

Executive Summary and Staff Analysis
PDC Case No. 09-007
**Building Industry Association of Washington and
BIAW Member Services Corporation**

Allegations

On July 25, 2008, a Citizen's Action Letter was filed with the Office of the Attorney General under RCW 42.17.400(4) and then forwarded to the Public Disclosure Commission for investigation.

The letter alleges that the Building Industry Association of Washington (BIAW) and the BIAW Member Services Corporation (BIAW-MSA) satisfy the definition of political committee in RCW 42.17 because they solicited and accepted contributions and used those funds to make campaign expenditures which supported or opposed candidates.

The letter also alleges that BIAW and BIAW-MSA satisfy the definition of a political committee under current case law because their "primary or one of the primary purposes [is]...to affect, directly or indirectly, government decision making by supporting or opposing candidates or ballot propositions."

Finally, the complaint alleges that BIAW and BIAW-MSA failed to register as political committees and failed to report contribution and expenditure activities in violation of RCW 42.17.

Political Committee Analysis

State law, under RCW 42.17.020(38), defines a "political committee" as any person (except a candidate or an individual dealing with his or her own funds or property) having the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition. Under the expenditure prong of this definition, to qualify as a "political committee," an organization must have as one of its primary purposes "to affect, directly or indirectly, governmental decision making by supporting or opposing candidates or ballot propositions." *State v. Dan J. Evans Campaign Comm.*, 86 Wn.2d 503, 509, 546 P.2d 75 (1976). Determination of whether electoral political activity is one of the organization's primary purposes "should include an examination of the stated goals and mission of the organization and whether electoral political activity was a primary means of achieving the stated goals and mission during the period in question." *State ex. rel. Evergreen Freedom Foundation v. Washington Educ. Ass'n*, 111 Wn. App. 586, 599, 49 P.3d 894 (2002).

When determining an organization's "primary purpose," the Washington courts have identified the following non-exclusive factors to consider:

- 1) the organization's stated goals and mission;
- 2) whether the organization's conduct furthers its stated goals and mission;

- 3) whether the stated goals and mission would be substantially achieved by a favorable outcome in the election; and
- 4) whether the organization uses means other than political activity to achieve its stated goals and mission.

Investigative Findings

1. BIAW:

The BIAW is a statewide non-profit trade association with 15 local associations and approximately 13,500 building company members. Each member must also belong to one of the local associations to be part of the statewide BIAW association.

The BIAW Mission Statement indicates the non-profit organization is dedicated to ensuring and enhancing the vitality of the building industry for the benefit of its members and the housing needs of the citizens. It states that to accomplish this purpose the association's primary focus is to interact with the legislature and regulatory, judicial and executive agencies of Washington's government.

BIAW has two main purposes: 1) recruitment of members; and 2) providing educational opportunities for its members through classes on construction and business related topics, regional conferences on construction related issues and publishing a member newsletter.

BIAW's primary funding sources are:

- Membership Dues;
- Health Insurance fees;
- Education Program Revenue; and
- Interest and Investment Income.

BIAW's expenditures from January 1, 2006 thru June 30, 2008 were \$2,927,666. A breakdown of major expenditure categories follows:

Wages/Benefits	\$1,517,592
Education Programs	\$688,045
Membership Promotion	\$142,834
Newsletter	\$57,794
Legislative Policy	\$52,730
Overhead/Administration	\$452,181

During 2006-June 2008, BIAW did not solicit or receive contributions to support or oppose candidates or ballot propositions, nor did it contribute to candidates or political committees or use its general treasury for other campaign-related expenditures.

2. BIAW-MSA:

BIAW-MSA is a wholly owned subsidiary of BIAW. It is a for-profit corporation formed by BIAW in 1993 and was created to run the Return on Industrial Insurance (ROI) Program, commonly known as the "Retro" program for BIAW members.

The Retro program is a voluntary workers' compensation insurance program that is administered by private organizations in cooperation with the State Department of Labor and Industries (L&I). Participants in the program pay insurance premiums to L&I based on predicted workers' compensation claims for a three-year period. Companies whose claims are less than the anticipated number of claims for which they obtained insurance receive Retro refunds from L&I.

Eighty percent of all premium refunds is distributed to the individual member companies participating in the Retro program, ten percent is returned to the 15 local associations as a marketing assistance fee, and ten percent is retained by BIAW-MSA which administers the Retro program for the building industry.

An analysis of expenditures by BIAW-MSA from January 2006 to June 2008 showed \$13,664,417 (83.8%) for Retro program administration and \$2,646,320 (16.2%) for electoral campaign activity in the form of monetary and in-kind contributions and other campaign-related expenditures. Electoral campaign activity also included staff time that constituted in-kind contributions to political committees and BIAW-MSA political education efforts.

Solicitation of Political Contributions by BIAW-MSA

The 15 local associations receive 10% of the annual total Retro refund as a marketing assistance fee. This fee covers program administration which includes membership recruitment, builder safety programs, and programs for loss control strategies and compliance. The amount of the 10% Retro refund to each local association is estimated at the beginning of each year by BIAW-MSA. In 2007, the actual Retro refund amount exceeded the BIAW-MSA estimated refund amount by \$1,470,900.28.

BIAW-MSA officers decided to approach the 15 local associations to ask them to contribute the difference between the estimated and actual Retro refunds for use by ChangePAC in the 2008 Governor's election.

Following the solicitations, eleven of the 15 local associations authorized BIAW-MSA to retain a portion of their 2007 Retro program refund for use in the 2008 election. In July 2007, the local associations authorized BIAW-MSA to retain a total of \$584,527.53 in Retro refunds for the purpose of making contributions to ChangePAC.

On August 20, 2008, BIAW-MSA contributed from its general treasury fund \$584,527.53 to ChangePAC and also provided ChangePAC with a list of the eleven local associations and the amount each association contributed.

On August 21, 2008, ChangePAC reported the receipt of the contributions as coming from the local associations.

