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Description of document: Federal Election Commission (FEC) emails resulting from an electronic search of emails TO and/or FROM and/or CC selected individuals which contain the words COMMISSIONER and APPOINT, 2019

Requested date: 22-July-2019

Release date: 08-January-2020

Posted date: 23-November-2020

Source of document: FOIA Request
Federal Election Commission
Attn: FOIA Requester Service Center
1050 First Street, NE
Washington, DC 20463
Fax: 202-219-1043
Email: FOIA@fec.gov

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From: Katrina Sutphin <ksutphin@fec.gov>

Sent: Wed, Jan 8, 2020 2:05 pm

Subject: Your Freedom of Information Act Request to the Federal Election Commission
FOIA [2019-089]

VIA ELECTRONIC MAIL

Re: Your Freedom of Information Act Request to the Federal Election Commission
FOIA [2019-089]

This email is in response to the request you filed for information under the Freedom of Information Act (FOIA) dated and received by the Federal Election Commission's (FEC) FOIA Requester Service Center on July 22, 2019. Specifically, you requested:

A copy of an electronic search for emails resulting from an electronic search of email TO and/or FROM and/or CC the following individuals: Alec Palmer, Kate Higginbotham, Patricia Orrock, John Quinlan, Judith Ingram, Duane Pugh for emails which contain the words COMMISSIONER and APPOINT.

We have searched our records and located responsive documents consisting of a total of 112 pages. We are releasing these documents to you without redaction. We have withheld 523 pages of responsive records in their entirety under FOIA Exemption 5. Please note that our response to your request does not include documents or publications publicly available on our website or compilations of publicly available news articles. Accordingly, your FOIA request has been granted in part.

The responsive documents which are included in this response are also available, for your convenience, on our website at the following link:

<https://www.fec.gov/about/committee-on-house-administration-april-2019-questions/>

Exemption 5 protects from disclosure inter- or intra-agency memoranda or letters that would not be available by law to a party other than an agency in litigation with the agency, including documents covered by the attorney work-product, deliberative process, and attorney-client privileges. See 5 U.S.C. § 552(b)(5).

You may contact our FOIA Public Liaison, Christine McClarin at (202) 694-1485, for any further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

You may appeal any adverse FOIA determination. Any such appeal must be filed in writing and should follow the guidelines set forth in 11 C.F.R. § 4.8. If you have any questions, please contact the FOIA Requester Service Center at ogis@nara.gov, or (202) 694-1650.

Sincerely,
Katrina Sutphin

From:Duane Pugh

To:Alec Palmer ; Lisa Stevenson ; John Quinlan ; Patricia Orrock ; Katie Higginbothom ; Kevin Deeley ; Neven Stipanovic ; Dayna Brown ; Laura Sinram ; Lauren H Lien ; Krista Roche ; Rhiannon Magruder ; Debbie Chacona ; Peter Blumberg ; Stephen Gura ; Lorenzo Holloway ; Amy Kort ; Rebecca Hough ; Gilbert A. Ford ; Robert Kahn ; Robert Knop ; Lawrence Calvert ; Jeff Jordan ; Tony Buckley ; Kevin P. Hancock ; Gregory Baker ; Amy Pike ; Kristina Portner ; Carla Smith ; Erica Lee ; Kendrick Smith ; Sarah Rozensky ; Theodore Lutz

Sent:2019-05-02T15:28:59.0000000Z

Subject:Many thanks

Many thanks to this entire team of folks who contributed greatly to preparing the Commission's response to its oversight committee's many questions! It was a genuine team effort, with folks throughout the agency turning away from their normal duties, often to prepare a rushed and yet scrutinized answer. Each of your efforts contributed to the fine products attached, and I think we can all be proud of the work we did in compiling them. I'm sure there were others who also contributed, and I ask you to thank them for me too.

Thanks,
Duane

J. Duane Pugh Jr.
Director
Congressional, Legislative and Intergovernmental Affairs
FEDERAL ELECTION COMMISSION
dpugh@fec.gov
(202) 694-1002



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

OFFICE OF THE CHAIR

May 1, 2019

The Honorable Zoe Lofgren
Chairperson
Committee on House Administration
1309 Longworth House Office Building
Washington, D.C. 20515

The Honorable Rodney L. Davis
Ranking Member
Committee on House Administration
1309 Longworth House Office Building
Washington, D.C. 20515

Dear Chairperson Lofgren and Ranking Member Davis,

The Federal Election Commission welcomes the oversight of the Committee on House Administration. We look forward to working with the Committee in continuing to improve our administration of the Federal Election Campaign Act and related statutes.

Please find enclosed the Federal Election Commission's responses to the questions posed in your letter of April 1, 2019. Electronic copies of the attachments referenced in our response are also enclosed.

You will find that one document, an agenda for a Regulations Committee meeting on March 5, 2014, has some material redacted. The FEC will provide a complete copy of that document to the Committee, and we request that the Committee maintain the confidentiality of that material due to the pendency of that particular matter.

We hope you find the enclosed information helpful. For further information, please contact me or the Commission's Director of Congressional Affairs, Duane Pugh, at (202) 694-1002 or dpugh@fec.gov.

On behalf of the Commission,

A handwritten signature in blue ink that reads "Ellen L. Weintraub".

Ellen L. Weintraub
Chair

Enclosure



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

RESPONSES TO QUESTIONS FROM THE COMMITTEE ON HOUSE ADMINISTRATION MAY 1, 2019

1. *Why has the position of General Counsel been vacant or filled in an acting capacity since July 2013?*

The Commission has a General Counsel in all but title. The Deputy General Counsel serves with distinction as Acting General Counsel. She commands the respect of her staff and enjoys the support of the full Commission.

According to recruiting specialists working with the Commission, the salary limit placed on the General Counsel by the FECA makes attracting a strong pool of applicants to these positions more challenging. The FECA currently specifies that the General Counsel is to be paid Level V of the Executive Schedule. This position supervises personnel at the GS-15 and Senior Level pay scales, which often provide higher salaries than V of the Executive Schedule.¹ The General Counsel has significant responsibilities and oversight duties with respect to both administrative and legal areas, as well as management over approximately one third of agency personnel. Effectively, the General Counsel runs a small law firm within the agency. The appointment and retention of this key leader has been identified by the Inspector General as ongoing management and performance challenges to the Commission in the 2018, 2017, 2016, 2015 and 2014 Agency Financial Reports and in previous Performance and Accountability Reports.²

Because of the challenges in maintaining consistent senior leadership, the Commission unanimously adopted a Legislative Recommendation in 2018, 2017, 2016, 2015, 2014, 2013 and 2011 that urges Congress to address this situation.³ Specifically, the Commission recommends that Congress remove the statutory bar on the FEC's participation in the Senior Executive

¹ The FECA also specifies that the Staff Director be paid at Level IV of the Executive Schedule.

² The Inspector General has also identified the Staff Director's dual roles as an ongoing management and performance challenge in 2018, 2017, 2016, 2015 and 2014 Agency Financial Reports and stability in this position in previous Performance and Accountability Reports.

³ The current Legislative Recommendation to provide the FEC with authority to create SES positions would make a number of positions eligible for SES consideration, including the General Counsel, Staff Director, and Inspector General positions. In 2004, the Commission adopted a similar Legislative Recommendation that sought inclusion of the FEC in the SES program and an adjustment of the compensation of the General Counsel. See <https://www.fec.gov/legal-resources/legislation/>.

Service (SES) Program and remove the statutory references to the Executive Schedule in FECA with respect to the General Counsel, so that the General Counsel would be compensated under the same schedule as the Commission's other senior managers. This revision would remedy the current situation where the Commission's top managers are compensated at a lower rate than many of their direct reports, and would ensure that the Commission can retain highly qualified individuals to serve in those positions as well as enable it to remain competitive in the marketplace for Federal executives when filling the current vacancy or when further vacancies arise.

While the Commission awaits a legislative solution to this situation, it has adopted an interim solution. The General Counsel's position is currently filled on an acting basis by a Deputy General Counsel. This has permitted the Commission to maintain needed stability in this key leadership position. Moreover, the Commission has been able to continue to receive the services of a leader who was selected for this position after substantial experience working in positions of significant responsibility for the FEC. The current Acting General Counsel has served the Commission in this capacity since September 2016 after having served the Commission as Deputy General Counsel since November 2012. Were the Commission to appoint the current Acting General Counsel as the Commission's General Counsel, it would entail an over \$20,000 pay cut.

For the reasons stated above, at this time, the Commission is not actively pursuing a permanent appointment for General Counsel. However, the Commission asks that Congress adopt our Legislative Recommendation so that the FEC would be in a position to hire a permanent General Counsel at a salary level commensurate with the job's responsibilities and required qualifications.

2. *What challenges has the Commission faced in hiring a General Counsel?*

Please see the response to question 1 above.

3. *What is the status of hiring a permanent General Counsel, and when do you expect to decide on a hire?*

Please see the response to question 1 above.

4. *Why has the position of Inspector General been vacant since March 2017?*

In 2017, the Commission's former Inspector General, Lynne McFarland, departed the agency after twenty-seven years in the position. Upon her departure, the Deputy Inspector General oversaw the work of the office and provided continuity of operations while the Inspector General position was vacant. During 2018, the Commission made a concerted effort to select and appoint a new Inspector General, and a candidate was selected to fill the Inspector General position in fall of 2018. In December 2018, the candidate accepted the firm job offer, but

subsequently withdrew from consideration in March 2019. Upon this candidate's withdrawal, the Commission reconsidered the remaining applicants on the selection certificate. The Commission ultimately decided not to make a selection from this pool of candidates, and recently posted a new vacancy announcement for the IG position.

5. *How has the lack of an Inspector General affected the Commission, including the simultaneous vacancy of a Deputy Inspector General?*

The Office of the Inspector General (OIG) has reported to the Commission that the absence of an Inspector General (IG), an Acting Inspector General (Acting IG), or Deputy Inspector General (DIG) is limiting OIG's ability to carry out its functions under the IG Act. Some examples provided by the OIG are as follows:

- * **FY 2019 Financial Statement Audit** – It may be difficult to complete the FEC's mandatory annual financial Statement audit as mandated by the Accountability Tax Dollar Act of 2002. The absence of an IG, Acting IG, or DIG prevents approval of the audit and proper contracting procedures to hire an independent accounting firm. In light of this situation, FEC staff, working with current OIG staff, have begun the procurement process for obtaining the services of an independent accounting firm so that an Acting IG will be in a position to select a firm promptly.
- * **DATA Act Audit** – The mandatory DATA Act audit requires an IG, Acting IG, or DIG to approve the necessary audit workpapers.
- * **Open Audits** – The OIG cannot fully complete or open new audits or reviews planned and reported in our FY 2019 workplan without an IG, Acting IG, or DIG to approve audit plans, workpapers, or final reports. The OIG has continued to work on existing audits to the extent possible. Therefore, no audits closed this reporting period.
- * **Investigating Criminal and Administrative Allegations** – The OIG has continued to open hotline and investigations as allegations are forwarded to the office and as required by the Inspector General Act. However, due to the absence of an IG, Acting IG, or DIG, the office has limited its scope regarding document requests and has not issued subpoenas and other documents that require an IG, Acting IG, or DIG signature. As a result some leads and information submitted to the OIG have become dormant. However, the OIG has continued to work on investigations to the extent possible.
- * **Finalizing Investigative Reports** – The OIG has not released any final Reports of Investigations (ROI) because the reports require an IG, Acting IG, or DIG signature. Therefore, no investigative reports were closed this reporting period.

6. *What is the status of hiring a permanent Inspector General, and when do you expect to decide on a hire?*

On April 15, 2019, the Commission posted a new vacancy announcement for the Inspector General position. The application period for this vacancy announcement runs until May 6, 2019. The Commission anticipates the hiring process—from the time the vacancy

announcement closes until the date a permanent Inspector General is selected—will take approximately three to four months. The Commission is working with the Council of Inspectors General for Integrity and Efficiency (CIGIE) to identify a candidate from another Federal agency to serve as the FEC’s Acting IG while the Commission completes the hiring process for a permanent IG. CIGIE recently announced this Acting IG opportunity to its members, and the Commission has received applications from several interested candidates. The Commission expects to have an Acting IG in place before the end of May.

7. *What is the status of hiring a permanent Deputy Inspector General?*

The Commission has decided that the Deputy Inspector General position should not be filled until an Inspector General is in place on a permanent or acting basis. Staff have prepared hiring documents that will be available to an Inspector General should that person elect to fill this vacancy.

8. *What other positions are filled by individuals in an acting capacity?*

In addition to the General Counsel, the following 12 positions are currently filled on an acting basis:

- * Associate General Counsel for Enforcement;
- * Associate General Counsel for Policy;
- * Director of Human Resources;
- * Deputy Associate General Counsel for Enforcement;
- * Four Assistant General Counsels (Litigation, Policy, Enforcement and Admin Law);
- * Reports Analysis Division Supervisory Training & Program Manager;
- * Supervisory IT Specialist - Database Manager;
- * Accountant; and
- * Executive Secretary to the General Counsel.

The Commission has posted vacancy announcements to fill four of these acting positions on a permanent basis. The Commission will post an additional vacancy announcement by early May.

The appointment of one acting position has a ripple effect on other positions within the agency. For example, because the Deputy Associate General Counsel for Enforcement has been filled in an acting capacity by an Assistant General Counsel for Enforcement, the Assistant General Counsel for Enforcement has now been filled in an acting capacity by an Enforcement Attorney. The appointment of staff into acting positions can be an opportunity for staff to develop new skills and demonstrate that they are ready for increased responsibilities.

9. *What committees exist at the Commission, and what is each committee's purpose?*

The Commission has instituted up to five committees: Finance, Regulations, Press, Personnel and Litigation Committees. The Chair and Vice Chair of the Commission appoint the members of committees after consultation with their colleagues about serving on committees. The Commission's committee structure is one mechanism that allows Commissioners on both sides of the aisle to work together in small groups to address various issues. Formal meetings are held as needed. However, a lack of formal meetings, agendas, and minutes does not necessarily indicate that Commissioners are not meeting to discuss Finance, Regulations, Press, Personnel, or Litigation matters in informal settings.

Finance Committee

The Finance Committee is composed of the Vice Chair, a member from the other political party, and the Chair as an ex-officio member. Traditionally, the Vice Chair serves as chair of this committee. The Finance Committee facilitates the decision-making process for planning purposes and presentation of budget issues for full Commission consideration.

Specific budget matters discussed and reviewed by the Finance Committee include:

1. A summary of the budget requests submitted by the offices/divisions for deciding the funding level that FEC should seek from the Office of Management and Budget (OMB).
2. The budget submission to OMB, generally due in early September.
3. OMB's passback decision on funding level and deciding whether to appeal. If FEC decides to appeal, the Finance Committee receives and approves the written appeal to OMB.
4. The Congressional budget request, generally due in early February.
5. The Management Plan.
6. Proposed reallocations of funds between offices.
7. The status of funds for the current fiscal year.

The Committee meets as needed to discuss these issues. Items 2 - 6 are subject to approval of the full Commission.

Since 2012, the Finance Committee has held at least the following number of formal meetings:

2012: 6
2013: 2
2014: 6
2015: 1
2016: 4
2017: 6
2018: 3
2019: 1

Agendas were located and provided for 20 of the above identified Finance Committee meetings held since 2012. The Finance Committee does not keep minutes of its meetings.

Regulations Committee

The Regulations Committee is a working group that focuses on Commission rulemakings. It consists of two Commissioners, with no more than one member from the same party. Its meetings are usually attended by staff members of the other Commissioners as well as relevant staff from the Office of General Counsel and the Office of the Staff Director.

The Regulations Committee works closely with the General Counsel and the managers of the Policy Division and can be a venue for prioritizing rulemakings and making policy decisions on draft rules and rulemaking documents. Typically, the Office of General Counsel's (OGC's) Policy Division drafts and sends to the Regulations Committee and all Commissioners recommended rulemaking priorities and documents such as Notices of Proposed Rulemaking (NPRMs), final rules, and Explanations and Justifications (E&Js) for final rules. The Committee meets as needed to discuss these issues. In some rulemakings, Commissioners and their staffs may discuss draft rulemaking documents directly with OGC staff. In others, the Commissioners on the Regulations Committee will meet with their colleagues to get feedback on rulemaking documents, which they then convey to OGC-Policy.

Since 2012, the Regulations Committee held at least the following number of formal meetings:

2012:	2
2013:	1
2014:	2
2015:	1
2016:	0
2017:	0
2018:	2
2019:	1

Agendas were located and provided for six of the Regulations Committee meetings identified above. The Regulations Committee does not keep minutes of its meetings.

Other Committees

The Personnel Committee consists of two members, with no more than one member from the same party. It works with the Office of Human Resources to coordinate Commission involvement in the interviewing and selection of candidates for positions that report directly to the Commission, and, on occasion, other positions. The Personnel Committee meets informally as necessary. Typically, hiring approvals are handled by Committee members via email and in-person follow-up conversations as necessary.

The Press Committee consists of two members, one from each party, who review all agency press releases, including Weekly Digests, prior to publication and approve all official statements to the press made on behalf of the Commission. Formal meetings are not needed for this committee to carry out its duties.

When formed, the Litigation Committee has been composed of two members of the Commission, with no more than one member from the same party. It provided oversight and guidance to the Litigation Division, particularly when novel challenges to Commission actions were filed and in-depth discussions regarding defense strategy would be beneficial. Regular meetings are not needed for this committee to carry out its duties. The full Commission receives written and oral monthly status reports from the Litigation Division, and events in litigation often happen too fast to lend themselves to regularly scheduled meetings. While some major decisions in litigation—such as the initiation of an enforcement action or the decision to appeal—require a formal vote of the full Commission, less consequential issues handled by OGC’s Litigation Division can sometimes be resolved through staff discussions with a Litigation Committee. No formal meetings have taken place since 2012.

10. *For each committee listed in Question 9, how many times has it met each year since 2012? Please provide a copy of any agendas and minutes from these committee meetings.*

Please see the response to question 9 above.

11. *How have the two Commissioner vacancies affected the Commission?*

As background to the answer, FECA requires four affirmative votes in order to take most actions in enforcement matters, litigation matters, rulemakings, advisory opinions, and matters arising under the public financing program for presidential elections.⁴ Moreover, Commission Directive 10 extends the four-vote requirement to all motions “exercising a power and duty under the Act” that do not already require four votes by statute, and also imposes a four-member quorum requirement for any meeting of the Commission.⁵

The largest challenge posed by the two vacancies is that all actions by the Commission must now have the unanimous support of all sitting Commissioners, a situation not directly contemplated by FECA. Another challenge posed by the vacancies is primarily logistical. Under Directive 10, all four sitting Members of the Commission must be present, either physically or by telephone, in order for the Commission to meet. Moreover, if a Commissioner is recused from a matter, that matter cannot go forward until the reason for the recusal is removed or one of the other vacant seats is filled.

