEGAL ANALYSIS

A. There is Reason to Believe Murray and Murray Energy Coerced Employees to Contribute and MECPAC Spent Funds Obtained Through Coercion

The Act prohibits corporations from making contributions to candidates or their committees in connection with federal elections. Corporations also are prohibited from facilitating the making of contributions to federal candidates and committees. Prohibited corporate facilitation activities involve "using corporate . . . resources or facilities to engage in fundraising activities" and include, for example, using means of "coercion, such as the threat of a detrimental job action, the threat of any other financial reprisal, or the threat of force, to urge any individual to make a contribution or engage in fundraising activities on behalf of a [federal] candidate or political committee."

Although they may not fundraise for federal candidates, corporations may solicit employees for contributions to SSFs like MECPAC. But these contributions must be voluntary, and the Act and Commission regulations seek to prevent coerced contributions to SSFs by requiring employers who solicit employees forSSF contributions to inform the employee at the time of each solicitation of "the political purposes of the fund at the time of such

\[\text{Declaration of Michael Ruble } \S 4.\]
\[52 \text{ U.S.C. } \S 30118(a).\]
\[11 \text{ C.F.R. } \S 114.2(f)(1).\]
\[ld.\]
\[ld. } \S 114.2(f)(2)(iv).\]
\[52 \text{ U.S.C. } \S 30118(b)(2)(C).\]
solicitation" and his or her "right to refuse to so contribute without any reprisal." If the solicitation includes guidelines for contribution amounts, it must also state "that the guidelines are merely suggestions," "that the individual is free to contribute more or less," and that "the corporation . . . will not favor or disadvantage anyone by reason of the amount of their contribution or their decision not to contribute." SSFs are further prohibited from "mak[ing] a contribution or expenditure by utilizing money or anything of value secured by physical force, job discrimination, financial reprisals, or the threat of force, job discrimination, or financial reprisal."

Here, two of the three submitted MEPCAC solicitations — those dated August 28 and September 15, 2010 — lack the anti-coercion information required by the Act and Commission regulations. While the August 28, 2010, solicitation letter describes MECPAC's political purposes and states that contributions are "strictly voluntary," it does not inform employees of their right to refuse to contribute without reprisal. Similarly, the September 15, 2010, letter from Murray Energy's top executive to his employees fails to state that employees will not suffer reprisal should they refuse to contribute. Therefore, it appears that MECPAC failed to include

60 Id. § 30118(b)(3)(B)-(C); 11 C.F.R. § 114.5(a)(3)(4).
61 11 C.F.R. § 114.5(a)(2). The requirements of Section 114.5(a)(2)-(4) apply to all solicitations directed to any employee for SSF contributions. Section 30118(b)(4), however, draws a distinction between solicitations directed to executive or administrative personnel and those sent to rank-and-file employees and limits to twice annually the number of SSF solicitations that may be directed to rank-and-file employees. See 52 U.S.C. § 52 U.S.C. § 30118(b)(7) (defining "executive or administrative personnel" to be "individuals employed on a salary, rather than hourly, basis and who have policymaking, managerial, professional, or supervisory responsibilities"). Because at this stage the solicitation practices in this matter appear to have been aimed only at Murray Energy's executive or administrative personnel, Section 30118(b)(4)'s limitation on the number of solicitations to other employees is not at issue.
63 See Resp., Ex. 3.
64 Id., Ex. 1.
required anti-coercion language in its August 28, 2010, and September 15, 2010, solicitations.\textsuperscript{65} Because the apparent anti-coercion disclaimer violations contained in these solicitations are beyond the five year statute of limitations,\textsuperscript{66} we do not make a recommendation as to 11 U.S.C. § 114.5(a)(2)-(5). The apparent lack of anti-coercion language in solicitations, however, is relevant to whether Murray Energy employees were coerced into making contributions based on Murray’s actions, which are alleged to have been part of a pattern of behavior lasting for several years, up to and including the 2012 election cycle.\textsuperscript{67}

Along with the absence of anti-coercion information in MECPAC solicitations, the presently available record suggests that Murray and Murray Energy solicited employees for contributions to individual candidates in a manner that further elevated the pressure to contribute, including the implicit threat that potential job-related reprisals may follow for not doing so. The allegations, if true, demonstrate that: (a) multiple employees of Murray Energy report feeling “compelled” or “coerced” by, among other things, the frequency of the solicitations and the fact that they came directly from the CEO; (b) the expectation to contribute is identified during the job interview and a manager training program (“Murray College”) during which Murray asked for a show of hands indicating which employees had contributed; (c) Murray sent an interoffice