Conclusion:

BIAW

PDC staff does not believe, during the time frame at issue, that BIAW was a political committee pursuant to RCW 42.17.020(38). The association did not receive contributions or make expenditures in support of, or opposition to, any candidate or ballot proposition.

BIAW-MSC

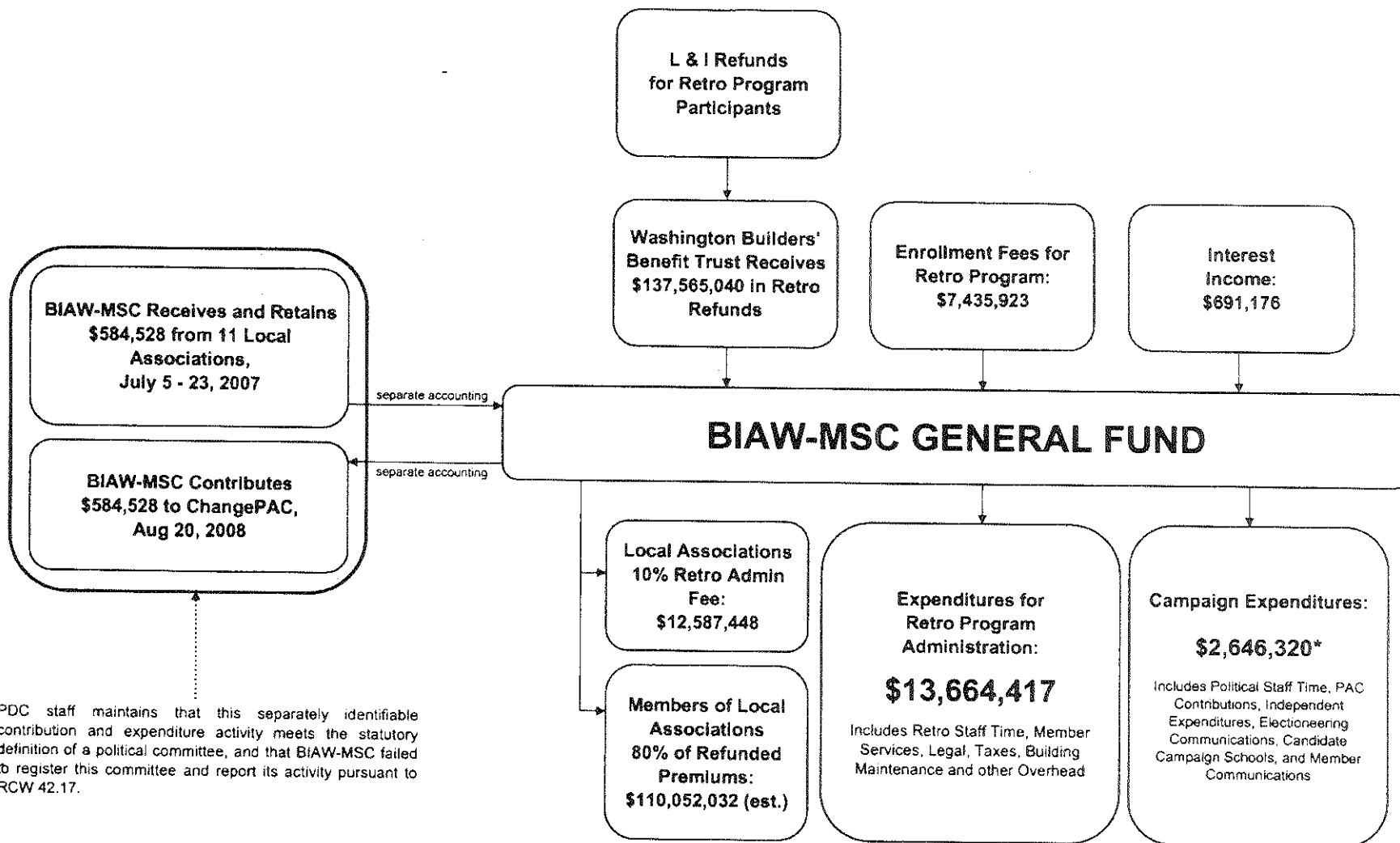
PDC staff is of the opinion that BIAW-MSC does not, as a whole, qualify as a "political committee," since during 2006-June 2008 it did not have as one of its primary purposes "to affect, directly or indirectly, governmental decision making by supporting or opposing candidates or ballot propositions" nor was electoral political activity a primary means of achieving the stated goals and mission during the period in question.

While staff maintains the entire BIAW-MSC general fund would not be considered a political committee, the solicitation, receipt, and retention of local association Retro program refunds by BIAW-MSC in the amount of \$584,527.53 qualifies that discrete portion of BIAW-MSC funds as a political committee pursuant to RCW 42.17.020(38).

Regarding PDC Case No. 09-007, staff suggests the Commission advise the Office of the Attorney General that the evidence of the investigation:

- 1) does not support the allegation that, during January 2006 through June 2008, BIAW was a political committee;
- 2) does not support that, during January 2006 through June 2008, the entire BIAW-MSD general fund is a political committee; and
- 3) **does support the allegation that BIAW-MSD committed multiple apparent violations of RCW 42.17 by failing to register as a political committee and report the contributions it solicited, received and retained from its local associations in 2007, and by failing to report expenditures to ChangePAC in 2008 with the contributions received.**

BIAW-MSC Revenue and Expense Summary, January 2006 - June 2008



PDC staff maintains that this separately identifiable contribution and expenditure activity meets the statutory definition of a political committee, and that BIAW-MSC failed to register this committee and report its activity pursuant to RCW 42.17.

* NOTE: Campaign expenditures from January 2006 - June 2008 (\$2,646,320) represented 1.9% of all BIAW-MSC expenditures during the same period (\$138,950,217), including disbursement of Retro Program refunds.