⁴ FECA, §§ 306(c) & 309, *codified at* 52 U.S.C. §§ 30106(c) & 30109.

⁵ See https://www.fec.gov/resources/cms-content/documents/directive_10.pdf

In practice, however, with the exception of certain litigation matters, the issue of two vacancies has had minimal practical impact on Commission business, as the Commission continues to either unanimously agree or split.

12. *According to the Inspector General Statement on the Federal Election Commission's Management and Performance Challenges (2018), the Inspector General contracted with a consultant company to conduct a study to determine the root causes of low employee morale at the agency. The Inspector General wrote that it "believe[s] that an action plan from top level management to address all the root causes of low employee morale is still critical." Has the Commission established an "action plan?" If so, please describe it. If the Commission has not created an action plan, why not?*

The Commission understands that the success of its programs depends upon the skills and commitment of its staff. On July 26, 2016, the FEC's OIG released a Morale Study that identified causes of low employee morale at the agency, including poor communication, a perceived lack of effectiveness by management and a perceived lack of diversity among managers.⁶ Following the release of the Morale Study, Commissioners met with staff members one-on-one and in small groups to hear their concerns. The FEC Staff Director expanded his open door policy to actively invite staff members to meet one-on-one to discuss their suggestions for process improvements, improvements to work-life balance issues and innovations. While we recognize there are multiple factors that contribute to agency morale, and there are no simple solutions, the Commission has outlined a plan based in part on the results of these discussions to continue to foster a workplace that is positive and productive, where everyone feels valued. The primary elements of this plan are outlined below and were published in the FEC's FY 2018 Agency Financial Report.

Notably, the FEC has already seen successes in improving morale. In the 2018 FEVS results, the FEC achieved an eight percentage point gain in employee satisfaction.⁷ The FEC had the second largest gain of all small agencies with more than 100 employees. Additionally, the FEC went from having less than half of its employees responding in the survey in FY17 to 61% responding to the FEVS survey during FY 2018, fifteen percentage points above the government-wide average. Out of 71 items in the survey, 64 had positive gains when compared to FY17 results. Of particular note is that these gains came in the midst of significant changes at the FEC, primarily the move to a new location. The agency's improvement earned it the Most Improved Small Federal Agency award from the Partnership for Public Service, Best Places to Work in 2018.

⁶ The Morale Study is available on the Commission's website at <https://www.fec.gov/resources/cms-content/documents/RootCausesofLowEmployeeMoraleStudyFinalReport-OIG-15-06.pdf>.

⁷ See https://www.govexec.com/management/2018/10/agencies-biggest-gains-and-losses-employee-happiness/152417/?oref=govexec_today_pm_nl.

Employee Morale Plan for FYs 2018 and 2019 from the FY 2018 Agency Financial Report

Management Performance Plans. The following items were included in all managers' performance plans for the 2017-18 review year, as well as the 2018-19 review year:

- * Engage in efforts to improve morale and foster a culture of trust within the manager's area of responsibility, including implementing recommendations from the Morale Study.
- * Engage in efforts to improve as a manager, including training, participation in a 360 Review, and development and implementation of a Leadership Development Plan.
- * Provide training opportunities (both formal and informal) for all staff.
- * Meet with each employee at least one time during the performance year in addition to the six-month and annual reviews to get the employee's input on how things are going and ideas for improvement.

Involving Staff in Preparation for the FEC's Office Space Move. In the spring of 2018, the FEC moved its entire workforce to new office space. Throughout the entire FEC move process, management was committed to engaging staff and keeping staff informed. Bargaining Unit members served on the Lease Renewal Advisory Team (LRAT) and on each of its subcommittees. Management also regularly updated an internal communications portal, "FEC Move," on the agency's intranet page that provided LRAT meeting minutes, photos of construction progress, and news about the move. Management has continued to solicit feedback from staff about the new office space and remains responsive to employee concerns.

Management Training. The agency has implemented several training programs targeted to areas where improved performance by managers and supervisors can boost employee morale. Trainings have been held on topics such as diversity and inclusion, conflict resolution, general management skills, and individual leadership training. The Commission also partnered with OPM to deliver on-site supervisory training to managers in the fall of 2018. Moreover, the Commission has included the phased implementation of a supervisory training plan as FY 2018 and 2019 performance measures in its Annual Performance Report.

Since September 2016, over half of agency managers have undertaken 360 Reviews conducted by OPM and developed leadership plans to develop strengths and improve. Importantly, language has been added to all managers' performance plans requiring that the managers demonstrate a commitment to improving morale and documenting steps taken within his or her area of responsibility.

Staff Professional Development. Divisions throughout the agency continue to give staff opportunities for professional growth. These opportunities include:

- * OGC detail program with the US Attorney's Office in the District of Columbia, which provides staff attorneys the opportunity to prosecute general misdemeanor cases and develop their investigative and litigation skills;
- * OGC staff opportunities to serve details within different divisions in the Office, as well as on details to Commissioner's offices;
- * OCIO staff partnering one-on-one with staff from the General Services Administration's 18F to learn new information technology skills;
- * RAD staff on detail to other agency divisions;

- * Information Division conducted training sessions for agency staff that participate in outreach efforts to learn how to maximize webinar participation;
- * RAD conducted branch-wide professional development months focused on skills training and one-on-one coaching sessions available to all staff;
- * Brown-bag lunches and informational sessions where staff can learn about what other divisions do and ask questions of senior staff and Commissioners; and
- * Expanded opportunities for eligible FEC staff to compete for detail positions and temporary promotions within the agency.

Diversity in Hiring and Promotion. Agency managers have undertaken a substantial effort to expand the diversity of the pool of applicants that apply for FEC positions. Every year OGC attends multiple internship fairs hosted by local law schools reaches out to other law schools in the country in its ongoing efforts to create diverse internship classes. For example, OGC has also reached out to Black Law Students Associations from around the country and continues to reach out to Howard Law School about opportunities with its externship program. Agency managers continue to ensure that hiring panels are diverse and inclusive, ensuring that multiple viewpoints are present.

Communication. Management has undertaken efforts to communicate more clearly and consistently across the agency as well as within divisions. Each division has been encouraged to hold regular division meetings, and senior leaders routinely attend those meetings to answer questions on any topic, as schedules have allowed. We have also attempted to be more proactive in getting information out. Some divisions are holding brown bag lunch and learn programs and are undertaking other, informal activities to give staff and managers a chance to interact. Most importantly, management continues to encourage an open door policy for employees to come with any questions or concerns at any time.

Management understands that improving morale is not a one-off, “check the box” project. Our efforts on this front will continue.

13. *How is the Commission addressing the root causes of low employee morale?*

Please see the response to question 12 above.

14. *According to the Inspector General Statement on the Federal Election Commission’s Management and Performance Challenges (2018), “the senior leadership roles of the Staff Director and Chief Information Officer (CIO) are filled by the same individual. As both senior leader positions are critical to the agency, we strongly believe these two positions should have separate full-time personnel solely dedicated to each position.” Do you agree with the Inspector General?*

Yes. All of the Commissioners agree that the Commission should have separate individuals filling the senior leadership roles of Staff Director and CIO. As is true of the General Counsel position (see response to question 1 above), the salary limit placed on the Staff Director

by the FECA (Level IV of the Executive Schedule) means that the Staff Director supervises personnel whose positions, on the GS-15 and Senior Level pay scales, often provide higher salaries than the statutory salary for the Staff Director. The Commission has long recommended that Congress de-link the Staff Director's salary from the Executive Schedule.

When the Commission promoted our CIO to Staff Director, we allowed him to continue to serve as CIO and be compensated at that level rather than absorb a substantial pay cut in order to accept the promotion. This has allowed the Commission to maintain consistency in its most senior staff leadership.

15. *According to the Office of Inspector General's most recent Semiannual Report to Congress (November 2018), a total of 7 Office of Inspector General Audits and Inspections had 50 recommendations that still required Commission follow-up as of August 2018. This includes 23 recommendations that have been 7 years outstanding (2010 Follow-up Audit of Privacy and Data Protection); 1 recommendation that is 6 years outstanding (2010 Follow-up Audit of Procurement and Contract Management); 7 recommendations that are 5 years outstanding (Inspection of the FEC's Disaster Recovery Plan and Continuity of Operations Plans); 3 recommendations that are 4 years outstanding (Audit of the FEC's Office of Human Resources); 4 other recommendations that are 4 years outstanding (Inspection of FEC's Compliance with FMFIA/OMB A- 123); 9 recommendations that are 2 years outstanding (Audit of the FEC Telework Programs); and 3 recommendations that are 9 months outstanding (Required Review Under the DATA Act). Why are these recommendations still outstanding? Please provide the Committee with a status update on each of these recommendations.*

For each of the seven audits and inspections listed above, please find attached Corrective Action Plans by the Commission's Staff Managers that provide a status update on each of the outstanding recommendations, and in some instances, on closed recommendations. These updates explain the key facts and circumstances related to each recommendation, including those related to why it remains outstanding.⁸

16. *Please provide a summary of any improvements that the Commission has made to its IT systems since Chinese hackers crashed them during the 2013 government shutdown. What is the Commission doing to address and anticipate future problems?*

Once the FEC resumed operations following the 2013 shutdown, the agency took a series of tactical steps to mitigate vulnerabilities and also launched a strategic approach to enhancing the FEC's cyber security posture. Thanks to these efforts and the assignment of additional Office

⁸ Three of the outstanding recommendations from the 2010 Follow-up Audit of Privacy and Data Protection that are referenced in the OIG Semiannual Report are not addressed in the November 2018 corrective action plan because they were resolved prior to that date. Additionally, two findings in the Audit of the FEC's Telework Programs and one finding in the Inspection of FEC's Compliance with FMFIA/OMB A-123 have been resolved.

of Chief Information Officer (OCIO) personnel as essential employees to remain in service during future Federal government shutdowns, FEC staff have been able to monitor and mitigate vulnerabilities continuously. In fact, during the recent partial government shutdown that shuttered the FEC during FY 2019, no information security incidents were identified.

Tactical Steps to Improve Cybersecurity Following the 2013 Shutdown

Following the 2013 government shutdown, the FEC developed enhanced security zones across the FEC's existing website infrastructure. The FEC also implemented systems and tools to better protect and monitor the agency's website and systems. For example, the FEC implemented a Trusted Internet Connection (TIC), which reduced and consolidated external access points, managed the security requirements for FEC networks and Internet services and Security Operations Centers, and established compliance with OMB's TIC initiative.

The agency implemented a suite of cyber security tools that detect and stop malicious activity on our systems and equipment in real time and help the agency's network administrators better understand cyber threats by producing forensic details of attempted attacks. These tools also aid in detecting and stopping Advanced Persistent Threats, including those initiated via phishing emails.

The Commission also added an additional staff position in the Information Security Office to better manage these security systems and tools.

New Strategic Approach to Protecting Security and Privacy

The Commission has taken strategic steps to implement a platform of security and privacy. FEC recognizes that perfect security is not feasible; it is a continuing process of detecting risks, process improvements and hardening defenses. For that reason, the benchmark of the FEC's approach to cybersecurity is practicability and continuous improvement. Our cybersecurity strategy outlines an approach of securing our infrastructure and preventing intrusions through a holistic cybersecurity program led by the Chief Information Security Officer.

1. Adopt National Institute of Standards and Technology Cyber Security Framework

The first pillar of the FEC's overarching strategy to protect security and privacy is to adopt the National Institute of Standards and Technology (NIST) Cyber Security Framework (CSF). The FEC is exempted from the Paperwork Reduction Act's requirement that Federal agencies to adhere to the NIST standards for information technology security. In FY 2014 the agency contracted with an IT security consultant to perform a comprehensive review of implementing further NIST guidelines at the FEC. During FY 2015, the Commission voted to adopt the NIST *Risk Management Framework* and NIST IT security control "best practices." Adoption of the NIST CSF was included as a strategic objective in the agency's IT Strategic Plan, FY 2017-2021. The FEC's cyber security strategy, which encompasses the NIST CSF and industry best practices, outlines an approach of securing our infrastructure and preventing intrusions through a holistic cybersecurity program.

2. Implement a Robust Security Architecture

The second pillar of our strategy is to implement a robust security architecture. In partnership with the Department of Homeland Security (DHS), Massachusetts Institute of Technology and the Pacific Northwest National Laboratory, the OCIO has collaborated with FEC stakeholders and technical experts to identify, protect, detect and respond to the impact of known and unknown threats, continuously assessing security controls and addressing the remaining residual risks. The FEC has also entered into an inter-agency agreement with DHS to participate in the Federal Continuous Diagnostics and Mitigation program. By partnering with DHS, the FEC is able to leverage that agency's cybersecurity resources, which would be cost prohibitive for an agency of the FEC's size to procure independently.

Following NIST guidelines and the Commission's own prioritization and resources, the first wave of projects undertaken to enhance to FEC's security architecture focused on the "protect" function to hinder threat actors from gaining access to FEC IT assets and data. The initial project included strengthening the FEC's perimeter defenses using Software Defined Perimeter and protecting users from inadvertently infecting their systems by using a robust end-point solution. The FEC has additionally implemented tools and services that:

- * Detect and/or identify malicious behavior activities.
- * Continuously log the entire FEC network flow, which allows OCIO staff to track and identify egress and ingress traffic.
- * Identify critical, high and medium vulnerabilities to update/patch for mitigating FEC computer systems.
- * Implemented email controls to filter and deliver only trusted emails.

3. Adopt Cloud First Initiative

The third pillar of our strategy is to adopt a cloud first initiative for security, accessibility and recoverability. Hosting systems and data in a cloud environment allows the FEC to utilize our cloud service providers' significant resources that are dedicated to maintaining the highest level of security. In addition, by utilizing the cloud service providers' robust disaster recovery solutions, the FEC eliminates the need to maintain physical disaster recovery sites, which are costly to maintain and secure. The FEC has already completed the migration of its largest database, the campaign finance database, and its website to a cloud environment. The FEC's new website, launched in May 2017, uses FedRAMP Authorized cloud services, which provides a standardized approach to security assessment, authorization, and continuous monitoring for cloud products and services.

4. Build a Cybersecurity Culture

The fourth pillar of this strategy is to build a cybersecurity culture. For this comprehensive cybersecurity strategy to be successful, the OCIO will partner with Federal agencies and industry leaders to leverage best practices for our IT workforce. The first line of defense in maintaining the protection and integrity of the agency's network is the ongoing education of employees about their role in identifying and preventing malicious activities. The Commission's main target will be recruiting and training talent with cybersecurity expertise. In April 2019, the FEC entered into a partnership with the Partnership for Public Service to

participate in the Cybersecurity Talent Initiative. This selective, cross-sector program, which provides loan forgiveness to top bachelors and masters graduates around the United States in exchange for at least two-years' service at a Federal agency, addresses the immediate cybersecurity talent deficiency faced by Federal government agencies by attracting service-minded individuals to government who might not otherwise have applied.

In partnership with DHS and cybersecurity partners, we continue to evaluate emerging threat vectors and focus on efforts to enhance both our defenses and our mitigation strategies as we deal with potential intrusion attempts on a regular basis.

17. *In the Chair's opening remarks at the February 7, 2019 open meeting, the Chair noted that the Commission has "hundreds of cases on our enforcement docket, 326 to be precise, over 50 already imperiled by a looming statute of limitations."*

a. *How many cases are on the enforcement docket as of the date of this letter?*

As of May 1, 2019, OGC-Enforcement's docket includes 289 cases.

b. *How many cases are imperiled by a looming statute of limitations?*

Of the 289 cases on the enforcement docket, 45 cases have at least some activity that is beyond the statute of limitations or will be before May 1, 2020. Please note that cases might also include later activity that will remain within the statute of limitations and that some cases are subjects of tolling agreements.

c. *How does the Commission plan to address the hundreds of cases?*

The Commission plans to address the current caseload through both increased productivity and the continued implementation of certain systemic reforms. Thus far in the current year, the Commission has held meetings in Executive Session approximately two times a month (almost every other week), and has considered, on average, 27.5 enforcement cases per agenda. Frequently, Executive Session meetings continue on Thursdays after the conclusion of Public Sessions. As noted below, the Commission intends to pursue a more aggressive meeting schedule for the remainder of the year.

The Commission prioritizes for immediate consideration in Executive Session any matters imperiled by an impending statute of limitations, as well as matters that allege violations of the foreign national prohibition, as discussed in response to question 41. Similarly, the OGC Enforcement Division also prioritizes for assignment and review any such matters.

The Commission also receives detailed quarterly status reports from the Enforcement Division that show the progress made on case files. The reports include data on OGC's timeliness for activating cases and processing them through the various stages of the enforcement

process. The reports also highlight matters that are imperiled by the statute of limitations. These status reports are automatically calendared on Executive Session agendas where commissioners can ask questions on specific matters or on overall efficiency and management issues.

In December 2018, the Commission revised two procedures that have improved efficiency: (1) the Reports Analysis Division Review and Referral Procedures, and (2) the Enforcement Priority System's rating system (used by OGC to prioritize and activate MURs). These changes will allow more low-priority matters to be handled through Alternative Dispute Resolution, educational programs, or streamlined Enforcement Priority System Dismissals. Shifting these matters away from the Enforcement Division's "active" docket will allow for more Enforcement Division resources to be devoted to complex, high-priority Matters Under Review. Additionally, in order to increase the efficiency of the EPS Dismissal process, the Commission also in December 2018 instructed the Enforcement Division to exclusively use "short-form" reports (two to three page summaries) in the EPS Dismissal process rather than more expansive analyses.⁹

d. How often does the Commission plan to meet for the remainder of 2019 in Executive Session to dispose of these cases?

Historically, the Commission has met in Executive Session on Tuesdays, sometimes with a continuation on Thursdays after the conclusion of the Public Session. The Commission is committed to adopting a more aggressive schedule for the rest of the year to address the cases on the enforcement docket. The Commission has already scheduled meetings on the following dates:

May 7, 9, 21 and 23

June 4, 6, 18 and 20.

At its next Public Session on May 9, 2019 the Commission intends to supplement its schedule to reflect its commitment to adopt a more aggressive schedule for the rest of the year. The Commission will provide the schedule for the full calendar year to the Committee immediately thereafter.

18. How many Matters Under Review are considered in a typical Executive Session?

Reviewing the agendas for Executive Sessions from January 1, 2015 through April 9-11, 2019, the Commission considers an average of approximately 18 enforcement cases per Executive Session. This average includes several categories of enforcement cases are placed on Executive Session agendas, including Matters Under Review, RAD Referrals, Audit Referrals, and Pre-MURs, as discussed in more detail in response to question 25.¹⁰ This average does not

⁹ For additional information about the Enforcement Priority System, see the response to question 19 below.