\textsuperscript{65} Conciliation Agreement at 5, MUR 5337 (First Consumers Nat’l Bank) (Mar. 10, 2003) (“[M]erely including the word [voluntary] once does not diminish the coercive nature of the solicitations or satisfy the requirements of 11 C.F.R. § 114.5(a)(2)-(4).”); see Advisory Opinion 1998-19 (a solicitation’s use of “voluntary” is not a sufficient substitute for stating that there will be no retribution should the member refuse to contribute); Factual and Legal Analysis at 4, MUR 6129 (ARDA-ROC PAC) (Nov. 19, 2008) (citing AO 1998-19); Factual and Legal Analysis at 3, MUR 5681 (High Point Regional Ass’n of Realtors) (Nov. 1, 2006) (same); Conciliation Agreement at 4, MUR 5208 (Jersey Bankers PAC) (Oct. 28, 2002) (“although the JebPAC solicitations did not contain the specific language required by 11 C.F.R. § 114.5(a), they included a statement that contributions to JebPAC are solicited on a voluntary basis”); Explanation and Justification for Part 114 at 107 (Jan. 12, 1977) (highlighting the importance of the “reprisal” language).

\textsuperscript{66} 28 U.S.C. § 2462.

\textsuperscript{67} See supra pp. 3-6; Compl. at 1-2; Resp., Exs. 6-9.
memo stating that he viewed the failure of “well-paid” employees to participate as an “insult”;
(d) employee participation is tracked by the CEO, who then makes decisions about employee
compensation and bonuses; and (e) Murray ordered his managers to pressure subordinates to
participate and circulated a list singling out employees who did not contribute or attend
fundraisers.68

Although the available information does not include an explicit threat of reprisal, the
prohibition on “threat[s] of a detrimental job action, [or] the threat of any other financial
reprisal” is not limited only to expressly stated threats against an employee.69 For example, in
MUR 5379 (CarePlus Medical Centers., Inc.), there was not an explicit threat of detrimental job
action or other financial reprisal, but the Commission nevertheless found reason to believe that a
senior executive’s e-mail coercively solicited contributions from the company’s employees. The
Commission’s finding took into account three facts: (i) the recipients knew “that the person who
is ultimately responsible for making decisions regarding salaries, bonuses, and promotions is
asking them to contribute”; (ii) the message stated that the CEO had “asked for an accounting of
the individuals who do and do not contribute”; and (iii) the message made clear that executive
level staff were “‘expected’ to contribute, thereby signifying that this [was] a requirement and
not merely a request.”70 Likewise, the circumstances in the present case reflect that contributions
were not merely being requested — there was pressure to participate to avoid the adverse
consequences that might follow an employee’s failure to “positively respond” to Murray’s
solicitations, and Murray affirmatively maintained lists and tracked particular employees’

68 See supra pp. 3-6.
69 11 C.F.R. § 114.2(f)(2)(iv); see also id. § 114.5(a)(1); 52 U.S.C. § 30118(b)(3)(A).
70 Factual and Legal Analysis at 4, MUR 5379 (CarePlus Medical Centers, Inc.) (Mar. 11, 2004).
participation, all while determining whether the affected employees would receive bonuses for their value to the company.

Such lists and tracking activities are notably absent from the record in MUR 5666 (MZM, Inc.). In that matter, the Commission (after an "extensive investigation") entered into a $1 million settlement with MZM based on its involvement in a widespread conduit contribution scheme. In reaching that resolution, the Commission also agreed with this Office that the aggressive fundraising practices presented in that matter did not warrant an additional finding of coercion. Unlike the allegations in the present matter, however, the Commission's investigation into the solicitation and fundraising practices at MZM did not reveal that senior management actively maintained and circulated lists of non-participating employees to other managers with direct instructions that they should ensure that those employees complied with fundraising requests; did not regularly follow up with non-participating employees both at home and work concerning their lack of participation; and did not evaluate bonuses for non-participating employees based on the subjective view of the same senior manager who generated the lists and demanded their compliance. Taken together, these additional allegations amply support finding reason to believe that there may have been a violation of the anti-coercion provisions of the Commission's regulations.