STATE OF WASHINGTON
PUBLIC DISCLOSURE COMMISSION

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BEFORE THE PUBLIC DISCLOSURE COMMISSION
OF THE STATE OF WASHINGTON

IN RE COMPLIANCE)	PDC CASE NO: 09-007
WITH RCW 42.17)	
)	Report of Investigation
Building Industry Association of)	
Washington "BIAW" and)	
)	
BIAW Member Services Corporation)	
"BIAW-MSC")	
)	
Respondents)	
)	

I.
Complaint

- 1.1 On July 25, 2008, Knoll D. Lowney and Michael Withey filed a citizen action (45-day letter) on behalf of Robert F. Utter, Faith Ireland, A-1 Builders and BIAW Trust Beneficiaries against the Building Industry Association of Washington (BIAW) & the BIAW Member Services Corporation (BIAW-MSC). **(Exhibit 1 - Complaint)**
- 1.2 The citizen action letter was filed with the Office of the Washington State Attorney General (AGO) and with the King, Pierce and Thurston County Prosecutors' offices in accordance with RCW 42.17.400.
- 1.3 The citizen action letter alleged that BIAW and BIAW-MSC met the definition of a political committee in chapter 42.17 RCW because they solicited and accepted contributions and then used those funds to make expenditures for electioneering communications and political advertisements that supported or opposed candidates.
- 1.4 The AGO forwarded the complaint to the Public Disclosure Commission (PDC) for investigation on July 25, 2008.



II. Background

Building Industry Association of Washington

- 2.1 BIAW is a statewide trade association of builders, and is an affiliate of the National Association of Home Builders (NAHB). The BIAW is organized under section 501(c) (6) of the Internal Revenue Code as a non-profit organization.
- 2.2 BIAW was founded in the early 1950s and has approximately 13,500 members. It is located in Olympia, Washington. Members are required to first join one of 15 local builder associations. BIAW has lobbied on behalf of its members since the 1960s. BIAW has operated a political committee, the Washington Affordable Housing Council (WAHC), since the 1970s. BIAW states its primary purpose is to provide services to its members, including assistance to local builder associations in recruiting new members.
- 2.3 The following 15 local home builders associations are affiliated with BIAW:
- Building Industry Association of Clark County;
 - Central Washington Home Builders Association;
 - Jefferson County Home Builders Association;
 - Master Builders Association of King and Snohomish Counties;
 - Home Builders Association of Kitsap County;
 - Lower Columbia Contractors Association;
 - North Central Home Builders Association;
 - North Peninsula Building Association;
 - Olympia Master Builders;
 - Master Builders Association of Pierce County;
 - San Juan Builders Association;
 - Skagit-Island Counties Builders Association;
 - Spokane Home Builders Association;
 - Home Builders Association of Tri-Cities; and
 - Building Industry Association of Whatcom County.
- 2.4 The 2008 Senior Officers for BIAW are: Brad Spears, President; Daimon Doyle, Immediate Past President; Kyle LaPierre, First Vice President; Linda Mosier-Vaudt, Second Vice President; Matthew Clarkson, Treasurer; and Juli Bacon, Secretary. BIAW's daily operations are carried out by staff members located in Olympia.
- 2.5 BIAW, through its wholly owned subsidiary, BIAW-MSA, conducts the Return on Industrial Insurance (ROI) Program. BIAW provides an Education Program to its members on construction and business related issues. It also provides legal support through a Legal Program, and offers a Health Insurance and Safety Assistance Program.

- 2.6 The BIAW Mission Statement states that BIAW is dedicated to ensuring and enhancing the vitality of the building industry for the benefit of its members and the housing needs of the citizens. It says, to accomplish this purpose, the Association's primary focus is to interact with the legislature and regulatory, judicial and executive agencies of Washington's government.

BIAW Member Services Corporation

- 2.7 BIAW-MSA is a wholly owned subsidiary of BIAW. It is a for-profit corporation formed by BIAW in 1993. BIAW-MSA was created to run the ROI Program for BIAW members who choose to participate in the program. The ROI program is a voluntary workers' compensation insurance program that provides services for 6,000 BIAW members who participate in the program and who pay \$180 million in annual premiums to the Washington State Department of Labor & Industries (L&I).

Return on Industrial Insurance (ROI) Program

- 2.8 The ROI program is also known as the Retrospective Rating Program or the Retro program. Employers who insure their workers through compensation insurance obligations with L&I and meet the Retro program requirements may participate in a group Retro program. If a group Retro program improves its overall safety rating, the members of the group are entitled to an adjustment or refund of premiums paid to L&I. BIAW-MSA is also responsible for paying additional premium assessments to L&I that result from high workers' claims. The Retro program administered by BIAW-MSA has been able to generate premium refunds for participating companies because of improved workplace safety, employee training, and successful injured worker outcomes.
- 2.9 BIAW-MSA has adopted insurance underwriting standards in an effort to reduce group claims for BIAW members participating in the Retro program. Refunds have averaged 25 percent of premiums paid in recent years. About half of BIAW's 13,500 members participate in the Retro program. The remaining members either elect not to participate in the Retro program, or fail to meet the criteria established by L&I for participation.
(Exhibit 2, Response to Complaint)
- 2.10 On January 1, 1994, the Washington Builders Benefit Trust (Benefit Trust) was established for the purpose of holding premium refunds until they are distributed.
(Exhibit 3)
- 2.11 When L&I issues premium refunds, they are initially held in the Benefit Trust. After final adjustments are made, the funds are transferred to the BIAW-MSA general fund for distribution. Eighty percent is held for the benefit of participating members. From this 80 percent, refund checks are made payable to each member, and are sent by BIAW-MSA to the local builder associations for distribution to the individual members. Of the remaining 20 percent, one half (10 percent of premium refunds) is returned to the local

associations for association use, and one half (10 percent of premium refunds) is retained by BIAW-MSA for administration of the program.