¹⁰ For purposes of calculating the average number of cases considered in an Executive Session, each enforcement matter on the agenda was counted separately regardless of whether it was presented collectively in one General Counsel Report. For example, if a single First General Counsel's report placed on the agenda collectively

include matters that were designated on the agenda as held over at the request of the Commissioner, nor does it include matters that were designated on the agenda as calendared for status inquiries.

19. *According to the “Status of Enforcement—Fiscal Year 2018” memorandum from the Office of General Counsel, there was a caseload of 317 cases, including 113 “inactive” cases and 204 “active” cases. What distinguishes an “inactive” case from an “active” case?*

Any complaint, referral, or *sua sponte* submission received by the Commission is initially designated as “inactive.” A case is “activated” when the Associate General Counsel for Enforcement assigns it to an OGC Enforcement Division attorney.

This assignment happens after OGC completes the intake process handled by OGC Enforcement Division’s Complaints Examination and Legal Administration team. In brief, this process involves notification of the respondents; receipt of responses from the respondents; and evaluation of the complaint and response using objective criteria approved by the Commission under its Enforcement Priority System (EPS). Respondents have 15 days to respond to a complaint pursuant to FECA; however, a respondent may request an extension of up to 30 days.¹¹ Matters are activated within an average of 50 days of the date OGC receives the last response.

Some matters are disposed of without ever being “activated;” these cases are either transferred to the Alternative Dispute Resolution Office or, if the EPS rating indicates the matter does not warrant the further use of Commission resources, OGC generally uses a streamlined EPS dismissal process to recommend the Commission dismiss the matter.

analyzed complaints in two Matters Under Review and one RAD Referral, that report represented three cases on the agenda.

¹¹ FECA, § 309(a), *codified at* 52 U.S.C. § 30109(a).

20. According to the “Status of Enforcement - Fiscal Year 2018” memorandum from the Office of General Counsel to the Commission, of First General Counsel’s Reports Pending with the Commission, numerous cases—including one dating back to 2012—have been pending for years and have been “held over” on multiple dates.

<i>Receipt</i>	<i>Assigned</i>	<i>Circ.</i>	<i># of Days Receipt to Circ.</i>	<i># Days Assigned to Circ.</i>	<i># of Days Receipt to Close of Quarter</i>	<i># of Days Circ. to Close of Quarter</i>	<i>Held Over Dates</i>
06/20/12	10/09/12	03/10/14	628	517	2293	1665	02/10/15; 03/09/15; 03/17/15; 04/21/15; 08/11/15; 09/15/15; 11/17/15; 12/10/15; 08/15/17; 09/12/17;
02/11/14	07/02/14	10/28/14	259	118	1692	1433	04/12/16; 04/26/16; 01/24/17; 01/25/17; 09/06/18
02/21/14	07/02/14	10/28/14	249	118	1682	1433	04/12/16; 04/26/16; 01/24/17; 01/25/17; 09/06/18
03/27/14	07/02/14	10/28/14	215	118	1648	1433	04/12/16; 04/26/16; 01/24/17; 01/25/17; 09/06/18
05/21/14	10/07/14	02/04/15	259	120	1593	1334	06/28/16; 01/24/17
03/31/15	06/29/15	05/12/17	773	683	1279	506	11/7/17; 11/8/17; 11/14/17; 11/16/17; 9/25/18; 10/9/18; 10/11/18
12/04/14	06/04/15	11/13/15	344	162	1396	1052	11/15/16; 12/06/16; 12/08/16; 01/24/17; 01/25/17; 05/22/18; 07/07/18
05/06/16	09/01/16	01/09/17	248	130	877	629	06/06/17; 12/12/17
03/31/15	04/01/16	02/08/17	680	313	1279	599	9/25/17; 10/11/18; 9/25/18; 10/9/18; 10/11/18;
02/23/15	06/24/15	03/06/17	742	621	1315	573	10/11/17; 10/12/17; 10/24/17; 10/26/17; 11/7/17; 11/8/17; 11/14/17; 11/16/17; 9/25/18; 10/9/18; 10/11/18

Why are some enforcement cases held over—sometimes for years—without resolution?

A matter is considered held over when the Chair places it on the agenda for a Commission meeting, but at least one Commissioner requests that it not be considered—or if considered, that it not be voted on—at that meeting.

Commissioners are not required to give reasons for requests to hold matters over. However, reasons provided in the past have included the following:

- Commissioners have held matters over pending completion of General Counsel’s Reports in, or Commission consideration of, other matters that involve common respondents or common legal issues.
- Commissioners have held matters over pending resolution of the same or a related legal issue in pending litigation.
- Due to the press of other business, Commissioners have held matters over because they are not prepared to proceed on the matters at the meeting for which it has been calendared.
- Commissioners have held matters over to permit more time to consider points made in Commission discussion of the matter before voting.
- Commissioners have held matters over to permit more time for negotiations regarding the text of the Commission’s Factual and Legal Analysis in the matter in an attempt to achieve consensus and avoid closing the matter due to disagreement.

Some Commissioners do not agree that holding over matters for lengthy periods of time is warranted.

21. *From January 1, 2012 to the present, how many enforcement actions were initiated as a result of:*

- a. *Complaint-generated matters?*
- b. *Internally-generated matters?*
- c. *External referrals?*
- d. *Sua sponte submissions?*

Year	Complaints	Internal Referrals	External Referrals	<i>Sua Sponte</i>	Total
2012	167	85	1	23	276
2013	35	30	2	12	79
2014	135	29	0	13	177
2015	68	35	1	7	111
2016	190	14	0	12	216
2017	78	46	0	5	129
2018	223	31	3	11	268
2019*	31	0	1	3	35

* Data covers January 1 to March 31, 2019

22. *How many enforcement cases, organized by election cycle, are still unresolved and not yet closed?*

Election Cycle	Active	Inactive	Total
2012	4	0	4
2014	7	0	7
2016	93	16	109
2018	96	63	159
2020	4	6	10

* Data is current as of May 1, 2019.¹²

23. *How many Administrative Fines cases has the Commission closed since January 1, 2012?*

Between January 1, 2012 and April 1, 2019, the Commission closed 796 Administrative Fines cases.

24. *Does the Commission plan to expand the Administrative Fines Program to cover other reporting violations, as authorized by Public Law 113-72?*

Since at least 2014, the issue of whether to expand the Administrative Fines Program to cover other reporting violations has been considered by the Commission.

The Commission published a Notice of Availability on March 30, 2015 in which it sought public comment on a petition for rulemaking asking the Commission to open a rulemaking to expand the Administrative Fines Program.

Following Regulations Committee meetings, formal and informal discussions, and after reviewing the comments received on the petition, the Commission has not decided whether to open a rulemaking on the issue of expanding the Administrative Fines Program.

25. *How many Matters Under Review has the Commission closed since January 1, 2012?*

Matters Under Review are a type of administrative enforcement matter handled by the Commission's Office of General Counsel pursuant to section 309 of FECA.¹³ External complaints filed with the Commission are designated Matters Under Review (MURs) and

¹² As to the MURs that reflect 2014-2016 election cycle activity, almost all of those matters have tolling agreements or contain alleged continuing violations.

¹³ FECA, § 309, codified at 52 U.S.C. § 30109.

assigned a MUR number upon receipt. MURs may be designated by the Commission itself; for instance, if the Commission determines to sever an allegation or a respondent from an existing MUR and pursue a case separately, it will open a new MUR, sever the portions of the case from the existing MUR, and transfer them to the new MUR.

There are also preliminary types of enforcement matters, identified in response to question 21(b)-(d), that may also become MURs and are assigned MUR numbers if the Commission determines to “open a MUR” and pursue the matter. These case types are RAD referrals, Audit Referrals, and Pre-MURs (*sua sponte* submissions or external referrals), and other internally-generated matters.

Consistent with the foregoing, between January 1, 2012 and April 1, 2019 the Commission closed 839 Matters Under Review through the ordinary enforcement process described in section 309 of FECA. It also closed an additional 32 Matters Under Review on OGC’s docket by referring them to ADRO for resolution.

26. *How many and what percentage of the Matters Under Review in Question 25 were resolved exclusively on a tally vote?*

Of the 839 Matters Under Review identified in question 25, 308 MURs (or 36.7%) were resolved exclusively on tally. Some cases are resolved on tally after they are scheduled for an Executive Session.

27. *For purposes of this question, assume a “deadlocked vote” is an equally divided vote of the Commission or any other vote that lacks four affirmative votes. Of Matters Under Review considered in Executive Session since January 1, 2012 and that are now closed, how many and what percentage of the MURs included at least one deadlocked vote of the Commission during Executive Session? Please provide, categorized by year since 2012, the count and percentages. Please also provide the MUR number for each MUR that included at least one deadlocked vote.*

Using a Commission vote database maintained by the Commission’s Secretary, an Enforcement Division case management database, and the Enforcement Query System on the FEC’s website, all MURs (as defined in response to question 25 above) that were considered by the Commission in Executive Session after January 1, 2012 and that were closed as of April 1, 2019 were examined. 531 such MURs were identified. 269 of these MURs, or 50.6%, had at least one vote after January 1, 2012, with no position receiving the support of four or more Commissioners, which the Commission has typically called a “split vote.” Split votes are most often 3-3 or 2-2, and can also be any other combination that lacks four or more votes in the affirmative or negative.

The Commission does not consider some of the votes that the question considers to be “deadlocked” to be split votes. FECA requires four Commissioners’ votes for certain decisions, without regard to how many Commissioners are currently serving. Consequently, the

Commission views any position supported by four or more Commissioners as a Commission decision, and not as a “deadlocked” vote.¹⁴ The question seeks information about cases where there were not four *affirmative* votes. In one such case, for example, an initial motion to dismiss the case as a matter of prosecutorial discretion was defeated by a vote 1-5, and the case then proceeded through multiple unanimous votes through reason-to-believe and probable-cause-to-believe findings, and was resolved by a conciliation agreement with admissions and a substantial civil penalty.¹⁵ The initial vote of 1-5 lacks four affirmative votes and is therefore responsive to this question. The Commission, however, would not consider this case an example of a “deadlocked” case. As a result of conferring with House Administration Committee staff, FEC staff agreed to compile the data related to cases with votes like this and present it separately in footnotes in response to questions 27 and 28.¹⁶

¹⁴ Congressional Research Service did not consider four or more negative votes to be a deadlocked vote in its work in 2009 or 2015. See CRS, “The Federal Election Commission: Enforcement Process and Selected Issues for Congress,” R44319, at 10 n.44 (Dec. 22, 2015) and CRS, “Deadlocked Votes Among Members of the Federal Election Commission (FEC): Overview and Potential Considerations for Congress,” R40779, at 5 & 10-11 (Oct. 6, 2009).

¹⁵ See MUR 6394 (Pingree for Congress) <https://www.fec.gov/data/legal/matter-under-review/6394/>.

¹⁶ If additional cases with votes that lack four affirmative votes after January 1, 2012, are also considered responsive to question 27, an additional 12 MURs would be responsive, for a total of 281 or 52.9 %.

The following chart breaks down this data by calendar year. Some MURs are subject to one vote in one Executive Session, while others can be considered in multiple Executive Sessions that might fall in different years. The data below include each MUR considered by the Commission in Executive Session in each of the calendar years, so some MURs appear more than once.

Calendar Year	Closed MURs with At Least One Split Vote Considered in Executive Session	Closed MURs Considered in Executive Session	Percentage (At Least One Split/ Closed MURs in Exec.)
2012	27	61	44.3 %
2013 ¹⁷	41	93	44.1 %
2014 ¹⁸	23	61	44.3 %
2015 ¹⁹	53	91	58.2 %
2016 ²⁰	49	75	65.3 %
2017 ²¹	39	72	54.2 %
2018	51	86	59.3 %
1/1-3/31/ 2019	16	20	80.0 %
Total for Entire Period	269	531	50.6 %

Additional comments on this question by commissioners are attached. (See Attachments A and B.)

28. *For purposes of this question, assume a “deadlocked vote” is an equally divided vote of the Commission or any other vote that lacks four affirmative votes. Of Matters Under Review considered in Executive Session since January 1, 2012 and that are now closed, how many and what percentage of the MURs deadlocked on all votes taken during Executive Session, other than a vote to close the file and send the appropriate letter(s)? Please provide, categorized by year since 2012, the count and percentages. Please also provide the MUR numbers and MUR subject of the cases*

¹⁷ If votes lacking four affirmative votes were included, 2013’s Closed MURs with At Least One Deadlock Vote Considered in Executive Session would increase by one to 42, and the percentage would increase to 45.2 %.

¹⁸ If votes lacking four affirmative votes were included, 2014’s Closed MURs with At Least One Deadlock Vote Considered in Executive Session would increase by two to 25, and the percentage would increase to 41.0%.

¹⁹ If votes lacking four affirmative votes were included, 2015’s Closed MURs with At Least One Deadlock Vote Considered in Executive Session would increase by seven to 60, and the percentage would increase to 65.9 %.

²⁰ If votes lacking four affirmative votes were included, 2016’s Closed MURs with At Least One Deadlock Vote Considered in Executive Session would increase by three to 52, and the percentage would increase to 69.3 %.

²¹ If votes lacking four affirmative votes were included, 2017’s Closed MURs with At Least One Deadlock Vote Considered in Executive Session would increase by four to 43, and the percentage would increase to 59.7%.

that deadlocked on all votes taken in Executive Session (other than a vote to close the file and send the appropriate letter(s)).

Of the 531 MURs that were considered by the Commission in Executive Session after January 1, 2012 and that were closed as of April 1, 2019, 84 of these MURs or 15.8% had split votes (as defined in response to question 27) on all votes taken during the executive session other than a vote to close the file.²²

Calendar Year	Closed MURs with All Split Votes Considered in Executive Session	Total Closed MURs Considered in Executive Session	Percentage (All Split/ Closed MURs in Exec.)
2012	2	61	3.3 %
2013	12	93	12.9 %
2014	6	61	9.8 %
2015 ²³	19	91	20.9 %
2016 ²⁴	12	75	16.1 %
2017	12	72	16.7 %
2018	24	86	27.9 %
1/1-3/31/2019	11	20	55.0 %
Total for Entire Period	84	531	15.8 %

The MURs responsive to question 28 consist of matters where the votes on all substantive issues were split votes, other than votes to close the files. These 84 “all split” MURs were also responsive to question 27, as MURs with at least one split vote.

Additional comments on this question by commissioners are attached. (See Attachments A and B.)

²² If all of the 839 MURs that have been closed from January 1, 2012, to April 1, 2019, are considered, and if additional cases with votes without four affirmative votes after January 1, 2012 are also considered, an additional 5 MURs would be responsive to question 28, for a total of 89 or 16.8%.

²³ If votes lacking four affirmative votes were included, 2015’s Closed MURs with All Deadlock Votes Considered in Executive Session would increase by three to 21, and the percentage would increase to 23.1%.

²⁴ If votes lacking four affirmative votes were included, 2016’s Closed MURs with All Deadlock Votes Considered in Executive Session would increase by two to 14, and the percentage would increase to 18.7%.

29. *Once the Commission deadlocks on a recommendation from the Office of General Counsel, is it the Commission's position that the Office of General Counsel should not make the same recommendation in an analogous case?*

Under FECA's framework, the General Counsel recommends to the Commission whether or not it should find reason to believe or probable cause to believe that a respondent has committed, or is about to commit, a violation.²⁵ In making these recommendations, the General Counsel will consider the factual and legal issues of the case. When analyzing the legal issues of a case, the General Counsel considers, *inter alia*, FECA and Commission regulations, case law, MUR precedent, and Commission Advisory Opinions.

The General Counsel has not considered Commission split votes, that is where there are neither four or more votes for or four or more against a recommendation, to be binding MUR precedent. Therefore, after a split vote, the General Counsel may make the same recommendation, either to find a violation or to find no violation, in an analogous case.²⁶ Commissioners have divided views on whether such split votes should be considered binding MUR precedent.

Consistent with the explanation given in our answers to questions 27 and 28, the Commission generally does not consider a proposition that is rejected by four or more Commissioners to be a "deadlock vote." Thus, if the Commission rejects a recommendation by, say, a vote of 2 to 4 or 1 to 5, that will likely affect the General Counsel's recommendation in an analogous case.

30. *Since the Supreme Court's decision in Citizens United, how many times has the Commission found a violation of the coordination regulations? Please provide the Matter Under Review numbers.*

Since the Supreme Court's decision in *Citizens United*, the Commission has not entered into pre-probable cause conciliation or found probable cause to believe that a respondent violated the coordination regulations.

The Commission found reason to believe that respondents violated the coordination regulations in one case, but ultimately determined that the violation was not worth pursuing. In MUR 6721 (Beth Steele/Mark Long), the Commission found reason to believe that candidate Todd Long and his committee, Todd Long for Congress, coordinated automated telephone calls with Beth Steele and Women Advocating Respect in violation of 11 C.F.R. § 109.21, resulting in Long and the Committee knowingly accepting an excessive in-kind contribution in violation of FECA.²⁷ After an investigation, the Office of General Counsel was unable to conclusively

²⁵ FECA, § 309(a)(3), *codified at* 52 U.S.C. § 30109(a)(3); *see also* 11 C.F.R. §§ 111.7, 111.8, 111.9, 111.16.

²⁶ *See Common Cause v. FEC*, 842 F.2d 436, 449 at n.32 (D.C. Cir. 1998)(noting that a split-vote decision "is not binding legal precedent or authority in future cases").

²⁷ FECA, § 315(f), *codified at* 52 U.S.C. § 30116(f). *See* FEC Notification and Factual and Legal Analysis to Todd Long (Aug. 21, 2015), *available at* <https://www.fec.gov/files/legal/murs/6721/18044454714.pdf>.

determine whether the robocalls were coordinated and also determined that any amount in violation was likely no more than \$700 and therefore of a *de minimis* amount; the Office therefore recommended taking no further action. The Commission approved the recommendation and closed the file on November 26, 2018.

In addition, the Commission has found reason to believe a violation occurred in another matter which remains pending.

31. *Since January 1, 2012, how many enforcement cases has the FEC pursued through litigation after attempting conciliation?*

Under 52 U.S.C. § 30109(a)(6), the Commission may, upon an affirmative vote of four of its members, institute a civil action in federal district court to remedy a violation of FECA if, among other things, the Commission was first unable to correct or prevent that violation by informal methods of conference, conciliation, and persuasion. Since January 1, 2012, the Commission has litigated all or part of six cases that it filed under section 30109(a)(6) after attempting conciliation. The Commission filed one of those cases prior to January 1, 2012, but continued to pursue the case after that date. The other five cases were filed by the Commission after January 1, 2012. Two of those cases remain active today.