See, e.g., General Counsel's Report #3 at 12-13, MUR 5379 (CarePlus Medical Centers, Inc.) (Nov. 29, 2007) (finding coercion on basis of e-mail solicitation lacking anti-coercion language despite lack of explicit threats or actual reprisals, and despite sworn statements from multiple employees that their contributions were voluntary); Factual and Legal Analysis at 3-4, MUR 5681 (High Point Reg'l Ass'n of Realtors) (Nov. 1, 2006) (finding reason to believe respondent coerced SSF contributions by omitting anti-coercion information and singling out those who declined to contribute); Factual & Legal Analysis at 3, MUR 5437 (SEIU COPE) (Oct. 4, 2004) (finding reason to believe respondents coerced SSF contributions where employee complained employees were told contributions "were needed to help them keep their jobs"); Conciliation Agreement at 5, MUR 5337 (First Consumers Nat'l Bank) (bank's solicitations for contributions used coercion and implied threats of financial reprisal and detrimental job action despite stating that the contributions were "voluntary" where the names of those who did not contribute were
The lone declaration submitted by the Respondents does not refute the alleged coercion. Under the Act and Commission regulations, coercion may be found on the basis of actual or threatened reprisals. The Ruble declaration, however, addresses only actual reprisals, stating, "[t]o my knowledge, no employee has suffered reprisals for not contributing" to MECPAC or Murray's favored candidates. Ruble's lack of personal knowledge concerning actual reprisals does not negate the Complaint's claim that employees were coerced into making contributions. Similarly, the Supplemental Response focuses on information developed by counsel suggesting that, at the company where Cochenour worked, there was little or no correlation between employees who were terminated and employees who did not contribute in response to Murray's solicitations. This assertion in response to Cochenour's allegation that she was wrongfully terminated does not refute the allegation that a manager stated to her that failing to contribute could lead to unspecified adverse employment consequences.

Declaration of Michael Ruble ¶ 6, 7. Ruble also states that less than half of those Murray Energy management personnel solicited for contributions actually contributed to MECPAC in 2012. Ruble then asserts that this figure is "clear evidence that the PAC solicitation process is not coercive." Id. ¶ 5. We disagree. First, Ruble's figures apply only to MECPAC while the allegations in this matter also relate to candidate contributions. Second, Ruble's figures omit the anti-coercion information were circulated in 2010. He does not provide the contribution rate for that year or for any other years. Second, Ruble's figures apply only to MECPAC while the allegations in this matter also relate to candidate contributions. Ruble does not provide any data about those types of contributions. Third, Ruble's assertion suggests that a PAC contribution rate of about 43% (i.e., 151 of 354 employees solicited) is low and therefore not coercive, but he provides no baseline data or context to substantiate this assertion. One could just as well argue that a 43% contribution rate is unusually high and therefore tends to support the allegation of coercion. Most importantly, under the Act and Commission regulations, the determination whether certain solicitation practices are coercive does not turn on their perceived success rate.

As to the threshold sufficiency of the evidence, a reason to believe determination is not conclusive that an allegation is true; rather, it recognizes the seriousness of the allegations and provides an opportunity to conduct further fact finding to resolve whether in fact a violation occurred. A reason-to-believe finding is therefore appropriate "in cases where the available evidence in the matter is at least sufficient to warrant conducting an investigation." The information available in this matter adequately supports the conclusion that the Respondents may have violated the Act for the reasons described above. That further investigation may not yield affirmative evidence of a violation or may reveal that no violation occurred does not render the allegations speculative or insufficient to proceed at the reason to believe stage. We therefore recommend that the Commission find reason to believe that Murray and Murray Energy violated 52 U.S.C. § 30118(a) and 11 C.F.R. § 114.2(f)(2)(iv) by coercing Murray Energy employees to make contributions to federal candidates and participate in fundraising activities supporting federal candidates. And because MECPAC's disclosure reports indicate that it received contributions following the coercive solicitations and then made contributions and expenditures, we also recommend that the Commission find reason to believe that MECPAC violated 52 U.S.C. § 30118(b)(3)(A) and 11 C.F.R. § 114.5(a)(1).

See Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12,545 (Mar. 16, 2007) ("RTB Policy") (reason-to-believe finding appropriate where complaint "credibly alleges that a significant violation may have occurred, but further investigation is required to determine whether a violation in fact occurred and, if so, its exact scope").

See id.

See, e.g., FEC Form 3X, July 2012 Quarterly Report of Receipts & Disbursements at 2-3 (Apr. 18, 2013) (amended) (reporting $46,193 in contributions received from individuals and $52,000 in contributions made to federal candidates and committees).
B. Take No Action at this Time Regarding Murray Energy’s Alleged Reimbursement of Employee Contributions

The Act and Commission regulations prohibit a person from making a contribution in the name of another or knowingly permitting his or her name to be used to effect such a contribution. This prohibition extends to “those who initiate or instigate or have some significant participation in a plan or scheme to make a contribution in the name of another.”