- 2.12 The 10 percent that is retained by BIAW-MSA includes a built-in profit margin, and is known as the "Marketing Assistance Fees or (MAF)." The Retro program refund, or MAF, is held in BIAW-MSA's general account and is accounted for as a separate revenue line item.
- 2.13 On an annual basis, BIAW-MSA also receives an amount equal to 1.5 percent of premiums paid into the Retro program. The fee is paid by individual builder companies directly to BIAW-MSA. This is referred to as an "enrollment fee" and is deposited in BIAW-MSA's general account.
- 2.14 BIAW senior officers are also officers of BIAW-MSA. The daily operations of BIAW-MSA are carried out by BIAW staff members located in Olympia. The salaries and benefits for staff members working for BIAW and BIAW-MSA are prorated between the two entities based on the duties and time spent for each entity. In addition, some BIAW staff members provide assistance to affiliated political committees.

Affiliated Political Committees

- 2.15 BIAW and BIAW-MSA are affiliated with the Washington Affordable Housing Council, ChangePAC, It's Time for a Change, and Walking for Washington. These groups are registered political committees and have participated in Washington State elections for the past several years.

III. Findings

Solicitation of Political Contributions by BIAW-MSA

- 3.1 BIAW-MSA provides an annual estimate for each local builder association of the anticipated Retro program refund that will be sent to the association. This refund represents 10 percent of the total L&I Retro program refund for a given year, and is returned to each local association for its use. In 2007, it became apparent that the actual refunds would be much larger than the estimates.
- 3.2 BIAW-MSA accountant Sou Chiam prepared a chart titled "Estimated 2007 Marketing Assistance Fees (MAF)". (**Exhibit 4**) The chart shows the estimated and actual refunds in 2007 for each of the 15 local builder associations. The estimated refund for the 15 local associations was \$3,398,931.34, while the actual refund was \$4,869,831.73, resulting in refunds \$1,470,900.28 over the estimate.

3.3 As a result of this overage, Daimon Doyle, 2007 BIAW President, said BIAW-MSC officers decided to approach the 15 local associations at their Winter Board meeting held March 7, 2007 and ask them to donate the excess Retro funds for 2008 political campaigns. (Exhibit 5) The BIAW-MSC Officers decided that Mr. Doyle or other Senior Officers would personally visit each local builder association "to ask them to donate their excess unanticipated retro funds to ChangePAC for the 2008 Governor's election."

3.4 Mr. Doyle visited several local builder associations between March 7 and July 10, 2007, and requested that the associations donate the excess Retro funds to ChangePAC. In addition, Jeff Hansel, 2006 BIAW President, Kyle LaPierre, 2007 BIAW Treasurer, and Brad Spears, 2007 BIAW Vice-President and 2008 President made similar visits to local associations between March and May of 2007 and requested that the excess Retro refunds be donated to ChangePAC.

3.5 Following the solicitations, eleven of the 15 local builder associations authorized BIAW-MSC to retain a portion of their Retro program refund.

3.6 BIAW-MSC sent refund checks on July 5, July 11, July 13, and July 23, 2007, payable to the 15 local associations, totaling \$4,285,304.20.

3.7 Between July 5 and July 23, 2007, BIAW-MSC retained \$584,527.53 from 11 local builder associations for the purpose of donating the funds to ChangePAC, as needed, on behalf of the local associations for 2008 electoral activities. The funds were retained with the permission of the local builder associations, and are listed below:

• Building Industry Association of Clark County	\$122,649.59
• Central Washington Home Builders Association	\$ 65,477.98
• Home Builders Association of Tri-Cities	\$ 65,941.92
• Lower Columbia Contractors Association	\$ 11,562.63
• North Peninsula Building Association	\$ 12,398.86
• Olympia Master Builders	\$103,600.57
• San Juan Builders Association	\$ 2,846.97
• North Central Home Builders Association	\$ 37,453.97
• Skagit-Island Counties Builders Association	\$ 26,499.83
• Spokane Home Builders Association	\$126,095.21
• Building Industry Association of Whatcom County	<u>\$ 10,000.00</u>
Total	\$584,527.53

3.8 The four local builder associations that did not authorize BIAW-MSC to retain a portion of their 2007 Retro program refunds were:

- Home Builders Association of Kitsap County
- Jefferson County Home Builders Association

- Master Builders Association of King and Snohomish Counties
- Master Builders Association of Pierce County

Examples of Solicitation by BIAW-MSC

3.9 BIAW-MSC provided copies of three emails received by Tom Kwieciek, BIAW-MSC Administrator, from local builder associations. (See Exhibit 6) The emails demonstrate that these three associations responded to the BIAW-MSC solicitation and agreed to donate a portion of their Retro program refund for use in the 2008 Governor's campaign. A portion of the e-mails state the following:

- Joel White, Executive Officer of the Spokane Home Builders Association: Mr. White stated in part in his July 2, 2007 e-mail: **"Our Board of Directors authorized BIAW to keep any proceeds from the ROII program over the \$275,000 we budgeted in 2007 to be used for the Governor's race in 2008..."**
- Bill Quehrn, Building Industry Association of Whatcom County: Mr. Quehrn stated in part in his July 11, 2007 e-mail: **"The vote was to allow BIAW to withhold \$10,000 from our current check... The enthusiasm over another shot at the governor's office by Dino was unanimously welcomed."**
- Marc Straub, Executive Officer of the North Central Home Builders Association: Mr. Straub stated in part in his July 2, 2007 e-mail: **"Based on my calculations, I believe that our contribution should be \$37,454 – which is 31.6% of our total MAF."**

3.10 Jeff Danks, Controller of the Master Builders Association of King & Snohomish Counties (MBA-K&S) confirmed in an e-mail:

"I was present at the board meeting when Mr. Doyle made his solicitation to the MBA. The MBA was asked to agree to give back to BIAW any amount from the 2007 ROII refund above what was originally expected and that money was to be used for the 2008 Governors race."