1. *FEC v. Craig for U.S. Senate, et al.*, 12-958 (D.D.C. filed Jun. 11, 2012) (MUR 6128)
2. *FEC v. Kazran, et al.*, 10-1155 (M.D. Fl. filed Dec. 17, 2010) (MUR 6054)
3. *FEC v. O'Donnell, et al.*, 15-17 (D. Del. filed Jan. 5, 2015) (MUR 6380)
4. *FEC v. Johnson, et al.*, 15-439 (D. Utah filed Jun. 19, 2015) (MUR 6850) (active)
5. *FEC v. Lynch, et al.*, 15-81732 (S.D. Fl. filed Dec. 18, 2015) (MUR 6498)
6. *FEC v. Rivera*, 17-22643 (S.D. Fl. filed July 14, 2017) (MUR 6655) (active)

32. *What is the current relationship between the FEC and the Department of Justice regarding enforcement matters? Do FEC enforcement staff have the ability to consult with Department of Justice staff where appropriate?*

FECA provides that the Commission “shall have exclusive jurisdiction with respect to the civil enforcement” of FECA and the presidential public funding provisions of Chapters 95 and 96 of Title 26. Jurisdiction for criminal enforcement of the Act and Chapter 95 and 96 of Title 26 resides in the Department of Justice (DOJ). The Commission and DOJ have concurrent jurisdiction over knowing and willful violations of the Act.²⁸

²⁸ FECA, §§ 306(b)(1) & 309(a)(5)(C), codified at 52 U.S.C. §§ 30106(b)(1) & 30109(a)(5)(C).

In 1977, the Commission and DOJ entered into a Memorandum of Understanding (MOU) relating to their respective law enforcement jurisdiction and responsibilities.²⁹ The MOU remains the primary guidance/procedural agreement used by the Commission to assist in collaboration and consultation efforts (including referrals) between the Commission and DOJ.

The FEC and DOJ consult in a number of ways, but most frequently through the sharing of investigative materials. For instance, upon written request and subject to Commission approval, the FEC will share with DOJ documents from its enforcement files. In turn, DOJ will (subject to Grand Jury secrecy rules and other applicable laws) provide the FEC investigative materials from parallel matters, *e.g.*, FBI 302s. DOJ typically shares such information at the end of a DOJ prosecution or after DOJ determines not to prosecute a case. The initial point of contact for consultation on parallel matters between the FEC and DOJ is usually through the General Counsel or Associate General Counsel for Enforcement and DOJ's Public Integrity Section.

The Commission also routinely makes witnesses available to assist in DOJ prosecutions. Typically, the FEC witness provides testimony concerning the contents of disclosure reports filed with the Commission.

Finally, DOJ sometimes requests that the Commission hold particular Matters Under Review in abeyance pending the conclusion of a related DOJ investigation. These requests must be submitted in writing to the General Counsel or the Associate General Counsel, and the Commission votes to decide whether to grant the request based on OGC's recommendation. In deciding whether to grant the request, the Commission considers the amount of time remaining on the relevant statute of limitations, whether the Commission's investigation would benefit from accessing the DOJ file at the end of the DOJ investigation, and whether a parallel civil investigation may harm the criminal investigation by, for instance, creating conflicting witness statements. Typically such requests are granted for a set term, and then DOJ is asked to resubmit the abeyance request if it seeks continued abatement. The extension request is analyzed under the same factors as the original request.

33. *How many rulemakings has the Commission completed since January 1, 2012, excluding Civil Monetary Penalties Inflation Adjustments? Please provide a brief summary of each new rule.*

The Commission adopted Final Rules in ten rulemakings since January 1, 2012.

1. REG 2013-05 (Administrative Fines Extension): Revised regulations to extend the Administrative Fines Program through the new statutory expiration date and to delete a provision that required administrative fines to be paid by check or money order.
79 Fed. Reg. 3302 (Jan. 21, 2014).

²⁹ See 43 Fed. Reg. 5441 (Feb. 8, 1978).

2. REG 2013-04 (Technical Amendments to 2013 CFR): Revised various sections of the Commission's regulations to make correcting amendments.
79 Fed. Reg. 16661 (Mar. 26, 2014).
3. REG 2014-07 (Removal of Aggregate Contribution Limits (*McCutcheon*)): The Commission issued an Interim Final Rule followed by a Final Rule that revised the Commission's regulations to remove limits on the aggregate amounts that an individual may contribute to federal candidates and political committees in each two-year election cycle in response to the Supreme Court decision in *McCutcheon v. FEC*.
See Interim Final Rule, 79 Fed. Reg. 62335 (Oct. 17, 2014); Final Rule, 79 Fed. Reg. 77373 (Dec. 24, 2014).
4. REG 2010-01 Independent Expenditures and Electioneering Communications by Corporations and Labor Organizations (*Citizens United*): Revised regulations on corporate and labor organization expenditures, independent expenditures, and electioneering communications in response to the Supreme Court's decision in *Citizens United v. FEC*.
79 Fed. Reg. 62797 (Oct. 21, 2014).
5. REG 2014-08 (Technical Corrections): Revised various sections of the Commission's regulations to make correcting amendments.
79 Fed. Reg. 77841 (Dec. 29, 2014).
6. REG 2015-06 (Technical Amendments to 2015 CFR): Revised various sections of the Commission's regulations to make correcting amendments.
81 Fed. Reg. 34861 (June 1, 2016).
7. REG 2016-04 (Technical Amendments to 2016 CFR): Revised various sections of the Commission's regulations to make correcting amendments.
81 Fed. Reg. 94238 (Dec. 23, 2016).
8. REG 2017-02 (Change of Address; Technical Amendments): Revised various sections of the Commission's regulations to reflect the change in location of the Commission's offices.
82 Fed. Reg., 60852 (Dec. 26, 2017).
9. REG 2014-02 (Reporting Multistate Independent Expenditures and Electioneering Communications): Revised regulations to address reporting of independent expenditures and electioneering communications that relate to presidential primary elections and are publicly distributed in multiple states but that do not refer to any particular state's primary election.
83 Fed. Reg. 66590 (Dec. 27, 2018).
10. REG 2018-04 (Senate Filing): Congress amended FECA to require all mandated reports, designations, and notices to be filed with the Commission. Previously, Senate candidates and certain political committees were required to file such reports, designations, and

notices with the Secretary of the Senate. During its Open Meeting on April 25, 2019, the Commission voted to approve an Interim Final Rule revising its regulations to implement this new statutory requirement.

The Commission published three Notices of Disposition since January 1, 2012, two of which are related, as described below.

1. REG 2014-05 (Definition of “Federal Office”): The Commission issued a Notice of Availability seeking comment on a petition for rulemaking submitted by National Convention PBC. The petition asked the Commission to revise its regulation defining “federal office” to include delegates to a constitutional convention.
79 Fed. Reg. 59459 (Oct. 2, 2014).
 - a. After reviewing the comments received on the petition, the Commission concluded its consideration by voting to issue a Notice of Disposition announcing its decision not to open a rulemaking. *See* Certification of Vote (available at: <https://sers.fec.gov/fosers/showpdf.htm?docid=310944>).
79 Fed. Reg. 75455 (Dec. 18, 2014).
2. REG 2014-06 (Candidate Debates): The Commission issued a Notice of Availability seeking comment on a petition for rulemaking submitted by Level the Playing Field. The petition asked the Commission to revise its regulation on candidate debates to prohibit debate staging organizations from using a minimum polling threshold as a criterion for determining who may participate in presidential and vice presidential candidate debates.
79 Fed. Reg. 68137 (Nov. 14, 2014).
 - a. After reviewing the comments received on the petition, the Commission considered whether to open a rulemaking in response to the petition. During its Open Meeting on July 16, 2015, the Commission voted on two motions. The first motion was to open a rulemaking. That motion failed to receive the required minimum four affirmative votes.³⁰ The second motion was to issue a Notice of Disposition announcing the Commission’s decision not to open a rulemaking. That motion passed, so the Commission issued the Notice of Disposition.
80 Fed. Reg. 72616 (Nov. 20, 2015).
 - b. After the Commission issued its Notice of Disposition in this matter, the petitioner sued the Commission over its decision not to open a rulemaking. The United States District Court for the District of Columbia ordered the Commission to reconsider its decision. The Commission then reconsidered the matter and again decided not to open a rulemaking, voting to approve a Supplemental Notice of Disposition.³¹ 82 Fed. Reg. 15468 (Mar. 29, 2017). Subsequently, the court

³⁰ Commissioners Ravel and Weintraub voted affirmatively for the motion. Commissioners Goodman, Hunter, Petersen, and Walther dissented. *See* Certification of Vote (available at: <https://sers.fec.gov/fosers/showpdf.htm?docid=341903>).

³¹ Commissioners Goodman, Hunter, Petersen, and Walther voted affirmatively for the motion. Commissioners Ravel and Weintraub dissented. *See* Certification of Vote (available

reviewed the Commission's explanation of its decision not to open a rulemaking in response to the petition and upheld the Commission's decision. *See Level the Playing Field v. FEC*, Case No. 15-cv-1397 (TSC), 2019 WL 1440883, at *19 (D.D.C. Mar. 31, 2019). On April 22, 2019, the plaintiff filed a notice of appeal to the United States Court of Appeals for the District of Columbia Circuit.

Since January 1, 2012, the Commission has issued five Interpretive Rules, Policy Statements or amendments.

1. Interpretive Rule on Reporting Ultimate Payees of Political Committee Disbursements: Clarified Commission's interpretation of the regulatory requirement that political committees report the full name and address of each person to whom they make expenditures or other disbursements aggregating more than \$200 per calendar year, or per election cycle for authorized committees, and the date, amount, and purpose of such payments.
78 Fed. Reg. 40625 (July 8, 2013).
2. Policy Statement on Program for Requesting Consideration of Legal Questions by the Commission: Revised a program providing for a means by which persons and entities may have a legal question considered by the Commission earlier in both the report review process and the audit process to provide alternative means to file a request with the Commission.
78 Fed. Reg. 63203 (Oct. 23, 2013).
 - a. Amendment: The Commission further revised its program for requesting its consideration of legal questions by (1) clarifying that requests for consideration be submitted to the Commission Secretary to ensure that such requests are processed in a timely manner, and (2) building five business days into the program to allow time for the informal resolution of matters.
81 Fed. Reg. 29861 (May 13, 2016).
3. Interpretive Rule on Date of Political Party Nominations of Candidates for Special Primary Elections in New York: Clarified the Commission's interpretation of its rules for determining the date of a special primary election as those rules apply to nominations conducted under New York statutes that provide for a candidate to be nominated for a special election by a vote of a state or county party committee.
78 Fed. Reg. 76032 (Dec. 16, 2013).
4. Policy Statement on Disclosure of Certain Documents in Enforcement and Other Matters: Announced a policy on placing certain documents on the public record in enforcement, administrative fines, and alternative dispute resolution cases, as well as administrative matters.
81 Fed. Reg. 50702 (Aug. 2, 2016).

34. *Please provide a brief summary, including the current status of Commission action, for each Advance Notice of Proposed Rulemaking (ANPRM) that the Commission has opened or reopened since January 1, 2012. In the summary, please provide the status of the Commission's deliberations on these matters, including but not limited to whether and when it expects to take further action on each ANPRM.*

The Commission has published three Advance Notices of Proposed Rulemaking since 2012.

1. REG 2013-01 (Technological Modernization): Sought comment on whether and how the Commission should revise its regulations to reflect technological advances, on the relevance of industry standards in processing electronic transactions to such revisions, and on the methods used by political committees and other persons to engage in electronic transactions and to keep records of such transactions.
78 Fed. Reg. 25635 (May 2, 2013).
 - a. After reviewing the comments received in response to the Advance Notice of Proposed Rulemaking, the Commission decided to open a rulemaking to consider revising many of its regulations.
See Notice of Proposed Rulemaking, 81 Fed. Reg. 76416 (Nov. 2, 2016).
2. REG 2014-01 (Earmarking, Affiliation, Joint Fundraising, Disclosure, and Other Issues (McCutcheon)): Sought comment on whether the Commission should revise its regulations on earmarking, affiliation, joint fundraising, or disclosure to prevent circumvention of contribution limits in light of the Supreme Court's decision in *McCutcheon v. FEC*, which held that the aggregate biennial limit on contributions from individuals was unconstitutional.
79 Fed. Reg. 62361 (Oct. 17, 2014).
 - a. On February 11, 2015, the Commission held a hearing and heard testimony from witnesses on the issues raised in the Advance Notice of Proposed Rulemaking.
See Hearing Transcript (available at: <https://sers.fec.gov/fosers/showpdf.htm?docid=329748>)
 - b. After reviewing the comments and witness testimony received in response to the Advance Notice of Proposed Rulemaking, the Commission considered whether to open a rulemaking to consider revising its regulations on earmarking, affiliation, joint fundraising, or disclosure. On May 21, 2015, the Commission voted 3 to 3 on a motion to open a rulemaking in this matter.³²

³² Commissioners Ravel, Walther, and Weintraub voted affirmatively for the motion. Commissioners Goodman, Hunter, and Petersen dissented. *See* Certification of Vote on Motion To Open a Rulemaking in Response to Comments and Testimony On The *McCutcheon v. FEC* ANPRM (available at: <https://sers.fec.gov/fosers/showpdf.htm?docid=349376>).

3. REG 2011-02 (Internet Disclaimers): The Commission issued an Advance Notice of Proposed Rulemaking in October of 2011, seeking comment on whether to revise its regulation on disclaimer requirements for certain internet communications.
76 Fed. Reg. 63567 (Oct. 13, 2011).
 - a. The Commission re-opened the comment period on the Advance Notice of Proposed Rulemaking in October of 2016 and in October of 2017.
See 81 Fed. Reg. 71647 (Oct. 18, 2016) and 82 Fed. Reg. 46937 (Oct. 10, 2017).
 - b. After considering the comments received during all three comment periods, the Commission decided to open a rulemaking to consider revising its disclaimer regulation with respect to certain internet communications.
See Notice of Proposed Rulemaking, 83 Fed. Reg. 12864 (Mar. 26, 2018).
 - c. The Commission has considered the written comments submitted in response to the March 2018 Notice of Proposed Rulemaking and witness testimony it received in connection with its June 2018 hearing. It is not at this time clear whether there will be four affirmative votes to adopt a final rule.
35. *Please provide a brief summary, including the current status of Commission action, for each Notice of Proposed Rulemaking (NPRM) that the Commission has opened or reopened since January 1, 2012. In the summary, please provide the status of the Commission's deliberations on these matters, including but not limited to whether and when it expects to take further action on each NPRM.*

In addition to the Notices of Proposed Rulemaking issued in the course of final rulemaking matters, detailed in the answer to question 33, the Commission has issued three Notices of Proposed Rulemaking since January 1, 2012.

1. REG 2012-02 (Limited Liability Partnerships): The Commission proposed a new regulation on the treatment of limited liability partnerships (LLPs). LLPs share some characteristics with corporations and some characteristics with partnerships. Under the proposed regulation, LLPs registered with the Internal Revenue Service as corporations would be treated as corporations under the Act, enabling such LLPs to establish separate segregated funds like other corporations. Similarly, LLPs not registered with the Internal Revenue Service as corporations would be treated as partnerships under the Act, which would permit such LLP's to make limited contributions to candidates. 79 Fed. Reg. 74121 (Dec. 13, 2012).
 - a. The Commission has reviewed the comments received in response to the Notice of Proposed Rulemaking, but has not decided whether to proceed with this rulemaking matter.

2. REG 2013-01 (Technological Modernization): After considering the comments received in response to its Advance Notice of Proposed Rulemaking, which asked whether the Commission should revise its regulations to reflect technological advances, the Commission issued a Notice of Proposed Rulemaking proposing to revise many of its regulations. 81 Fed. Reg. 76416 (Nov. 2, 2016).
 - a. After considering the comments received in response to the Notice of Proposed Rulemaking, OGC circulated drafts of the Final Rule. The Commission is currently considering the drafted Final Rule.
3. REG 2011-02 (Internet Communication Disclaimers): After considering the comments received in response to its Advance Notice of Proposed Rulemaking, which asked whether the Commission should revise its disclaimer regulation with respect to certain internet communications, the Commission issued a Notice of Proposed Rulemaking proposing to revise that regulation. *See* Notice of Proposed Rulemaking, 83 Fed. Reg. 12864 (Mar. 26, 2018).
 - a. The Commission held a two-day hearing on June 27-28, 2018 on the Notice of Proposed Rulemaking and heard testimony from 18 witnesses. *See* Hearing Transcript for June 27, 2018 (available at: <https://sers.fec.gov/fosers/showpdf.htm?docid=394833>) and Hearing Transcript for June 28, 2018 (available at: <https://sers.fec.gov/fosers/showpdf.htm?docid=394834>).
 - b. The Commission has considered the written comments and witness testimony it received in response to the Notice of Proposed Rulemaking. It is not at this time clear whether there will be four affirmative votes to adopt a final rule.
36. *Please provide a brief summary, including the current status of Commission action, of any petition for rulemaking for which the Commission approved a Notice of Availability since January 1, 2012. In the summary, please provide the status of the Commission's deliberations on these matters, including but not limited to whether and when it expects to take further action on each petition.*

The Commission has issued 14 Notices of Availability regarding petitions for rulemaking it has received since January 1, 2012.

1. REG 2012-01 (Electioneering Communications Reporting): The Commission sought comment on a petition for rulemaking submitted by the Center for Individual Freedom. The petition asked the Commission to revise its regulations on the reporting of electioneering communications. *See* Notice of Availability, 77 Fed. Reg. 65332 (Oct. 26, 2012).
 - a. After reviewing the comments received on the petition for rulemaking, the Commission considered whether to open a rulemaking in response to the

petition. During its Open Meeting on March 7, 2013, the Commission voted on two motions: a motion to open a rulemaking in response to the petition and a motion to dismiss the petition. Neither motion received the required minimum affirmative vote of four Commissioners.³³

2. REG 2014-05 (Definition of “Federal Office”): The Commission issued a Notice of Availability seeking comment on a petition for rulemaking submitted by National Convention PBC. The petition asked the Commission to revise its regulation defining “federal office” to include delegates to a constitutional convention.
79 Fed. Reg. 59459 (October 2, 2014).

- a. After reviewing the comments received on the petition, the Commission concluded its consideration by voting to issue a Notice of Disposition announcing its decision not to open a rulemaking.³⁴
79 Fed. Reg. 75455 (Dec. 18, 2014).

3. REG 2014-06 (Candidate Debates): The Commission issued a Notice of Availability seeking comment on a petition for rulemaking submitted by Level the Playing Field. The petition asked the Commission to revise its regulation on candidate debates to prohibit debate staging organizations from using a minimum polling threshold as a criterion for determining who may participate in presidential and vice presidential candidate debates.
79 Fed. Reg. 68137 (Nov. 14, 2014).