Commission regulations also prohibit an employer from paying an employee “for his or her [SSF] contribution through a bonus, expense account, or other form of direct or indirect compensation.” No person therefore may participate in a program that pays employees for their SSF contributions or reimburses them for making campaign contributions.

Given that we are recommending an investigation into allegations of coercion that may affect the factual record before us, we recommend that the Commission take no action at this time as to the allegations concerning corporate reimbursement by Murray Energy of employee contributions.

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78 52 U.S.C. § 30122; 11 C.F.R. § 110.4(b)(1)(i)-(iii). Just as one may not make a contribution in the name of another, the Act and Commission regulations also prohibit a person from knowingly accepting a contribution made by one person in the name of another person. 52 U.S.C. § 30122; 11 C.F.R. § 110.4(b)(1)(iv).


80 11 C.F.R. § 114.5(b)(1).

81 See, e.g., United States v. Boender, 649 F.3d 650, 661 (7th Cir. 2011) (concluding § 441f “unambiguously criminalized both straw man and false name contributions”); United States v. O’Donnell, 608 F.3d 546 (9th Cir. 2010) (same); Mariani v. United States, 212 F.3d 761, 775 (3d Cir. 2000) (concluding “[p]roscription of conduit contributions (with the concomitant requirement that the true source of contributions be disclosed) would seem to be at the very core of the [Buckley] Court’s analysis” and therefore upholding § 441f); see also United States v. Danielczyk, 788 F. Supp. 2d 472, 478-85 (E.D. Va. 2011), rev’d on other grounds, 683 F.3d 611 (4th Cir. 2012) (Section 441f prohibits “pass-through contributions”); United States v. Hsu, 643 F. Supp. 2d 574, 576 (S.D.N.Y. 2009) (evidence sufficient to support conviction in “unlawful straw donor scheme”).
IV. INVESTIGATION

While the available information is sufficient to support a reason-to-believe finding, an investigation is necessary to clarify the factual record concerning the coercion allegations. For example, document requests and witness information are likely to aid the Commission in determining whether, in fact, Murray Energy’s solicitation practices were coercive, including whether employees made any specific contributions or participated in any specific fundraising activities based on direct or indirect threats or intimidation. In short, gathering more information about MECPAC and candidate solicitation practices is likely to provide the Commission with the substantial evidence necessary to determine whether a violation in fact occurred and, if so, what further action may be appropriate, or, if not, to support closure of the file based on that evidence.

We will attempt to conduct our proposed investigation using informal, cooperative means. Should our efforts fail, however, formal means of discovery may be necessary, and we therefore request that the Commission authorize the use of compulsory process as necessary.

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82 See, e.g., MUR 5437 (SEIU COPE) (2007) (where respondent produced copy of check-off authorization form in response to employee's complaint of coercion, Commission stated, "Given the factual dispute here, further information is needed to determine whether union members were coerced into signing this form, as [Complainant] alleges.").

83 See La Botz, 889 F. Supp. 2d at 61-63 (reversing and remanding Commission decision that relied on summary, post hoc affidavit that also was contradicted by contemporaneous document because Commission's decision was not based on "substantial evidence").
V. RECOMMENDATIONS

1. Find reason to believe that Robert E. Murray and Murray Energy Corporation violated 52 U.S.C. §§ 30118(a) and 11 C.F.R. §§ 114.2(f) by coercing Murray Energy employees to make contributions to federal candidates and participate in fundraising activities supporting federal candidates;

2. Find reason to believe that Murray Energy Corporation PAC and Michael G. Ruble in his official capacity as treasurer violated 52 U.S.C. §§ 30118(b)(3)(A) and 11 C.F.R. §§ 114.5(a)(1);

3. Take no action at this time as to whether any of the respondents violated 52 U.S.C. §§ 30122 or 30118 by reimbursing employee contributions with corporate funds.

4. Approve the attached Factual and Legal Analysis;

5. Authorize an investigation, including the use of compulsory process as necessary; and

6. Approve the appropriate letters.

Dated: 2/1/16

Daniel A. Petalas
Acting General Counsel

Stephen A. Fina
Deputy Associate General Counsel for Enforcement

Peter G. Blumberg
Assistant General Counsel

Peter Reynolds
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