3.11 The April 30, 2007 Minutes of the MBA-K&S Board of Directors meeting state that BIAW President Daimon Doyle was in attendance and provided information about the 2007 Legislative Session. The minutes also state:

"Daimon then went on to explain the reason he was in attendance, which was to ask the Association to donate the excess proceeds of the ROII return to BIAW's election fund to support a gubernatorial candidate in 2008. He discussed fundraising for the upcoming election year 2008, and stated that the senior officers introduced a resolution asking each of the 15 locals to donate the excess retro funds beyond what they budgeted to the gubernatorial fund..."

Expenditure of Political Contributions Retained by BIAW-MSC

3.12 After BIAW-MSC received notice of the 45 day letter, on August 20, 2008, BIAW-MSC sent \$584,527.53 to ChangePAC, with a list of 11 local builder associations and the amount of each association's contribution. BIAW-MSC informed ChangePAC that the contributions were being made by the 11 local builder associations on August 20, 2008.

Disclosure of Political Contributions Retained by BIAW-MSC

3.13 On August 21, 2008, ChangePAC filed PDC form C-3 and reported receiving contributions from 11 local builder associations on August 20, 2008, totaling \$584,527.53. (**Exhibit 7**)

3.14 Two local associations, the Home Builders Association of Kitsap County and the Skagit-Island Counties Builders Association, made contributions directly to ChangePac after receiving their Retro program refund checks. ChangePAC reported receiving a \$20,000 contribution from the Home Builders Association of Kitsap County on February 27, 2008, and a \$6,347.82 contribution from the Skagit-Island Counties Builders Association on January 2, 2008.

Purpose, Funding Sources, and Activities of Building Industry Association of Washington

3.15 BIAW is a statewide trade association of builders, organized as a non-profit organization, with 15 affiliated local home builder associations. BIAW states that its primary purpose is to ensure and enhance the vitality of the building industry for the benefit of its members and the housing needs of the citizens. To accomplish this purpose, BIAW interacts with all branches of government. BIAW's Director of Political Finance and Fiscal Policy and its Political Affairs Director are registered lobbyists.

3.16 In addition to representing the interests of its members before government, BIAW assists its local builder associations in recruiting new members. BIAW also offers a variety of programs and services for its members including educational opportunities, regional conferences on construction related issues, and a newsletter. It provides legal support, and offers Health Insurance and Safety Assistance Programs.

3.17 BIAW's primary funding sources are:

- Membership Dues;
- Health Insurance fees;
- Education Program Revenue; and
- Interest and Investment Income.

3.18 PDC staff reviewed the revenue and expenditures for BIAW for 2006, 2007 and the first six months of 2008. (Exhibit 8) The totals are summarized below:

BIAW Revenue & Expenditures: 2006-2008

	CY 2006	CY 2007	CY 2008 (thru 6/30/08)	Totals
Total Revenue	\$ 2,800,741	\$ 2,685,061	\$ 1,212,020	\$ 6,697,822
Total Expenditures	\$ 1,147,314	\$ 1,253,384	\$ 526,968	\$ 2,927,666
Excess Revenue Over Expenditures	\$ 1,653,427	\$ 1,431,677	\$ 685,052	\$ 3,770,156

- 3.19 BIAW does not solicit or receive contributions to support or oppose candidates or ballot propositions, and does not contribute to candidates or political committees.
- 3.20 On three occasions, BIAW sent letters to its members, asking that funds be sent directly to ChangePAC. (Exhibit 2, p.19-31) The letters were critical of the Governor and went on to highlight differences between Dino Rossi and Governor Gregoire. Because the letters were paid for by BIAW and sent to its members, the value of the mailings was not a contribution to ChangePAC.

Primary Activities of BIAW Member Services Corporation (BIAW-MS):

BIAW-MS Revenue & Expenditures: 2006-2008

- 3.21 BIAW-MS pays for staff members who provide support for reportable independent expenditures, electioneering communications, and contributions to political committees. In these instances, PDC reports show BIAW as the entity providing the support. PDC reports should identify BIAW-MS as providing the support.
- 3.22 The Retro program enrollment fees and the revenue received for 10 percent of the Retro refunds represented more than 90 percent of the revenue received by BIAW-MS for calendar years 2006, 2007, and the first six months of 2008. Expenditures during this period supported a variety of programs and activities. The revenue and expenditures for BIAW-MS were reviewed for 2006, 2007 and the first six months of 2008. (Exhibit 9) The totals are summarized below:

BIAW-MS Total Revenue & Expenditures

	CY 2006	CY 2007	CY 2008 (thru 6/30/08)	Totals
Total Revenue	\$ 6,614,049	\$ 8,603,069	\$ 7,130,938	\$ 22,348,056
Total Expenditures	\$ 6,233,223	\$ 6,067,937	\$ 4,009,580	\$ 16,310,740
Excess of Revenue over Expenditures	\$ 380,827	\$ 2,535,131	\$ 3,121,358	\$ 6,037,316