- a. After reviewing the comments received on the petition, the Commission considered whether to open a rulemaking in response to the petition. During its Open Meeting on July 16, 2015, the Commission voted on two motions. The first motion was to open a rulemaking. That motion failed to receive the required minimum four affirmative votes. The second motion was to issue a Notice of Disposition announcing the Commission’s decision not to open a rulemaking. That motion passed, so the Commission issued the Notice of Disposition.³⁵
80 Fed. Reg. 72616 (Nov. 20, 2015).

³³ Commissioners Hunter, McGahn II, and Petersen voted to initiate a rulemaking. Commissioners Walther and Weintraub dissented. Then, Commissioners Walther and Weintraub voted to dismiss the petition. Commissioners Hunter, McGahn II, and Petersen dissented. *See* Certification of Vote (available at: <https://sers.fec.gov/fosers/showpdf.htm?docid=296278>).

³⁴ Commissioners Goodman, Hunter, Petersen, Ravel, Walther, and Weintraub voted affirmatively for the decision. *See* Certification of Vote (available at: <https://sers.fec.gov/fosers/showpdf.htm?docid=310944>).

³⁵ Commissioners Ravel and Weintraub voted to open a rulemaking. Commissioners Goodman, Hunter, Petersen, and Walther dissented. Then, Commissioners Goodman, Hunter, Petersen, and Walther voted to direct OGC to draft a notice of disposition. Commissioners Ravel and Weintraub dissented. *See* Certification of Vote (available at: <https://sers.fec.gov/fosers/showpdf.htm?docid=341903>).

- b. After the Commission issued its Notice of Disposition in this matter, the petitioner sued the Commission over its decision not to open a rulemaking. The United States District Court for the District of Columbia ordered the Commission to reconsider its decision. The Commission then reconsidered the matter and again decided not to open a rulemaking, voting to approve a Supplemental Notice of Disposition.³⁶ 82 Fed. Reg. 15468 (March 29, 2017). Subsequently, the court reviewed the Commission's explanation of its decision not to open a rulemaking in response to the petition and upheld the Commission's decision. *See Level the Playing Field v. FEC*, Case No. 15-cv-1397 (TSC), 2019 WL 1440883, at *19 (D.D.C. Mar. 31, 2019). On April 22, 2019, the plaintiff filed a notice of appeal to the United States Court of Appeals for the District of Columbia Circuit.
4. REG 2014-09 (Federal Contractors): The Commission sought comment on a petition for rulemaking submitted by Public Citizen. The petition asked the Commission to amend its regulations regarding federal contractors to include certain factors for determining whether entities of the same corporate family are distinct business entities for purposes of the prohibition on contributions by federal contractors. *See* Notice of Availability, 80 Fed. Reg. 16595 (Mar. 30, 2015).
 - a. After reviewing the comments received on the petition for rulemaking, the Commission considered whether to open a rulemaking in response to the petition. During its Open Meeting on November 10, 2015, the Commission voted on a motion to open a rulemaking. The motion failed to receive the required minimum affirmative vote of four Commissioners.³⁷
5. REG 2015-01 (Administrative Fines and Forms): The Commission sought comment on a petition for rulemaking submitted by seven attorneys. The petition asked the Commission to expand its Administrative Fines Program, as authorized by Congress, and to revise and update several Commission forms and their instructions. *See* Notice of Availability, 80 Fed. Reg. 16594 (Mar. 30, 2015).
 - a. After reviewing the comments received on the petition for rulemaking, the Commission has not decided whether to take any further action on the petition.

³⁶ Commissioners Goodman, Hunter, Petersen, and Walther voted affirmatively for the motion. Commissioners Ravel and Weintraub dissented. *See* Certification of Vote (available at: [See Certification of Vote \(available at: https://sers.fec.gov/fosers/showpdf.htm?docid=357019\)](https://sers.fec.gov/fosers/showpdf.htm?docid=357019))).

³⁷ Commissioners Ravel, Walther, and Weintraub voted affirmatively for the motion. Commissioners Goodman, Hunter, and Petersen dissented. *See* Certification of Vote (available at: <https://sers.fec.gov/fosers/showpdf.htm?docid=346292>)).

6. REG 2015-04 (Independent Spending by Corporations, Labor Organizations, Foreign Nationals, and Certain Political Committees (Citizens United)): The Commission sought comment on two petitions for rulemaking: one submitted by Make Your Laws PAC, Inc. and Make Your Laws Advocacy, Inc., and the other submitted by Craig Holman and Public Citizen. Both petitions asked the Commission to issue new regulations and revise existing regulations concerning: (1) The disclosure of certain financing information regarding independent expenditures and electioneering communications; (2) election-related spending by foreign nationals; (3) solicitations of corporate and labor organization employees and members; and (4) the independence of expenditures made by independent-expenditure-only political committees and accounts. *See* Notice of Availability, 80 Fed. Reg. 45116 (July 29, 2015).
 - a. After reviewing the comments received on the petition for rulemaking, the Commission considered whether to open a rulemaking in response to the petition. During its Open Meeting on December 17, 2015, the Commission voted on a motion to open a rulemaking. The motion failed to receive the required minimum affirmative vote of four Commissioners.³⁸
7. REG 2015-03 (Contributions from Corporations and Other Organizations to Political Committees): The Commission sought comment on a petition for rulemaking submitted by Make Your Laws PAC, Inc. and Make Your Laws Advocacy, Inc. The petition asked the Commission to revise its regulations on the reporting of contributions to political committees from corporations and other organizations. *See* Notice of Availability, 80 Fed. Reg. 45115 (July 29, 2015).
 - a. After reviewing the comments received on the petition for rulemaking, the Commission has not decided whether to take any further action on the petition.
8. REG 2014-10 (Party Contribution Limits): The Commission sought comment on a petition for rulemaking submitted by the Perkins Coie LLP Political Law Group. The petition asked the Commission to adopt new regulations, and to revise its current regulations, to implement amendments to the Federal Election Campaign Act, 52 U.S.C. 30101–46 (“FECA”), made by the Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. 113–235, 128 Stat. 2130, 2772 (2014). The petition also asked the Commission to adopt new regulations, and to revise its current regulations, regarding convention committees. *See* Notice of Availability, 81 Fed. Reg. 69722 (Oct. 7, 2016).

³⁸ Commissioners Ravel, Walther, and Weintraub voted affirmatively for the motion. Commissioners Goodman, Hunter, and Petersen dissented. *See* Certification of Vote (available at: <https://sers.fec.gov/fosers/showpdf.htm?docid=346628>).

- a. OGC circulated an outline of a draft NPRM to the Commission on October 23, 2015. *See* Agenda Document No. 15-54-B (available at: <https://sers.fec.gov/fosers/showpdf.htm?docid=347532>). The Commission considered the outline at its Open Meetings on October 29, 2015, November 10, 2015, and December 17, 2015. During its Open Meeting on December 17, 2015, the Commission voted unanimously to refer the matter to the Regulations Committee for further work. *See* Certification of Vote (available at: <https://sers.fec.gov/fosers/showpdf.htm?docid=347539>).
 - b. After reviewing the comments received on the petition for rulemaking, OGC circulated drafts of the NPRM. The Commission is currently considering the drafted NPRM.
9. REG 2016-03 (Political Party Rules): The Commission sought comment on a petition for rulemaking submitted by the Minnesota Democratic-Farmer-Labor Party and its Chair, Ken Martin. The petition asked the Commission to revise several of its regulations on the use of federal funds to pay for certain activities of state, district, or local committees of a political party. *See* Notice of Availability, 81 Fed. Reg. 69721 (Oct. 7, 2016).
 - a. After reviewing the comments received on the petition for rulemaking, the Commission has not decided whether to take any further action on the petition.
10. REG 2018-01 (Former Candidates' Personal Use): The Commission sought comment on a petition for rulemaking submitted by the Campaign Legal Center. The petition asked the Commission to revise its regulations on the personal use of campaign funds to explicitly apply those regulations to former candidates and officeholders. *See* Notice of Availability, 83 Fed. Reg. 12283 (Mar. 21, 2018).
 - a. After reviewing the comments received on the petition for rulemaking, the Commission has not decided whether to take any further action on the petition.
11. REG 2018-02 (Personal Use of Leadership PAC Funds): The Commission sought comment on a petition for rulemaking received from the Campaign Legal Center, Issue One, and five former United States Representatives. The petition asked the Commission to revise one of its regulations on the personal use of campaign funds to explicitly apply that regulation to leadership PAC funds. *See* Notice of Availability, 83 Fed. Reg. 46888 (Sept. 17, 2018).
 - a. After reviewing the comments received on the petition for rulemaking, the Commission has not decided whether to take any further action on the petition.
12. REG 2016-01 (Procedures for Public Comment on Draft Advisory Opinions): The Commission sought comment on a petition for rulemaking submitted by Make Your

Laws PAC, Inc., Make Your Laws Advocacy, Inc., Make Your Laws, Inc., and Dan Backer, Esq. The petition asked the Commission to revise its regulation on advisory opinion procedures to establish specific time periods for the submission of public comments on drafts of advisory opinions before the Commission votes on the drafts. *See* Notice of Availability, 83 Fed. Reg. 62283 (Dec. 3, 2018).

- a. After reviewing the comments received on the petition for rulemaking, the Commission has not decided whether to take any further action on the petition.

13. REG 2018-03 (Definition of “Contribution”): The Commission sought comment on a petition for rulemaking submitted by the Institute for Free Speech. The petition asked the Commission to revise its regulation defining “contribution” in light of the United States District Court for the District of Columbia’s decision in *Citizens for Responsibility & Ethics in Washington v. FEC*. *See* Notice of Availability, 83 Fed. Reg. 62282 (Dec. 3, 2018).

- a. After reviewing the comments received on the petition for rulemaking, the Commission has not decided whether to take any further action on the petition.

14. REG 2018-05 (Size of Letters in Television Disclaimers): The Commission sought comment on a petition for rulemaking submitted by Extreme Reach. The petition asked the Commission to revise its regulation on disclaimer requirements for television broadcast advertisements, which requires the letters for disclaimers in those advertisements to be a certain minimum height. The petition contends that the current standard for such advertisements is outdated due to the fact that it was promulgated during a period when television was broadcast in standard definition, rather than the current high definition. *See* Notice of Availability, 84 Fed. Reg. 3344 (Feb. 12, 2019).

- a. The comment period on the petition for rulemaking closed on April 15, 2019. The Commission has not yet decided whether to take any further action on the petition.

37. *What further action does the Commission anticipate taking on REG 2011-02 concerning internet communication disclaimers? When does it anticipate taking this further action, if any?*

The Commission has considered the written comments submitted in response to the March 2018 Notice of Proposed Rulemaking and witness testimony it received in connection with its June 2018 hearing. It is not at this time clear whether there will be four affirmative votes to adopt a final rule.

38. *How many litigation cases has the Commission appealed in the past 10 years after an adverse court ruling?*

Under section 307(a)(6) of FECA, the Commission has the power to “appeal any civil action in the name of the Commission to enforce the provisions [of FECA] through its general counsel.”³⁹ Exercising this power to appeal requires the affirmative vote of four members of the Commission.⁴⁰ In the past 10 years, the Commission has not garnered four affirmative votes in favor of appealing any of the approximately 13 adverse or partially adverse district court judgments that it has formally considered for appeal.

39. *For the past decade, how many requests for advisory opinions lacked four affirmative votes to provide an answer? Please provide the numbers and advisory opinion citations by year.*

Since January 1, 2009 through April 11, 2019, the Commission has been unable to approve a response by four or more affirmative votes to 31 requests for advisory opinions, as follows:

2009 (5)

2009-03 (IntercontinentalExchange, Inc.)
2009-11 (Senator John Kerry and the John Kerry for Senate Committee)
2009-17 (Romney for President, Inc.)
2009-25 (Jennifer Brunner Committee)
2009-28 (Democracy Engine Inc. PAC)

2010 (1)

2010-20 (National Defense PAC)

2011 (4)

2010-25 (RG Entertainment, Ltd.)
2011-09 (Facebook)
2011-16 (Dimension4, Inc. PAC)
2011-23 (American Crossroads)

2012 (6)

2012-01 (Stop This Insanity, Inc. Employee Leadership Fund)
2012-08 (Repledge)
2012-20 (Markwayne Mullin)
2012-24 (Dean Peterson)
2012-29 (Hawaiian Airlines, Inc.)
2012-37 (Yamaha Motor Corporation, U.S.A.)

³⁹ FECA, § 307(a)(6), *codified at* 52 U.S.C. § 30107(a)(6).

⁴⁰ FECA, § 306(c), *codified at* 52 U.S.C. § 30106(c).

2013 (5)

2012-25 (American Future Fund/American Future Fund Political Action/McIntosh)
2013-14 (Martin Long)
2013-15 (Conservative Action Fund)
2013-17 (Tea Party Leadership Fund)
2013-19 (Yamaha Motor Corporation, U.S.A.)

2014 (1)

2013-18 (Revolution Messaging, LLC)

2015 (1)

2015-3 (Democracy Rules, Inc.)

2016 (4)

2016-04 (Grand Trunk Western Railroad – Illinois Central Railroad PAC)
2016-12 (Citizen Super PAC)
2016-13 (Martins for Congress II)
2016-20 (Christoph Mlinarchik)

2017 (1)

2016-23 (Socialist Workers Party)

2018 (2)

2018-04 (Conservative Primary LLC)
2018-08 (Rep. Darrell Issa)

2019 (1)

2019-06 (Leigh Brown) April 11, 2019

In 32 other AOs, the Commission answered some questions raised by the advisory opinion requests, but lacked four votes to answers other questions.

2009 (3)

2009-04 (Al Franken for U.S. Senate/Democratic Senatorial Campaign Committee)
2009-13 (The Black Rock Group)
2009-14 (Mercedes-Benz USA LLC/Sterling Truck Group)

2010 (6)

2010-02 (West Virginia Republican Party, Inc.)
2010-07 (Yes on FAIR)
2010-18 (Minnesota Democratic-Farmer-Labor Party)
2010-19 (Google, Inc.)
2010-24 (Republican Party of San Diego County)
2010-30 (Citizens United)

2011 (2)

2011-02 (Sen. Scott Brown/Scott Brown for U.S. Senate Committee)

2011-14 (Utah Bankers Association/Utah Bankers Association Action PAC)

2012 (7)

2011-24 (StandLouder.com)

2012-06 (RickPerry.org, Inc.)

2012-07 (Feinstein for Senate)

2012-10 (Greenberg Quinlan Rosner Research, Inc.)

2012-11 (Free Speech)

2012-19 (American Future Fund)

2012-27 (National Defense Committee)

2013 (1)

2013-04 (Democratic Governors Association/Jobs & Opportunity)

2014 (2)

2014-02 (Make Your Laws PAC, Inc.)

2014-06 (Rep. Paul Ryan/Ryan for Congress, Inc./Prosperity Action, Inc.)

2015 (3)

2015-06 (Rep. Maxine Waters)

2015-09 (Senate Majority PAC/House Majority PAC)

2015-11 (FYP, LLC)

2016 (4)

2015-16 (Niger Innis for Congress)

2016-02 (Enable Midstream Services, LLC)

2016-06 (Internet Association/IAPAC)

2016-10 (Parker)

2017 (4)

2016-21 (Great America PAC)

2017-05 (Great America PAC/The Committee to Defend the President)

2017-06 (Stein/Gottlieb)

2017-12 (Take Back Action Fund)

40. *Do you view advisory opinions as binding on analogously-situated parties?*

The FECA provides that “any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which an advisory opinion was rendered” may rely on that advisory opinion.⁴¹

⁴¹ See 52 U.S.C. § 30108(c)(1)(B).

41. *In the Minutes of an Open Meeting from Sept. 15, 2016, then-Chair Petersen stated that, without objection, the General Counsel's Office was "directed to prioritize cases involving allegations of foreign influence." What is the status of this direction to the Office of General Counsel? How many cases have been prioritized and what is their disposition?*

As of September 15, 2016, the Commission had 14 enforcement matters in house that included alleged violations of the foreign national prohibition. Of those 14, 12 have been closed and only two remain open.

Of the 12 matters that have been closed:

- Two matters were resolved through conciliation agreements containing civil penalties totaling \$969,000.⁴²
- Two matters were closed after the Commission found no reason to believe any of the respondents had violated the law.⁴³
- Three matters were, with respect to the majority of respondents, dismissed by majority vote of the Commission; other respondents were the subject of "no reason to believe" findings.⁴⁴
- One matter was dismissed after being further prioritized for early dismissal under the Commission's Enforcement Priority System.⁴⁵
- Four matters were closed after split votes.⁴⁶

The two remaining matters that were opened prior to September 15, 2016 and remain active and assigned to OGC Enforcement Division attorneys.

Subsequent to September 15, 2016, and as of April 1, 2019, the Commission received an additional 40 enforcement matters that include alleged violations of the foreign national prohibition. Of those 40, eight have been closed and 32 remain open.

Of the eight additional matters that have been closed:

⁴² See FEC Report to the Committees on Appropriations on Enforcing the Foreign National Prohibition, 8-9 and n. 36 (Sept. 18, 2018), *copy enclosed and available at* https://www.fec.gov/resources/cms-content/documents/Foreign_National_Report_To_Congress.pdf ("Appropriations Report") (discussion of MUR 7035 (Australian Labor Party, *et al.*)); *see also* answer to question 42, *supra* (discussion of MUR 7122 (Right to Rise USA)).

⁴³ See MUR 6959 (DNC and Nava), <https://www.fec.gov/data/legal/matter-under-review/6959/>; MUR 7059 (Human Rights for Vietnam PAC, *et al.*), <https://www.fec.gov/data/legal/matter-under-review/7059/>

⁴⁴ See Appropriations Report at 8 and n. 35 (discussion of MUR 7081 (Floridians for a Strong Middle Class) and 9 and n.39 (discussion of MURs 6962 and 6982 (Project Veritas, *et al.*))

⁴⁵ See Appropriations Report at 9 and n. 38 (discussion of MUR 6944 (Farias))

⁴⁶ See Appropriations Report at 9 (discussion of MUR 6976 (City Council Committee for Johnny W. Streets, Jr.) and 11 and n.46 (discussion of MURs 7094, 7096 and 7098 (Donald J. Trump for President, *et al.*))

- Two matters were closed after the Commission found no reason to believe any of the respondents had violated the law.⁴⁷
- One matter was transferred from OGC to the Alternative Dispute Resolution Office; the Commission subsequently dismissed the matter by a majority vote.⁴⁸
- Three matters were dismissed by a majority vote.⁴⁹
- One matter was closed after a split vote.⁵⁰

Of the remaining 32 matters, 24 are active and assigned to OGC Enforcement attorneys, while eight are inactive. Seven of the eight inactive matters were received in 2019, and as of April 1 are in the Commission's case intake procedure.