Analysis of BIAW-MS C Expenditures

	CY 2006	CY 2007	CY 2008 (thru 6/30/08)	Totals	%
Political (includes contributions to PAC's, Independent Expend. & Electioneering Comm.)	\$1,266,163	\$ 198,199	\$ 1,043,186	\$ 2,507,548 (1)	15.4% (1)
Political Education (includes candidate campaign schools and member communications)	\$ 44,691	\$ 27,698	\$ 14,007	\$ 86,396	.5%
Employee Costs (includes wages, employee benefits & taxes, account/legal, employee expenses)	\$2,590,980	\$2,881,683	\$ 1,476,883	\$ 6,949,546	42.6%
Publications (includes newsletters, printing, postage, PR and Issue Education)	\$ 293,338	\$ 408,965	\$ 173,409	\$ 875,712	5.4%
Member Services (includes Member Promo, Award Recognition, BIAW Scholarship, Nat'l/Sr. Officer, Marketing, Dues/Subscriptions, Board & Comm. and President Expense)	\$ 444,269	\$ 464,241	\$ 212,928	\$ 1,121,438	6.9%
Legislative Strategy/Policy	\$ 68,770	\$ 50,116	\$ 62,617	\$ 181,503	1.1%
Fixed Overhead Costs (includes Building maintenance and Depreciation costs, Telephone, DB maintenance, Misc. and Supplies)	\$ 320,600	\$ 400,053	\$ 172,319	\$ 892,972	5.5%
Legal	\$ 284,680	\$ 50,967	\$ 0	\$ 335,647	2.0%
Taxes (includes Provision for Income Tax and B & O Taxes)	\$ 919,730	\$1,586,016	\$ 854,230	\$ 3,359,976	20.6%
Total Expenditures	\$6,233,221	\$6,067,937	\$ 4,009,579	\$16,310,737	100%

(1) PDC staff determined that an additional \$52,376 should be allocated to the "Political" category from other categories for staff time and miscellaneous expenses that have been reported as in-kind contributions.

- 3.23 The analysis of expenditures shows that for the period January 1, 2006 through June 30, 2008, 83.8 % of expenditures were for administering the Retro program and 16.2% were for electoral campaign activity in the form of monetary and in-kind contributions.
- 3.24 BIAW-MSA funds are used to make political contributions and expenditures, and to provide staff time to engage in political activities. From January 1, 2006 through June 30, 2008, political expenditures included contributions to political committees, electioneering communications, independent expenditures and other political advertisements.
- 3.25 The Political Education category of the expenditures included candidate campaign schools and member communications. BIAW-MSA usually conducts two campaign schools during even-numbered years, and one during odd-numbered years. The cost for each campaign school is approximately \$12,000. Member communications are made using both BIAW-MSA and BIAW funds. Member communications sometime include information about candidates and ballot propositions.
- 3.26 BIAW-MSA makes monetary contributions directly to other political committees, such as ChangePAC, Washington Affordable Housing Council, and Walking for Washington from its general treasury. In addition, during the 2008 election cycle, BIAW-MSA made three direct expenditures, two for yard signs supporting a candidate for Governor, totaling \$28,799, and one for billboards in Eastern Washington supporting a candidate for Governor, totaling \$168,250. All three BIAW-MSA expenditures were reported as independent expenditures on the Monthly Lobbyist Expense Reports (PDC Form L-2) of BIAW's Political Affairs Director, and on an Independent Expenditure Report (PDC Form C-6) for BIAW-MSA.
- 3.27 Several political committees affiliated with BIAW-MSA report receiving in-kind contributions from BIAW-MSA for the value of staff time and other services in supplying administrative support to the committees. Staff time includes the pro-rated value of the salaries of BIAW-MSA's Political Affairs Director and Director of Political Finance and Fiscal Policy, as well as the value of legal counsel support.
- 3.28 PDC staff reviewed in-kind contributions reported on PDC lobbying reports of BIAW's Political Affairs Director for the period January 1, 2006 through June 30, 2008. During the time reviewed, BIAW-MSA disclosed making a total of \$81,454 in in-kind contributions to political committees, as follows:
- | | |
|---------------------------------|----------|
| • Walking for Washington | \$70,152 |
| • ChangePAC | \$ 7,025 |
| • WA Affordable Housing Council | \$ 4,277 |
| Total | \$81,454 |
- 3.29 The \$81,454 reported as in-kind contributions to Walking for Washington, ChangePAC, and WA Affordable Housing Council are described as being for staff time, overhead

costs, auditor lists, data files, literature, equipment, laptop, telephone and palm cards, promotional items, and food and beverages. The portion of the \$81,454 allocable to staff-time/miscellaneous is as follows:

• Walking for Washington	\$42,324
• ChangePAC	\$ 5,775
• WA Affordable Housing Council	<u>\$ 4,277</u>
Total	\$52,376

3.30 BIAW provided a chart for 2006, 2007 and 2008, listing BIAW and BIAW-MS C employees, and the percentages of their salaries paid for by each organization. **(Exhibit 10)**

3.31 Employees in the BIAW-MS C Retro program include Field Representatives, full-time Claims Managers, and support staff. The duties of the Field Representatives include visiting member employers' offices and worksites to help with job classifications and audits, and to explain loss control strategies and help with compliance issues. Employees also conduct mock safety inspections and advise on accident protection. Claims Managers work with L&I, doctors, and vocational and rehabilitation experts. They also answer participants' questions and provide advice on claims management. Following is a summary of revenue, expenditures, employees, and contributions for BIAW-MS C.

2008 (January 1-June 30, 2008):

Revenue

3.32 During the first six months of 2008, BIAW-MS C revenue totaled \$7,130,938 which consisted of: \$4,384,510 in Retro Income or Marketing Assistance Fees (61.5%); \$2,649,610 in Enrollment Income (31.2%); and \$96,824 for Interest Income (1.4%).

Expenditures

3.33 2008 BIAW-MS C Major Expenditure Amounts & Percentage of Total Expenditures by Categories (January 1-June 30, 2008):

• Wages/Employee Benefits & Taxes	\$ 1,476,883 or 36.8%
• Political	\$ 1,043,186 or 26.0%
• Taxes	\$ 854,230 or 21.3%
• Member Services	\$ 212,928 or 5.3%
• Publications	\$ 173,409 or 4.3%
• Fixed Overhead Costs	\$ 172,319 or 4.3%
• Other	<u>\$ 76,625 or 2.0%</u>
Totals	\$ 4,009,580 or 100%

Employees

3.34 During the first six months of 2008, BIAW-MSA paid a portion of the salaries for 46 employees as noted below:

- 14 Claims Representatives: (All-paid 100%);
- 9 Administrative employees: (2-paid 100%; 6-paid 80%; 1-paid 70%);
- 4 Directors: (2-paid 70%; 2-paid 60%);
- 3 Managers: (1-paid 100%; 1-paid 90%; 1-paid 80%);
- 3 Safety employees: (All-paid 100%);
- 3 Legal Department employees: (1-paid 75%; 2-paid 60%);
- 3 Legislative Work employees: (1-paid 70%; 2-paid 60%);
- 3 Education employees: (2-paid 40%; 1-paid 25%);
- 2 Marketing employees: (Both-paid 100%);
- 1 Analyst: (Paid 70%);
- 1 Local Association Rep: (Paid 30%).

Contributions

3.35 During the first six months of 2008, monetary and in-kind contributions made by BIAW-MSA totaled \$1,010,798, and included \$995,785 in monetary contributions and \$15,013 for in-kind contributions as follows:

• ChangePAC: 3 monetary contributions totaling	\$955,000
• Walking for WA: 1 monetary contribution	\$ 20,000
• Walking for WA: 8 in-kind contributions totaling	\$ 11,838
• ReduceCongestion.org: 1 monetary contribution	\$ 10,000
• United for WA: 1 monetary contribution	\$ 7,500
• ChangePAC: 5 in-kind contributions totaling	\$ 3,175
• Dino Rossi: 2-monetary contributions totaling	\$ 3,000

2007:

Revenue

3.36 During 2007, BIAW-MSA revenue totaled \$8,603,069 which consisted of: \$5,454,359 in Retro Income (63.4%); \$2,525,116 in Enrollment Income (29.4%); \$345,369 for Interest Income (4%); \$277,640 in Miscellaneous Income (3.2%); and \$585 in Rental Income from the McCleary Mansion.

Expenditures

3.37 2007 BIAW-MSA Major Expenditure Amounts & Percentages by Categories:

• Wages/Employee Benefits & Taxes	\$ 2,881,683 or 47.5%
• Taxes	\$ 1,586,016 or 26.1%
• Member Services	\$ 464,241 or 7.7%
• Publications	\$ 408,965 or 6.7%
• Fixed Overhead Costs	\$ 400,053 or 6.6%
• Political	\$ 198,199 or 3.3%
• Other	\$ 128,780 or 2.1%
Totals	\$ 6,067,937 or 100%

Employees

3.38 During 2007, BIAW-MSA paid a portion of the salaries for 42 employees as noted below:

- 12 Claims Representatives: (All-paid 100% by MSA);
- 9 Administrative employees: (2-paid 100%; 6-paid 80%; 1-paid 70%);
- 4 Directors: (2-paid 70%; 2-paid 60%);
- 3 Managers: (1-paid 100%; 1-paid 90%; 1-paid 80%);
- 2 Safety employees: (All-paid 100%);
- 3 Legal Department employees: (2-paid 70%; 1-paid 60%);
- 3 Legislative Work employees: (1-paid 70%; 2-paid 60%);
- 3 Education employees: (All-paid 50%);
- 2 Marketing employees: (All paid 100%);
- 1 Analyst: (Paid 60%).

Contributions

3.39 During 2007, monetary and in-kind contributions made by BIAW-MSA totaled \$147,896, and included \$123,600 in monetary contributions and \$24,296 for in-kind contributions as follows:

- Walking for WA: 4 monetary contributions \$105,000
- Walking for WA: 11 in-kind contributions \$ 24,046
- WA State Republican Party – Exempt funds \$ 10,000
- United for WA: one monetary contribution \$ 7,500

2006:

Revenue

3.40 During 2006, BIAW-MSA revenue totaled \$6,614,049 which consisted of: \$3,917,641 in Retro Income (59.2%); \$2,261,198 in Enrollment Income (34.2); \$248,983 for Interest Income (3.8%); \$176,286 in Miscellaneous Income (2.7%); and \$9,940 in Rental Income from the McCleary Mansion.

Expenditures

3.41 2006 BIAW-MSC Major Expenditure Amounts & Percentages by Categories:

• Wages/Employee Benefits & Taxes	\$ 2,590,980 or 41.6%
• Political	\$ 1,266,163 or 20.3%
• Taxes	\$ 919,730 or 14.8%
• Member Services	\$ 444,269 or 7.1%
• Fixed Overhead Costs	\$ 320,600 or 5.1%
• Publications	\$ 293,338 or 4.7%
• Legal	\$ 284,680 or 4.6%
• Other	\$ 113,463 or 1.8%
Totals	\$ 6,233,223 or 100%

Employees

3.42 During 2006, BIAW-MSC paid a portion of the salaries for 42 employees as noted below:

- 13 Claims Representatives: (All-paid 100%);
- 9 Administrative employees: (2-paid 100%; 6-paid 80%; 1-paid 70% by MSC);
- 4 Directors: (1-paid 80%; 1-paid 70%; 2-paid 60%);
- 3 Managers: (1-paid 100%; 1-paid 95%; 1-paid 80%);
- 2 Safety employees: (All-paid 100%);
- 4 Legal Department employees: (1-paid 80%; 1-paid 75%; 2-paid 60%);
- 3 Legislative Work employees: (1-paid 80%; 2-paid 60%);
- 3 Education employees: (1 paid 60%; 2-paid 50%);
- 1 Marketing employee paid 100%.

Contributions

3.43 During 2006, monetary and in-kind contributions made by BIAW-MSC totaled \$1,195,787, and included \$916,080 in monetary contributions and \$279,707 for in-kind contributions as follows:

• ChangePAC: 3 monetary contributions totaling	\$750,000
• WA State Republican Party – Exempt funds	\$235,000
• Walking for WA: 4 monetary contributions totaling	\$118,480
• Walking for WA: 24 in-kind contributions totaling	\$ 35,679
• ChangePAC: 4 in-kind contributions totaling	\$ 4,750
• WA Affordable Housing Council: 2 in-kind contributions.	\$ 4,277

3.44 In all matters relating to this investigation, the Building Industry Association of Washington and the BIAW Member Services Corporation has fully cooperated.