In response to the Commission's direction to prioritize foreign national prohibition matters, the Office of General Counsel has taken a number of steps that have made possible the results discussed above. Along with cases that are statute-of-limitations imperiled when OGC receives them, foreign national prohibition cases are assigned to OGC staff attorneys before any other class of cases. OGC has also modified its Status of Enforcement reports to the Commission so that the Commission is provided with complete data on every foreign national prohibition case on a quarterly basis. Further, OGC has revised its procedures so that it may more efficiently track the progress of all foreign national prohibition matters through the enforcement process. OGC has also modified its case management software to make it easier to run reports for the Commission concerning all foreign national prohibition matters. Finally, for foreign national prohibition matters that are not resolved by tally votes, the Commission has prioritized the placement of these matters on Executive Session agendas for faster Commission consideration.

42. *Besides efforts to encourage voluntary compliance with the law and deadlocks on enforcements matters, what action has the Commission taken to address the threat of foreign interference in American elections?*

On September 18, 2018, the FEC provided a comprehensive Report to the Committees on Appropriations on Enforcing the Foreign National Prohibition. This Report provides a discussion of the legal background on FECA's foreign national prohibition and answers three points raised posed by the Appropriations Committees, which are:

- (1) The Commission's Role in Enforcing the Foreign National Prohibition;
- (2) How the Commission Identifies Foreign National Contributions or Donations; and
- (3) The Commission's Plans for Enforcing the Foreign National Prohibition.

⁴⁷ See Appropriations Report at 8 and n. 33 (discussion of MUR 7141 (Beverly Hills Residents and Businesses to Preserve Our City)); see also MUR 7144 (Jacobs, *et al.*), <https://www.fec.gov/data/legal/matter-under-review/7144/>

⁴⁸ See Appropriations Report at 10 and n.43 (discussion of ADR 822 (Arteaga)).

⁴⁹ See answer to question 42, *supra* (discussion of MURs 7430, 7444 and 7445 (Unknown Respondents))

⁵⁰ See Appropriations Report at 7 and n. 30 (discussion of MUR 7205 (Jill Stein for President, *et al.*))

The Report discusses 23 enforcement and compliance cases recently resolved by the Commission, involving over \$400,000 in civil penalties.⁵¹ A copy of the Report is attached.⁵²

Since then, the Commission has closed two cases involving the foreign national prohibition. One involved a solicitation of a foreign national contribution. Right to Rise USA, an independent expenditure-only committee (commonly known as a “super PAC”) that supported Governor John E. “Jeb” Bush’s 2016 presidential campaign signed a conciliation agreement agreeing that it violated the foreign national prohibition when its agent, Neil Bush, solicited a foreign national for a political contribution, and when it accepted the funds. It agreed to cease and desist from violating the foreign national prohibition and paid a \$390,000 civil penalty. In a separate conciliation agreement, the contributors agreed that they violated the foreign national prohibition in making or substantially assisting in the making of the contributions to Right to Rise USA. They also agreed to cease and desist from violating the foreign national prohibition and paid a \$550,000 civil penalty.⁵³

Another MUR involved allegations of foreign national contributions of \$30 to state and local candidates in Texas. Consistent with the advice of the General Counsel, the Commission voted unanimously to exercise its prosecutorial discretion to dismiss the complaints, given the small amounts at issue and the difficulties posed by a potential investigation to identify unknown respondents.⁵⁴

43. *What have been the effects of Directive 70 on the audit process?*

The effects of Directive 70 are:

- * The number of reports produced by the Audit Division for each audit has increased from two to four. Prior to Directive 70, the audit process included two audit reports -- the Interim Audit Report (or Preliminary Audit Report for Title 26 audits) and the Final Audit Report. Under Directive 70 and other policies and directives, the audit process now includes four audit reports – the Interim Audit Report (or Preliminary Audit Report for Title 26 audits), the Draft Final Audit Report which is reviewed by the Commission with a memorandum from the auditors recommending findings (Audit Division

⁵¹ See FEC Report to the Committees on Appropriations on Enforcing the Foreign National Prohibition, 4-11 (Sept. 18, 2018), *copy enclosed and available at* https://www.fec.gov/resources/cms-content/documents/Foreign_National_Report_To_Congress.pdf

⁵² Additionally, then-Vice Chair Ellen Weintraub wrote separately to express her own views on this topic. See Letter from Ellen L. Weintraub to Appropriations Committees (Sept. 28, 2018); *available at*: <https://www.fec.gov/resources/cms-content/documents/201809-28-ELW-Approps-Committees-reply.pdf>.

⁵³ See MUR 7122 (Right to Rise USA) <https://www.fec.gov/data/legal/matter-under-review/7122/>.

⁵⁴ See MUR 7430, 7444 & 7445 (Unknown Respondent), <https://www.fec.gov/data/legal/matter-under-review/7430/>.⁵⁵ The Commission unanimously voted on June 26, 2018 to terminate the audit of all 2014 party committees and one authorized committee and to enter the committees into the Alternative Dispute Resolution process immediately.

Recommendation Memorandum), the Proposed Final Audit Report, and the Final Audit Report of the Commission.

- * The number of opportunities for committees to respond to a finding has increased from two to five. Prior to Directive 70, Committees could respond to findings after the exit conference and/or after issuance of the Interim Audit Report. Title 26 committees could also request an Administrative Review Hearing for repayment determinations after issuance of the Final Audit Report. With the adoption of Directive 70, committees can now respond to findings after the Exit Conference, after the issuance of the Interim Audit Report and the Draft Final Audit Report. Additionally, committees have the opportunity to interact with the Commission directly through a Request for Legal Consideration and an Audit Hearing, if the committee's request is granted by the Commission. Title 26 committees can also request an Administrative Review Hearing for repayment determinations after issuance of the Final Audit Report of the Commission.
- * Legal issues may be broken down into severable sub-findings.
- * Commissioners review the audit report language before it changes from an Audit Division report (Interim Audit Report and Draft Final Audit Report) to a Commission report (Final Audit Report of the Commission).
- * The number of audit reports and memoranda reviewed by the Office of General Counsel has increased from two to three in certain audits.
- * Audit reports and associated documents (legal analysis, committee responses, etc.) are placed on the FEC website. Placing these documents on the web provides more transparency to the public.
- * Findings proposed by the auditors that do not garner four votes to either approve or disapprove remain in the audit report, however, the proposed finding is re-categorized as an "Additional Issue" and no further action can be taken on the matter.
- * The Commission can add findings to an audit report upon four affirmative votes.
- * For reasons stated above, among others, the length of time the agency spends auditing each committee has increased.

44. *Have any Commissioners put forward proposals to change any aspect of Directive 70 on processing audits?*

In recent years, Commissioners have discussed various proposals to modify Directive 70 with the Audit Division and Office of General Counsel staff. In August and September 2017, Audit Division and OGC management met with several Commission offices to discuss how to improve the timeliness of audits. Discussions involved both making changes to Directive 70 and internal division changes. As a result of these meetings, the Audit Division implemented stricter milestones, and time-saving mechanisms, including procedures for acquiring committee records more efficiently and the development of standardized templates.

During 2018, additional informal meetings were held with the Audit Division and OGC to consider changes to the report writing process. Additionally, in August 2018, the Assistant Staff Director of Audit circulated a memo to the Commission outlining procedural changes to further improve audit turnaround times.

45. *What is the average time that it takes to complete an audit under Directive 70?*

The length of time each audit takes depends on its type and complexity. The chart below shows the average duration of audits by committee type over four election cycles by number of months. The chart documents the progress made thus far in reducing the time the FEC spends auditing each committee. The Commission continues to explore ways of further reducing the duration of audits.

Committee Type	Average Number of Months			
	2010 Cycle	2012 cycle	2014 ⁵⁵ cycle	2016 ⁵⁶ cycle
Authorized ⁵⁷	19.1	27.9	23.5	18.3
Unauthorized ⁵⁸	25.3	36.4	20.9	5
Title 26 ⁵⁹	N/A	27.8	N/A	20.2

46. *What are the greatest challenges to the Commission's ability to fulfill its mission and mandate? Each Commissioner is invited to answer this question separately.*

Commissioners will respond to this question separately.

⁵⁵ The Commission unanimously voted on June 26, 2018 to terminate the audit of all 2014 party committees and one authorized committee and to enter the committees into the Alternative Dispute Resolution process immediately.

⁵⁶ Averages only include audits completed thus far in the 2016 election cycle.

⁵⁷ “Authorized Committees” are committees authorized by candidates for nomination or election to Federal office.

⁵⁸ “Unauthorized Committees” are not authorized by a candidate and include Political Party Committees, Nonconnected Committees, and separate segregated funds (or PACs). Separate segregated funds may be established by corporations, labor organizations, Trade Associations or Membership Organization.

⁵⁹ “Title 26 Committees” are established by candidates for President of the United States who receive funds under the Presidential public funding programs.



CHAIR ELLEN L. WEINTRAUB
FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

ATTACHMENT A

CHAIR ELLEN L. WEINTRAUB'S
SUPPLEMENTARY RESPONSES TO QUESTIONS FROM THE
COMMITTEE ON HOUSE ADMINISTRATION
MAY 1, 2019

The Commission greatly benefits from effective Congressional oversight, and I am pleased to see that the Committee is zeroing in on some of the most salient issues before my agency.

Several of the Commission's responses merit additional comment.

Questions 12 & 13: *Has the Commission established an "action plan" regarding low employee morale? How is the Commission addressing the root causes of low employee morale?*

The Commission is concerned about low employee morale and has taken the actions described in Answers 12 and 13 to address it.

But there is a larger driver of low employee morale, especially among the professionals in our Office of General Counsel. Staff work many long hours on enforcement matters or rulemakings, only to see enforcement of their matters blocked, or their policy work discarded, by half the Commission. This is a morale-killing problem that will persist as long as the Federal Election Commission lacks a majority of members who are committed to robust law enforcement and effective policymaking.

Questions 17(c) & (d): *How does the Commission plan to address the hundreds of cases on its enforcement docket? How often does the Commission plan to meet for the remainder of 2019 in Executive Session to dispose of these cases?*

I have proposed an aggressive meeting schedule for the second half of 2019 that would have the Commission meeting in Executive Session virtually every week. This would almost double the ordinary Executive Session meeting schedule for the rest of the year. At the Commission's next Public Session, on May 9, I will put a schedule forward for a vote.

Meeting to vote on matters is only part of the solution; if we do not have enough Enforcement Division staff to process our caseload, we will never make progress in clearing our docket. We are not only *not* making progress on staffing levels, we are falling further behind. As shown in Figure 1, below, while Enforcement Division staff FTEs have dropped 30% from 59 to 41 since 2010, the number of enforcement cases has more than tripled. As a result, in 2010, our Enforcement Division staff had 1.8 cases per FTE; in 2018, it was 8.

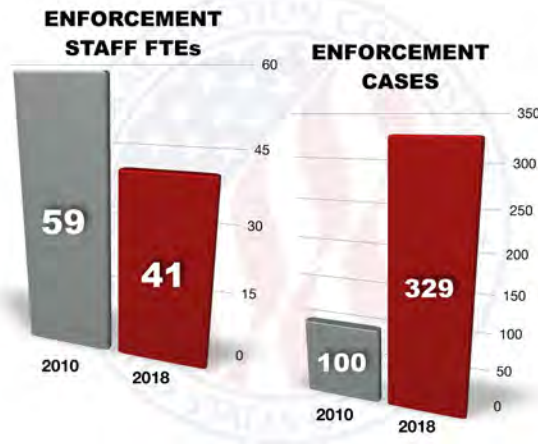


Fig. 1: Enforcement staffing and caseload

This atrophy of the FEC's Enforcement Division staffing levels has stemmed from (a) a refusal of my colleagues to ask Congress to provide funds for more Enforcement Division staff and (b) systematically blocking, slow-walking, or ignoring requests from Enforcement Division leadership to fill vacancies.

Question 18: *How many Matters Under Review are considered in a typical Executive Session?*

It depends on the year. The consensus answer is correct when it states that from 2015 through the present, the Commission considers an average of approximately 18 enforcement cases per Executive Session. But this average varies widely, and can be correlated to the affiliation of that year's Commission chair:

Calendar Year	Average Number of MURs per Agenda	Chair Affiliation
2015	22.2	D
2016	12.4	R
2017	20.7	I
2018	17.3	R
2019	27.5	D
Total	18.6	

Republican chairs average 14.9 matters per Executive Session agenda; Democratic and Independent chairs average 23.5 – 58% more.

Question 20: *Why are some enforcement cases held over – sometimes for years – without resolution?*

The Commission’s consensus answer to this question contains a laundry list of reasons commissioners give for holding over cases. In practice, some of these reasons have been misused to improperly delay or deny justice on some very important matters.

For example, it may occasionally be a good idea to hold matters over “pending completion of General Counsel’s Reports in, or Commission consideration of, other matters that involve common respondents or common legal issues.” But when my colleagues applied that reasoning to their treatment of several LLC matters, this turned into years of delay, with the clock starting over entirely every time a new complaint was filed. As my colleague Ann M. Ravel and I wrote in 2016:

Having refused to consider the first three matters without any justification for several years, they used the filing of the final case as pretext to further delay all of the matters. After stalling on the oldest of these cases for 1,357 days, they ultimately voted against opening an investigation or engaging in conciliation in every one of them. We twice tried to force a vote on the long-pending matters only to have all three Republican commissioners abstain on the motions. When they did finally agree to consider the matters earlier this year – and the Commission deadlocked on the votes along party lines – we even offered to forego all penalties in the hope of persuading them to at least acknowledge these clear violations of the law. But even that was a bridge too far for them.¹

The Commission has no procedural tools available to those who seek to resolve matters in a timely fashion, but commissioners who want to delay matters can do so endlessly. At the moment, with just four commissioners in the Commission’s six slots, a single commissioner’s objection can hold over an item repeatedly; if the item is forced onto an agenda, all that commissioner has to do is abstain from voting to delay consideration of the matter. But it works when the Commission is at full strength as well; when the Republican commissioners abstain, they act as their usual bloc.

¹ Statement of Commissioners Ann M. Ravel and Ellen L. Weintraub (April 13, 2016) in MURS 6487 & 6488 (F8, LLC, *et al.*), MUR 6486 (W Spann LLC, *et al.*), MUR 6711 (Specialty Investment Group, Inc., *et al.*), and MUR 6930 (Prakazrel “Pras” Michel, *et al.*), found at <https://eqs.fec.gov/eqsdocsMUR/16044392258.pdf>

Questions 27 & 28: *Regarding split votes.*

We find majorities to dismiss complaints against those who have not broken the law, which is good, but hardly noteworthy. But we are also supposed to find majorities to enforce against those who have, and we are failing to do so.

What my Republican colleagues are reflexively unwilling to do is move forward on cases where our Office of General Counsel recommends finding reason to believe a violation of the law may have occurred. Sixteen percent of MURs considered in Executive Session deadlock entirely. Those cases are then closed. But a slim majority of 51% have at least one split vote along the way. Inside that latter number is where a lot of the Commission's non-enforcement of the law happens.

Frequently, my Republican colleagues will vote down OGC's recommendations, refuse to move forward on the most major violations alleged, approve going forward on a much more minor accusation, and slash penalties far below appropriate levels – even on penalties set by statute or official Commission policy. My only choices are to accede to their tactics or to vote to dismiss the matter altogether. I'm lucky to get half a loaf; I may just get a slice; frequently, I'm not even offered crumbs.

The ratchet only goes one way. There is no leverage – ever – for anyone who wants to vigorously enforce the law. The advantage always falls to those who want to do less.

Question 29: *Once the Commission deadlocks on a recommendation from the Office of General Counsel, is it the Commission's position that the Office of General Counsel should not make the same recommendation in an analogous case?*

It would be improper as a matter of law and of parliamentary procedure for the Office of General Counsel to take any direction whatsoever from such a Commission deadlock. In the FEC's enforcement context, the Commission deadlocks on an OGC recommendation when a motion on that recommendation has failed to receive the required four affirmative votes. It is a motion that has failed. When a motion fails, the Commission has not acted.

A deadlocked vote is a disagreement, not a decision.

Question 30: *Since the Supreme Court's decision in Citizens United, how many times has the Commission found a violation of the coordination regulations?*

The simple answer is **zero**.

Even in a pre-*Citizens-United* world, coordination was difficult to prove. Post-*Citizens United*, the larger stakes involved in the limitless amounts super PACs are allowed to

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Chair Ellen L. Weintraub
Supplementary Responses
May 1, 2019

spend has caused the political community to push the boundaries even further, and the Commission's coordination regulations have failed altogether.

The Commission has been blocked from even investigating coordination when close family members, close friends, or former staffers of candidates start up super PACs that benefit those candidates. The Commission has been blocked from even investigating coordination when super PACs republish a campaign's materials. The Commission has been blocked from even investigating coordination when a candidate has a website page spelling out exactly what they wanted 'their' super PACs to do.

Despite the enormous pressure placed on the coordination regulations by *Citizens United* and super PACs, the FEC's Republican commissioners have blocked the agency from even *beginning* a rulemaking that would explore whether stronger rules are needed post-*Citizens United*. They are. Badly.

Question 33: *How many rulemakings has the Commission completed since January 1, 2012, excluding Civil Monetary Penalties Inflation Adjustments?*

The Commission's rulemaking pace has slowed drastically since 2008.

One significant example: Beginning shortly after the *Citizens United* decision upended the U.S. campaign-finance system in 2010, I have tried repeatedly – solely or in combination with colleagues – to initiate rulemakings that would protect U.S. elections from foreign spending. Some of these efforts focused on the various ways foreigners might seek to route money through various for-profit and nonprofit corporate entities. Most recently, in May 2018, I re-introduced a bare-bones proposal to prevent spending by corporations owned, or controlled, or used as conduits by *foreign governments*. Every one of these rulemaking proposals was blocked from going forward.²

² See FEC open meeting minutes (Jan. 20, 2011), at 4, http://www.fec.gov/agenda/2011/approved2011_06.pdf “Draft Notice of Proposed Rulemaking on Independent Expenditures and Electioneering Communications by Corporations and Labor Organizations” (Jan. 20, 2011), http://www.fec.gov/agenda/2011/mtgdoc_1102.pdf Ann M. Ravel, Ellen L. Weintraub, Petition for Rulemaking (June 8, 2015), https://www.fec.gov/resources/about-fec/commissioners/statements/Petition_for_Rulemaking.pdf “Proposal to launch rulemaking to ensure that U.S. political spending is free from foreign influence” (Sept. 9, 2016), https://www.fec.gov/resources/about-fec/commissioners/weintraub/statements/WeintraubForeign_Political_Spending_Rulemaking.pdf FEC open meeting minutes (Sept. 15, 2016), at 12, https://www.fec.gov/resources/updates/agendas/2016/approved_1663-a.pdf; “Revised Proposal to Launch Rulemaking to Ensure that U.S. Political Spending is Free from Foreign Influence” (Sept. 28, 2016), https://www.fec.gov/resources/about-fec/commissioners/weintraub/statements/Foreign_National_2_Memo_28_Sept_2016.pdf FEC open meeting minutes (Sept. 29, 2016), at 11, http://www.fec.gov/agenda/2016/documents/approved_1664-a.pdf; FEC open meeting minutes (Jan. 12, 2017), at 7, https://www.fec.gov/documents/372/January_12_2017_Open_Meeting.pdf “Rulemaking proposal to combat foreign influence in U.S. elections” (May 17, 2018), https://www.fec.gov/documents/556/mtgdoc_1826-a.pdf. See also FEC open meeting minutes (May 24, 2018), at 14, https://www.fec.gov/resources/cms-content/documents/May_24_2018_Open_Meeting.pdf.