IV.
Scope

- 4.1 Public Disclosure Commission (PDC) staff reviewed the 45-day citizen action letter filed by Knoll D. Lowney and Michael Withey.
- 4.2 PDC staff reviewed the initial response submitted on August 6, 2008, by Timothy Harris, Legal Counsel for the Building Industry Association of Washington (BIAW) and the BIAW Member Services Corporation. The response included 3 solicitation letters sent by BIAW dated March 21, 2008, May 19, 2008, and July 21, 2008, sent to BIAW and Master Builder members soliciting funds for ChangePAC. In addition, the response included declarations from the following individuals:
- Tom McCabe, BIAW Executive Vice-President;
 - Sou Chiam, accountant for BIAW and BIAW-MSC; and
 - Tom Kwieciak, BIAW-MSC Insurance Programs Administrator.
- 4.3 PDC staff reviewed documents located on the BIAW website describing the BIAW: Mission Statement; Return on Industrial Insurance (ROI) Program (operated by BIAW-Member Services Corporation); Education Program, Legal Program, Health Insurance Program, and Safety Assistance Program.
- 4.4 PDC staff reviewed the BIAW Member Services Corporation By-Laws, Certificate of Incorporation, and Master Business Application.
- 4.5 PDC staff reviewed the Annual Report of Employer's Lobbying Expenses (PDC Form L-3) filed by BIAW for calendar years 2006 and 2007.
- 4.6 PDC staff queried and reviewed the PDC Contribution and Expenditure databases for 2006 to the present for the following political committees: Washington Affordable Housing Council; ChangePAC; and Walking for Washington.
- 4.7 PDC staff queried and reviewed the PDC Contribution and Expenditure databases for 2006 to the present for contributions reported as being received by candidates and other political committees from BIAW-MSC.
- 4.8 PDC staff conducted Interviews Under Oath on August 25, 2008, at the McCleary Mansion in Olympia for the following individuals:
- Sou Chiam, accountant for BIAW and BIAW-MSC; and
 - Tom Kwieciak, BIAW-MSC Insurance Programs Administrator.

- 4.9 PDC staff reviewed additional documentation provided by BIAW and BIAW-MSA that included the following:
- Statements of Revenue and Expenditures for BIAW and BIAW-MSA for calendar years 2006 and 2007, and the first six months of 2008;
 - A listing of BIAW and BIAW-MSA employees for 2006 to 2008 including employee job titles, percentages of employee salaries paid by each entity;
 - Washington Affordable Housing Council By-Laws and policies;
 - BIAW Retro program participants' enrollment agreement;
 - Washington Builders Benefit Trust: Declaration of Trust;
 - BIAW Just 10% letter.
- 4.10 PDC staff reviewed documentation provided by BIAW on August 28, 2008, that included copies of three e-mails sent from local builder associations to BIAW-MSA regarding retaining a portion of local builder associations' Retro program refunds to make contributions to ChangePAC, and the names and telephone numbers of local builder associations' Executive Directors.
- 4.11 PDC staff reviewed additional documentation provided by BIAW on August 28, 2008, including the declaration of Daimon Doyle, 2007 BIAW President.

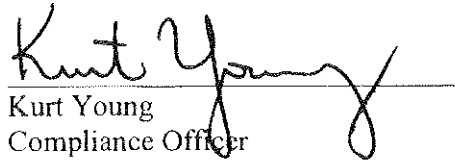
V.

Laws, Administrative Rules & PDC Interpretations

- 5.1 **RCW 42.17.020(39)** defines a "political committee" as "*any person (except a candidate or an individual dealing with his or her own funds or property) having the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition.*"
- 5.2 **RCW 42.17.040** requires every political committee to timely register with the Public Disclosure Commission.
- 5.3 **RCW 42.17.080 and 090** require political committees to file timely, accurate reports of contributions and expenditures. The reports are filed monthly following an excess of \$200 in contribution or expenditure activity, except during the five months before the election, during which time summary reports of receipts and expenditures are required to be filed 21 days and again 7 days before each election in which the committee is participating. Any contributions received and expenditures made prior to the date of registration must be disclosed on the day the registration is filed. Reports of contributions must include the name and address of any contributor who has given more than \$25 in the aggregate.

5.4 **PDC Interpretation 07-02** "Primary Purpose Test Guidelines" summarizes the "Primary Purpose test" as it relates to "political committees" under Washington State law. It takes into account AGO 1973, June 8, 1973, No. 14; State v. Evans, and Evergreen Freedom Foundation v. Washington Education Association.

Respectfully submitted this 11th day of September, 2008.


Kurt Young
Compliance Officer

List of Exhibits

- | | |
|-------------------|--|
| Exhibit 1 | July 25, 2008 Citizen Action Letter filed by Knoll D. Lowney and Michael Withey |
| Exhibit 2 | August 6, 2008, response to Citizen Action Letter from Timothy Harris, Legal Counsel for BIAW |
| Exhibit 3 | Washington Builders Benefit Trust January 1, 1994 Declaration of Trust |
| Exhibit 4 | BIAW-MSA chart entitled "Estimated 2007 Marketing Assistance Fees" Trust |
| Exhibit 5 | Declaration of Daimon Doyle, 2007 BIAW President |
| Exhibit 6 | E-mails from local builder associations regarding BIAW-MSA solicitation to retain portion of Retro refunds for ChangePAC |
| Exhibit 7 | C-3 Report received August 21, 2008 from ChangePAC showing contributions from local builder associations |
| Exhibit 8 | BIAW Statements of Revenue and Expenditures for calendar years 2006, 2007, and first six months of 2008 |
| Exhibit 9 | BIAW-MSA Statements of Revenue and Expenditures for calendar years 2006, 2007, and first six months of 2008 |
| Exhibit 10 | Chart listing BIAW and BIAW-MSA employees and the percentages of salaries paid by each organization |