Question 37: *What further action does the Commission anticipate taking on REG 2011-02 concerning internet communication disclaimers? When does it anticipate taking this further action, if any?*

I remain hopeful that we can come to consensus on this rulemaking and promulgate a new rule. Updating our advertising disclaimers for the internet age is long overdue. This rulemaking was pending on the Commission's agenda long before we learned that hostile foreign governments were using internet advertising to interfere in our elections.

It is, simultaneously, (a) one of the most modest steps we could take to increase transparency in internet advertising and protect our elections from undue influence and (b) the largest step I could get my colleagues to even *consider* taking.

That the rulemaking effort has floundered as long as it has – I have been unable to extract a response from my colleagues more than six months after giving them my latest draft – is emblematic of the challenges facing any FEC rulemaking effort. Again, there is simply no leverage available to those who would like to move efforts forward. Those who would block progress have all the leverage.

Question 38: *How many litigation cases has the Commission appealed in the past 10 years after an adverse court ruling?*

The simple answer is **zero**.

Question 41: *Prioritizing matters involving allegations of foreign influence.*

The Commission's staff has indeed prioritized their handling of foreign-influence matters, and, as Chair, I have placed these matters on Executive Session agendas in a timely fashion. I can bring commissioners to the table on these matters, but I cannot make them vote. Several foreign-influence enforcement matters have been held up repeatedly this year; one statute-of-limitations-imperiled matter has been on the agenda of every Executive Session this calendar year, and my colleagues have refused to vote on it.

Question 46: *What are the greatest challenges to the Commission's ability to fulfill its mission and mandate?*

For the past 11 years, the Federal Election Commission has been severely challenged from the inside by a group of commissioners who harbor ideological opposition to the very nature of the agency and the law we are charged with enforcing. FECA's requirement that it takes four votes to form a majority on the six-member commission

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May 1, 2019

was intended to ensure that Commissioners of one party could not persecute members of the other party. And it succeeded in providing that protection.

But the Commission's structure left it vulnerable to a bad-faith strategy where one party's commissioners routinely vote in a bloc, giving them the ability to block any matter before the agency. Unfortunately, my Republican colleagues have pursued this strategy consistently since 2008. We are rarely able to find four votes to pursue most matters of any substance. We are unable to find four votes to pass regulations to respond to the vast changes in the campaign-finance landscape over the past 11 years, especially since *Citizens United*.

And within the agency, my colleagues' obstruction has left the Commission and the country less well-prepared to handle the issues that do come before us. As noted above in the answers to questions 17(c) & (d), my colleagues' actions have caused our Enforcement Division staffing levels to atrophy.

As a result, the Federal Election Commission has been tethered to the sidelines as super PACs and dark money have exploded across the American political scene, as our elections have been attacked by our chief foreign adversary, and as Americans' faith in their democracy has declined.

Ellen L. Weintraub
Chair

ATTACHMENT B

27. *For purposes of this question, assume a “deadlocked vote” is an equally divided vote of the Commission or any other vote that lacks four affirmative votes. Of Matters Under Review considered in Executive Session since January 1, 2012 and that are now closed, how many and what percentage of the MURs included at least one deadlocked vote of the Commission during Executive Session? Please provide, categorized by year since 2012, the count and percentages. Please also provide the MUR number for each MUR that included at least one deadlocked vote.*

Response of

Vice Chairman Matthew S. Petersen and Commissioner Caroline C. Hunter

Using a Commission vote database maintained by the Commission’s Secretary, an Enforcement Division case management database, and the Enforcement Query System on the FEC’s website, all MURs (as defined in response to question 25 above) that were considered by the Commission in Executive Session after January 1, 2012 and that were closed as of April 1, 2019 were examined. 531 such MURs were identified. 269 of these MURs, or 50.6%, had at least one vote after January 1, 2012, with no position receiving the support of four or more Commissioners, which the Commission has typically called a “split vote.” Split votes are most often 3-3 or 2-2, and can also be any other combination that lacks four or more votes in the affirmative or negative.

The Commission does not consider some of the votes that the question considers to be “deadlocked” to be split votes. FECA requires four Commissioners’ votes for certain decisions, without regard to how many Commissioners are currently serving. Consequently, the Commission views any position supported by four or more Commissioners as a Commission decision, and not as a “deadlocked” vote.¹ The question seeks information about cases where there were not four *affirmative* votes. In one such case, for example, an initial motion to dismiss the case as a matter of prosecutorial discretion was defeated by a vote 1-5, and the case then proceeded through multiple unanimous votes through reason-to-believe and probable-cause-to-believe findings, and was resolved by a conciliation agreement with admissions and a substantial civil penalty.² The initial vote of 1-5 lacks four affirmative votes and is therefore responsive to this question. The Commission, however, would not consider this case an example of a “deadlocked” case. As a result of conferring with House Administration Committee staff, the Commission compiled the data related to cases with votes like this and present it separately in footnotes in response to questions 27 and 28.³

¹ Congressional Research Service did not consider four or more negative votes to be a deadlocked vote in its work in 2009 or 2015. See CRS, “The Federal Election Commission: Enforcement Process and Selected Issues for Congress,” R44319, at 10 n.44 (Dec. 22, 2015) and CRS, “Deadlocked Votes Among Members of the Federal Election Commission (FEC): Overview and Potential Considerations for Congress,” R40779, at 5 & 10-11 (Oct. 6, 2009).

² See MUR 6394 (Pingree for Congress).

³ If additional cases with votes that lack four affirmative votes after January 1, 2012, are also considered responsive to question 27, an additional 12 MURs would be responsive, for a total of 281 or 52.9%.

ATTACHMENT B

The following chart breaks down this data by calendar year. Some MURs are subject to one vote in one Executive Session, while others can be considered in multiple Executive Sessions that might fall in different years. The data below include each MUR considered by the Commission in Executive Session in each of the calendar years, so some MURs appear more than once.

Calendar Year	Closed MURs with At Least One Split Vote Considered in Executive Session	Closed MURs Considered in Executive Session	Percentage (At Least One Split/ Closed MURs in Exec.)	Total Closed MURs (Exec. Sess. & Tally)	Percentage (At Least One Split/ Total Closed MURs)
2012	27	61	44.3 %	103	26.2 %
2013 ⁴	41	93	44.1 %	172	23.8 %
2014 ⁵	23	61	44.3 %	94	24.5 %
2015 ⁶	53	91	58.2 %	133	39.8 %
2016 ⁷	49	75	65.3 %	137	35.8 %
2017 ⁸	39	72	54.2 %	169	23.1 %
2018	51	86	59.3 %	194	26.3 %
1/1-3/31/2019	16	20	80.0 %	35	45.7 %
Total for Entire Period	269	531	50.6 %	839	32.1 %

In addition to the 531 cases resolved in Executive Session, the Commission resolved a significant tranche of cases unanimously without the need for an Executive Session. As noted in response to Question 26, an additional 308 MURs were resolved on tally, for a total of 839 closed MURs.⁹ Thus, MURs resolved on tally are nearly 37% of the closed MURs for this eight year period, which is far too large a portion to ignore. In order to provide more complete information, the chart above also presents the closed MURs with at least one split vote as a

⁴ If votes lacking four affirmative votes were included, 2013's Closed MURs with At Least One Deadlock Vote Considered in Executive Session would increase by one to 42, and the percentage would increase to 45.2 %.

⁵ If votes lacking four affirmative votes were included, 2014's Closed MURs with At Least One Deadlock Vote Considered in Executive Session would increase by two to 25, and the percentage would increase to 41.0%.

⁶ If votes lacking four affirmative votes were included, 2015's Closed MURs with At Least One Deadlock Vote Considered in Executive Session would increase by seven to 60, and the percentage would increase to 65.9 %.

⁷ If votes lacking four affirmative votes were included, 2016's Closed MURs with At Least One Deadlock Vote Considered in Executive Session would increase by three to 52, and the percentage would increase to 69.3 %.

⁸ If votes lacking four affirmative votes were included, 2017's Closed MURs with At Least One Deadlock Vote Considered in Executive Session would increase by four to 43, and the percentage would increase to 59.7%.

⁹ By definition, all 308 MURs resolved on a tally vote were cases where the Office of General Counsel's recommendations received at least four Commissioners' votes—and in fact unanimous Commissioner support in very nearly all such cases.

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percentage of total closed MURs each year, including all the MURs closed exclusively on tally vote and those considered in Executive Session.¹⁰

¹⁰ Results from other analyses of Commission voting data vary widely based on methodology, time period, and the types of votes studied. For example, in 2009 the Congressional Research Service (CRS) defined “substantive deadlocks” as votes garnering less than four Commissioners’ support and which “essentially halted substantive Commission action.” See R. Sam Garrett, Cong. Research Serv., R40779, *Deadlocked Votes Among Members of the Federal Election Commission (FEC): Overview and Potential Considerations for Congress* at 4-5 (Aug. 26, 2009) (finding “substantive deadlocks” occurred in approximately 13% of publicly available MURs closed between July 2008 and June 2009).

In 2013, Public Citizen defined deadlock as *any* split vote on *any* Commission enforcement vote, regardless of whether it ended substantive Commission action. See Public Citizen, *Roiled in Partisan Deadlock, Federal Election Commission Failing* (Apr. 2015) (finding an average of 18.8% of all substantive and non-substantive votes were split between 2012-2014, but an average of 4.8% from 2003-2014). In 2015, the CRS noted the debate over how to count deadlocks, noting that “[f]ocusing on deadlocks might or might not provide meaningful information” since they “reveal little about why the Commission made its decision (or declined to make a decision).” One method counts MURs as the “unit of analysis” (the thing being counted) where votes precluding resolution of the matter would count as a single deadlock (*i.e.*, CRS’s definition of “substantive deadlock” in 2009). By contrast, a higher number results when each individual split vote is defined as a Commission deadlock. See R. Sam Garrett, Cong. Research Serv., R44318, *The Federal Election Commission: Enforcement Process and Selected Issues for Congress* at 13 (Dec. 22, 2015).

Before her departure in 2017, former Commissioner Ravel utilized the same metric as Public Citizen (*any* split vote on *any* Commission enforcement vote) to proclaim the Commission was suffering from an “enforcement crisis,” but even under this analysis, the percent of MURs “closed due to a deadlock” never exceeded 15% and averaged less than 10% for all MURs between 2006 and 2016. See *Dysfunction and Deadlock: The Enforcement Crisis at the Federal Election Commission Reveals the Unlikelihood of Draining the Swamp* at 10 (Feb. 2017). As shown in our response to the Committee’s question number 28, an average of **just 10.0%** of MURs closed because of Commission deadlocks from January 1, 2012 through March 31, 2019.

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28. *For purposes of this question, assume a “deadlocked vote” is an equally divided vote of the Commission or any other vote that lacks four affirmative votes. Of Matters Under Review considered in Executive Session since January 1, 2012 and that are now closed, how many and what percentage of the MURs deadlocked on all votes taken during Executive Session, other than a vote to close the file and send the appropriate letter(s)? Please provide, categorized by year since 2012, the count and percentages. Please also provide the MUR numbers and MUR subject of the cases that deadlocked on all votes taken in Executive Session (other than a vote to close the file and send the appropriate letter(s)).*

Of the 531 MURs that were considered by the Commission in Executive Session after January 1, 2012 and that were closed as of April 1, 2019, 84 of these MURs or 15.8% had split votes (as defined in response to question 27) on all votes taken during the Executive Session other than a vote to close the file.¹¹

Calendar Year	Closed MURs with All Split Votes Considered in Executive Session	Total Closed MURs Considered in Executive Session	Percentage (All Split/ Closed MURs in Exec.)	Total Closed MURs (Exec. & Tally)	Percentage (All Split/ Total Closed MURs)
2012	2	61	3.3 %	103	1.9 %
2013	12	93	12.9 %	172	7.0 %
2014	6	61	9.8 %	94	6.4 %
2015 ¹²	19	91	20.9 %	133	14.3 %
2016 ¹³	12	75	16.1 %	137	8.8 %
2017	12	72	16.7 %	169	7.1 %
2018	24	86	27.9 %	194	12.4 %
1/1-3/31/ 2019	11	20	55.0 %	35	31.4 %
Total for Entire Period	84	531	15.8 %	839	10.0 %

The MURs responsive to question 28 consist of matters where the votes on all substantive issues were split votes, other than votes to close the files. These 84 “all split” MURs were also responsive to question 27, as MURs with at least one split vote. However, an additional 185

¹¹ If all of the 839 MURs that have been closed from January 1, 2012, to April 1, 2019, are considered, and if additional cases with votes without four affirmative votes after January 1, 2012 are also considered, an additional 5 MURs would be responsive to question 28, for a total of 90 or 17.0%.

¹² If votes lacking four affirmative votes were included, 2015’s Closed MURs with All Deadlock Votes Considered in Executive Session would increase by three to 21, and the percentage would increase to 23.1%.

¹³ If votes lacking four affirmative votes were included, 2016’s Closed MURs with All Deadlock Votes Considered in Executive Session would increase by two to 14, and the percentage would increase to 18.7%.

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MURs were also responsive to question 27. Unlike the 84 “all split” MURs, the other 185 MURs that were also responsive to question 27 had some degree of Commission consensus about the issues in those cases.

For example, some of the split votes that rendered a MUR responsive to question 27 concerned the terms of a conciliation agreement to resolve a MUR nearing its conclusion. The stage of the case alone means there was: (1) a four-vote consensus (at a minimum) about a reason-to-believe finding; (2) a similar consensus about a legal theory for that violation with a common understanding of the facts of a case; and (3) a similar consensus about whether an investigation was required, and if it was, about the state of the evidence of that case. Further, the Commission agreed that resolving the case by a conciliation agreement was the best next step, but then disagreed initially over the terms of a conciliation agreement that the Commission should seek from respondents to resolve the case. Of the 183 MURs that had at least one split vote but were not “all split” MURs, the Commission has identified more than fifty closed MURs where the split vote concerned the amount of a civil penalty in cases that went on to be resolved with at least four Commissioners’ votes with conciliation agreements with lower civil penalties.¹⁴

Similarly, some of the split votes that rendered a MUR responsive to question 27 concerned a particular aspect in a case that was otherwise handled by an at least four vote consensus of Commissioners. For example, in dismissing cases pursuant to the recommendation of the General Counsel and with the votes of at least four Commissioners, the Commission has had split votes over whether a respondent should be issued a letter of caution against repeating the conduct at issue in the MUR.¹⁵ In other MURs, the Commission has had split votes over approving a proposed Factual and Legal Analysis that were followed by majority votes to approve a revised Factual and Legal Analysis.¹⁶ The Commission has also had split votes concerning the amount in violation where, for example, the Commission pursued a case of a personal use violation of FECA, but disagrees over some of the transactions that were alleged personal use violations.¹⁷ Like the disagreements over civil penalty amounts, these split votes show Commissioner disagreement on a particular aspect, but still within the context of four or more Commissioners in agreement over strategy for a case.

Still other split votes occur on more significant issues, and represent more consequential disagreement among Commissioners, but still should be viewed in their context of Commissioner agreement on other aspects of a case. For example, the Commission has had split votes over whether there is sufficient proof to pursue a FECA violation as a “knowing and willful” violation, which has potential parallel criminal consequences, and then agreed to pursue the same violation on a non-knowing and willful basis.¹⁸ The Commission has also had split votes on particular legal theories of liability for respondents, while ultimately agreeing to pursue

¹⁴ See, e.g., MUR 7470 (For Our Future), Certifications (Aug. 8, 2018 & Feb. 7, 2019).

¹⁵ See, e.g., MUR 7023 (Kinzler) and MUR 6961 (Trump).

¹⁶ See, e.g., MUR 6566 (Foley).

¹⁷ See, e.g., MUR 6498 (Lynch).

¹⁸ See, e.g., MUR 6498 (Lynch).

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other legal theories of liability related to the same facts of a MUR.¹⁹ The Commission has also had split votes on whether to begin an investigation of a case, followed by at least four vote consensus to resolve a case via conciliation.²⁰ These are significant and consequential disagreements among Commissioners; nonetheless, they should be viewed in context of Commissioner agreement about other aspects of the cases.

¹⁹ See, e.g., MUR 7126 (Michigan Democratic Party).

²⁰ See, e.g., MUR 6535 (Restore Our Future).



FEDERAL ELECTION COMMISSION
Washington, DC 20463

Office of Commissioner Steven T. Walther

May 1, 2019

Re: Response of Commissioner Steven T. Walther to Question 46 of
April 1, 2019 Letter to Federal Election Commission from Committee
on House Administration, Zoe Lofgren, Chairperson

Dear Chairperson Lofgren and Members of the Committee on House Administration:

Thank you very much for your ongoing interest in the Federal Election Commission and your desire to hear from the Commission regarding its concerns and challenges and to be apprised of our plans for the current election cycle.

Much of the credit in researching and compiling the information for our responses goes to the FEC team assembled by Duane Pugh, the Commission's Director of Congressional, Legislative and Intergovernmental Affairs. The FEC team toiled for many hours over this past month to provide detailed and accurate responses to the Committee's inquiries in a timely manner.

Thank you also for offering an opportunity for each of the Commissioners to provide comments individually in addition to providing collective responses to your questions. While I concur with the Commission's collective responses, there are some minor issues on which I would like to elaborate; I welcome this opportunity to offer my views concerning these issues.

Priority and Timing of Enforcement Matters

A major focus of my efforts as a Commissioner has been to improve the processing of enforcement matters that come before the Commission, while promoting fairness, efficiency and transparency. Unfortunately, all too often significant amounts of monetary activity in violation (or potential violation) of the FECA in enforcement matters before the Commission are lost due to the expiration of the applicable statute of limitations. These situations might have been avoided or ameliorated if the Commission had policies in place to handle cases more efficiently. To address these ongoing concerns, I have made four separate motions (dated July 16, 2015, September 15, 2015, November 10, 2015, and August 16, 2016), culminating in a November 15, 2017 memorandum entitled "Assessment of Commission Action in Enforcement Matters

Awaiting Reason to Believe Consideration.” *See* Document A.¹ These memoranda and accompanying motions included detailed charts and deadlines for appropriate action to be taken by the Commission.

Although the priority motions were not approved by the Commission, the charts and method of disclosure used in those motions were adopted in the amendments to Directive 68 on December 14, 2017.² The amended directive, which was unanimously approved by the Commission, greatly improved transparency and accountability regarding the Commission’s performance on enforcement matters. Each Status of Enforcement report is now placed on the Commission’s website and available to the public in redacted form within 15 days of circulation of the report to the Commission. In fact, the Committee included a chart from a recent Status of Enforcement document in Question 20.

The Commission still has not, however, approved procedures to speed up the enforcement process as proposed in the priority motions. For example, as indicated in the charts in the Status of Enforcement reports, enforcement matters are often delayed for several months or even years due to the numerous holdover requests by Commissioners. I believe there should be strict limits regarding the terms of holdover requests, and I will be asking the Commission to adopt further amendments to Directive 68 to establish deadlines for the timely processing of enforcement matters before the Commission. *See* Document B.

The Commission’s Audit Process

To improve the efficiency of processing audits and avoid losing potential violations to the statute of limitations, I believe that Directive 70 should be amended to require that no audit may be commenced unless, at the outset, Audit staff submits to the Commission a comprehensive plan of how it intends to complete the audit in a sufficient amount of time. Such a plan would include (a) an analysis of the need for the audit, (b) a projection of the time and effort to complete the audit, and (c) a conclusion as to whether the audit can be completed – including transfer to OGC for further enforcement proceedings as appropriate – prior to 18 months before the statute of limitations starts to run.

Legislative Cures

The massive amount of money that has been injected into the electoral process resulting from *Citizens United* and its judicial progeny has left the Commission with a lack of clear jurisdiction to regulate in this new area. The Commission is currently confronted with regulatory issues involving unlimited amounts of corporate and union funds spent independently (including money from foreign sources), including how these sources should be disclosed and the extent to which they should be disclosed; I believe that Congress should pass legislation to address these issues. Some aspects of current bills before Congress are laudable to the extent they directly

¹ The document is also available on the Commission’s website at https://www.fec.gov/resources/cms-content/documents/mtdoc_1753-a.pdf.

² The amended directive is available on the Commission’s website at https://www.fec.gov/resources/cms-content/documents/directive_68.pdf

target the current problems associated with so-called "Super PACs," "dark money" and the influx of foreign spending on American elections.

FEC Composition

Other aspects of pending legislation address concerns about Commission indecision, as manifested in frequent deadlocks on enforcement and policy matters. For example, one proposal would modify the structure of the Commission through the FECA so that the Commission would be comprised of an odd number of Commissioners with no single party holding a majority of seats. The idea is that deadlocked votes might be avoided if there were, say, five Commissioners with a majority of three required for approving most decisions. I believe there is greater wisdom in retaining the structure that exists now; *i.e.*, that most formal actions require the approval of four Commissioners, which must include at least one vote from a Commissioner not of the same party as the other three. If this were not the case, there could very well be accusations of partisan motives, whether or not justified, based upon one's view of the political leanings of the "tie-breaking" Commissioner. In many instances, Commission deadlocks can be instructive in the sense that persons or parties that come before the Commission, and others who are interested, can learn from the arguments presented and then determine how to conduct themselves in the absence of formal guidance.

In closing, even though exercises such as these frequently raise discomfiting views and negative comments, we should not lose sight of the fact that the FEC, with all its flaws, still remains the finest disclosure agency worldwide regarding campaign finance information. No other agency in the United States or any other country provides the scope of disclosure that the FEC ensures on a timely and accurate basis.

Thank you once again for this opportunity to submit this response; I am happy to supplement my answers or to provide further information as needed.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven T. Walther". The signature is fluid and cursive, with the first name "Steven" being more prominent.

Steven T. Walther
Commissioner

Attached documents (2)

RECEIVED

By Office of the Commission Secretary at 4:27 pm, Nov 15, 2017



FEDERAL ELECTION COMMISSION
Washington, DC 20463

AGENDA DOCUMENT NO. 17-53-A

AGENDA ITEM

For meeting of November 16, 2017

SUBMITTED LATE

MEMORANDUM

TO: The Commission

FROM: Steven T. Walther *STW*
Chairman

RE: Assessment of Commission Action on Enforcement Matters Awaiting
Reason-to-Believe Consideration

DATE: November 15, 2017

Attached is a memorandum regarding Commission action on enforcement matters awaiting reason-to-believe consideration. It is intended to follow up on motions I made most recently at the Open Meeting of August 16, 2016, and previously at the Open Meetings of July 16, September 17, and November 10, 2015.

I have asked to place this document on the agenda for the Open Meeting scheduled for November 16, 2017.

Attachment



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: The Commission

FROM: Steven T. Walther
Chairman

RE: Assessment of Commission Action on Enforcement Matters Awaiting
Reason-to-Believe Consideration

DATE: November 15, 2017

I. Introduction

This memorandum provides an update on the status of enforcement matters awaiting reason-to-believe consideration by the Commission, as well as an assessment of recent efforts by the agency to address the backlog of matters.

II. Background

On July 14, 2015, I filed my first motion ("Priorities Motion I," see attached) to prioritize the formal enforcement actions that come before the Commission following a recommendation by the Office of General Counsel ("OGC"). At the time the first motion was filed, my concern was aimed at reducing the aging matters by setting a priority and schedule for taking immediate substantive action¹ on initial enforcement recommendations by OGC.

On July 16, 2015, the Commission considered Priorities Motion I, which addressed enforcement matters that had been pending before the Commissioners for one

¹ "Substantive action" means a vote by the Commission that results in a finding of reason to believe, no reason to believe, dismissal or other formal action with respect to enforcement matters pending before the Commission alleging violations of the Federal Election Campaign Act.

year or more (as of June 30, 2015) from the date of receipt by the Commissioners, as well as on matters for which no substantive action had been taken for one year or more since the date of receipt of the complaint or referral. Priorities Motion I was defeated by a 2-4 vote.

Two months later, on September 17, 2015, the Commission considered a motion dated September 15, 2015 (“Priorities Motion II,” available on the Commission’s website²), again seeking adoption by the Commission of a similar policy as described above. Priorities Motion II related to matters that were pending as of August 31, 2015, adding to the list all matters with substantive recommendations submitted to the Commissioners by OGC between July 1 and August 31, 2015. Priorities Motion II deadlocked with a 3-3 vote.

Two months later, on November 10, 2015, the Commission considered a motion dated November 9, 2015 (“Priorities Motion III,” available on the Commission’s website³), again seeking adoption by the Commission of a similar policy as described above. Priorities Motion III related to matters that were pending as of October 31, 2015, adding to the list all matters with substantive recommendations submitted to the Commissioners by OGC between September 1 and October 31, 2015. Priorities Motion III deadlocked with a 3-3 vote.

Nine months later, on August 16, 2016, the Commission considered a motion dated August 12, 2015 (“Priorities Motion IV,” available on the Commission’s website⁴), again seeking adoption by the Commission of a similar policy as described above. Priorities Motion IV related to matters that were pending as of July 31, 2016, adding to the list all matters with substantive pending recommendations submitted to the Commissioners by OGC between November 1, 2015 and July 31, 2016. Priorities Motion IV deadlocked with a 3-3 vote.⁵

² See Second Motion to Set Priorities and Scheduling on Pending Enforcement Matters Awaiting Reason-to-Believe Consideration, *available at* http://www.fec.gov/agenda/2015/documents/mtgdoc_1548-a.pdf.

³ See Motion to Set Priorities and Scheduling on Pending Enforcement Matters Awaiting Reason-to-Believe Consideration, *available at* http://www.fec.gov/agenda/2015/documents/mtgdoc_1563-a.pdf.

⁴ See Motion to Set Priorities and Scheduling on Pending Enforcement Matters Awaiting Reason-to-Believe Consideration, *available at* <http://www.fec.gov/agenda/2016/agenda20160816.shtml>

⁵ The focus in these motions was solely on enforcement matters handled by OGC; they did not contain statistics with respect to other matters that came before the Commission during the relevant periods. These matters would include certain audits, alternate dispute resolution recommendations for which the Commission has little discretion, and administrative fine recommendations for which the Commission has even less discretion.

Priorities Motions I, II, III and IV sought adoption of a policy to act on enforcement matters that go to the heart of the Commission's enforcement process. These matters often involve complex factual and legal judgments that inform the public and those involved in the political process of the Commission's view of the law. These are the matters for which the Commission has exclusive authority to immediately act upon – with no extrinsic issues or events to inhibit the ability of the Commissioners to take immediate action on each of them.

III. Assessment of the Commission's Progress

At the outset, I want to stress that the Commission is entirely responsible for any enforcement delays that are reflected in the information contained in this memorandum and in the attachments. Any negative inferences or admonitions are directed only at the Commissioners. In my view, we have a very conscientious and professional staff members who are doing a fine job under challenging circumstances. I believe the work product from OGC is of the highest caliber, particularly in terms of submitting thorough factual and legal analyses that support OGC's substantive recommendations regarding complaints and referrals.

In addressing the backlog of enforcement matters as evidenced by the information presented herein, the Commissioners needs to focus primarily on budget issues, providing sufficient personnel, and, of course, on how best to administer the enforcement docket and prioritize older matters; I think all of these issues deserve far greater attention by the Commissioners.

As Priorities Motion I shows, there were a number of cases that deserved – at least in my opinion – greater attention due to the passage of time without any substantive Commission action. At the time of the filing of Priorities Motion I in mid-2015, there was a total of 78 pending matters, five of which had been awaiting Commission action for over three years; there were three that had been pending two years or more but less than three years, and 15 that had been pending one year or more but less than two years from the date of receipt by the Commission of a recommendation from OGC. The remaining 55 matters had been pending for less than one year.

In comparison to the chart of pending matters in Priorities Motion I, as of September 30, 2017, there is a total of 91 matters pending before the Commission without a substantive vote, an increase of 17% since mid-2015. However, there is now only one case that has been pending before the Commission for more than three years, representing a substantial reduction of 80%. In addition, five matters have been pending for two years or more but less than three years (67% increase), four matters have been pending one year or more but less than two years (73% reduction), and 81 matters have been pending before the Commission for less than one year (47% increase).

As can be seen from these statistics and the information in the attachments, there has been improvement in certain areas since Priorities Motion I, thanks to the attention given these matters by the Commissioners, who deserve credit for the effort taken to at least bring our inventory more current.

Regardless of whether or not I am Chairman, I will endeavor to bring these figures further within the constraints of reasonableness by reducing the number of matters pending over two years to zero, and by reducing the matters which have been before the Commission for more than 18 months to zero. I also hope that the Commission can eliminate entirely any matter which has been filed and has awaited the preparation and submission of an OGC report for more than 12 months, with the understanding that the Commission has the authority in unusual but nevertheless aggravated cases to move to dismiss the matter even without a pending recommendation from OGC. This is a balancing act whereby the speed of decisionmaking is important to the extent that the respondent is prejudiced by excessive delay.

IV. Current Data for the Period from Receipt of Complaint or Referral to the Date of Submission of OGC's Recommendation

The Commission usually receives 100 to 250 complaints and referrals per year; the number often fluctuates depending on whether or not there is an election year. Not surprisingly, the Commission generally receives the most complaints in years in which there is a presidential election.

During the last five years the number of complaints and referrals received by the Commission is as follows:

2017: 88 (as of September 30)
2016: 181
2015: 121
2014: 140
2013: 133
2012: 235

The attached charts address with particularity the amount of time pending *since the receipt of a recommendation by the Commission*; however, equally important in assessing the efficacy of our enforcement system is the amount of time between the date of receipt of a complaint or referral and the date a matter is submitted to the

Commissioners with a recommendation for action.⁶

Although this information has been redacted from the attached charts in order to prevent identification of the actual cases, the following tables are provided to allow an assessment of relevant sets of periods:

A. Chart Comparing Time Period Between Receipt of Complaint/Referral by Commission and Date of Chart

	June 30, 2015	September 30, 2017	Percent change (rounded)
4 years or more	1	1	0%
3 to 4 years	8	8	-0%
2 to 3 years	17	11	-35%
1 to 2 years	36	40	+11%
Less than one year	16	31	+94%
Total	78	91	

B. Chart Comparing Time Period Between Receipt of Complaint/Referral by Commission and Submission of OGC's Recommendation to the Commission

	June 30, 2015	September 30, 2017	Percent change (rounded)
3 to 4 years	0	3	N/A
2 to 3 years	7	3	-57%
1 to 2 years	16	10	-38%
Less than one year	55	75	+36%
Total	78	91	

⁶ There may be various reasons for delay during this pre-submission period that are outside of the control of the Commission and Office of General Counsel, but this time period, in my view, should rarely extend beyond 9 months (approx. 270 days). By statute, a respondent is entitled to notice of a complaint and opportunity to respond, and the Commission has further afforded that right to respondents with respect to supplements to complaints, and substantive action on a complaint is generally deferred during the response period. Delays can occur, for example, when a complainant submits periodic supplements to the initial complaint after filing the complaint; the respondent(s) is then sent a copy of each supplement and provided with an opportunity to respond.

C. Chart Comparing Time Period Between Submission of OGC's
Recommendation to the Commission and Date of Chart

	June 30, 2015	September 30, 2017	Percent change (rounded)
3 to 4 years	5	1	-80%
2 to 3 years	3	5	+67%
1 to 2 years	15	4	-73%
Less than one year	55	81	+47%
Total	78	91	

Attachments

Chart of Enforcement Matters (current as of September 30, 2017)
Priorities Motion I, dated July 14, 2015

Relevant Dates of Initial Substantive Recommendations
Submitted by OGC to the Commissioners as of September 30, 2017¹
(sorted by days between OGC's recommendations and Commission inaction)

1	2	3	4	5	6	7	8	9	10	11
#			Date Assigned to OGC Attorney	Date of OGC's Recommendations to Comm'n		Days Between Assignment and OGC's Recommendations to Comm'n		Days Between Assignment and Comm'n Inaction as of 9/30/17	Days Between OGC's Recommendations and Comm'n Inaction as of 9/30/17	Holdovers and Other Relevant Information as of 9/30/17
1.	X	X	9/11/15	N/A	N/A	N/A	X	750	N/A	N/A (Matter still pending with OGC)
2.	X	X	6/24/16	N/A	N/A	N/A	X	463	N/A	N/A (Matter still pending with OGC)
3.	X	X	4/20/17	N/A	N/A	N/A	X	163	N/A	N/A (Matter still pending with OGC)
4.	X	X	9/22/16	N/A	N/A	N/A	X	374	N/A	N/A (Matter still pending with OGC)
5.	X	X	7/28/16	N/A	N/A	N/A	X	429	N/A	N/A (Matter still pending with OGC)
6.	X	X	6/16/16	N/A	N/A	N/A	X	471	N/A	N/A (Matter still pending with OGC)
7.	X	X	5/10/16	N/A	N/A	N/A	X	508	N/A	N/A (Matter still pending with OGC)
8.	X	X	6/16/16	N/A	N/A	N/A	X	471	N/A	N/A (Matter still pending with OGC)
9.	X	X	12/23/16	N/A	N/A	N/A	X	280	N/A	N/A (Matter still pending with OGC)
10.	X	X	5/5/16	N/A	N/A	N/A	X	503	N/A	N/A (Matter still pending with OGC)
11.	X	X	10/9/12	3/10/14	X	517	X	1817	1300	*Held over meetings of Feb. 10, 12, Mar. 3, 10, 17, 19, Apr. 21, 22, May 19, 21, June 16, 18, July 14, 16, Aug. 10, 11, 13, Sept. 15, 17, 29, Oct. 1, 27, 29, Nov. 17, 19, Dec. 10, 15, 17, 2015. Aug. 15, 17, Sept. 12, 14, and 19, 2017
12.	X	X	7/02/14	10/29/14	X	119	X	1186	1067	*Held over meetings of Apr. 12, 26, 2016, Jan. 24, 25, 2017.
13.	X	X	7/02/14	10/29/14	X	119	X	1186	1067	*Held over meetings of Apr. 12, 26, 2016, Jan. 24, 25, 2017.
14.	X	X	7/02/14	10/29/14	X	119	X	1186	1067	*Held over meetings of Apr. 12, 26, 2016, Jan. 24, 25, 2017.
15.	X	X	10/07/14	2/05/15	X	121	X	1089	967	*Held over meetings of June 28, 2016, Jan. 24, 25, 2017.
16.	X	X	2/03/15	5/27/15	X	113	X	970	857	*Held over meetings of Dec. 10, 15, 17, 2015, Jan. 24, 25, Aug. 15 and 17, Sept. 12, 14, 19, 20, 2017.
17.	X	X	6/04/15	11/13/15	X	162	X	849	687	*Held over meetings of Nov. 15 and Dec. 6, 2016, Jan. 24, 25, 2017.

¹ This chart was prepared by the office of Chairman Walther. Chairman Walther is responsible for the accuracy of its contents. For purposes of public disclosure, in Column 2, the case number has been redacted; in Column 3, the date of receipt of complaint or referral has been redacted; in Column 6, the number of days between receipt and OGC's recommendations to the Commission has been redacted; and in Column 8, the number of days between receipt and Commission inaction has been redacted.

Items 1-10 are enforcement matters for which there had been no recommendation from OGC as of Sept. 30, 2017; they represent the ten oldest such matters before the Commission based on date of the complaint or referral. Six of the complaints or referrals associated with these matters were filed over two years prior to Sept. 30, 2017, and four of the complaints or referrals were filed between one and two years prior to Sept. 30, 2017. The only unredacted information provided for these particular matters is the date of assignment to an attorney, as shown in column 4, and the numbers of days between assignment to an attorney and Commission inaction, as shown in column 9. Not shown in this chart are 21 other such matters (approx.) with complaints or referrals received between one and two years prior to Sept. 30, 2017, for which there had been no recommendation as of that date, and 82 matters (approx.) received less than one year prior to that date for which there had been no recommendation as of that date.

*Currently subject to an informal hold request by one or more Commissioners.

1	2	3	4	5	6	7	8	9	10	11
#			Date Assigned to OGC Attorney	Date of OGC's Recommendations to Comm'n		Days Between Assignment and OGC's Recommendations to Comm'n		Days Between Assignment and Comm'n Inaction as of 9/30/17	Days Between OGC's Recommendations and Comm'n Inaction as of 9/30/17	Holdovers and Other Relevant Information as of 9/30/17

18.	X	X	12/08/15	4/13/16	X	127	X	662	535	*Held over meetings of Mar. 7 and 9, Aug. 15, 17, Sept. 12, 14, 19, 20, 2017.
19.	X	X	4/08/16	8/04/16	X	118	X	540	422	*Held over meetings of Mar. 7 and 9, Aug. 15, 17, Sept. 12, 14, 19, 20, 2017.
20.	X	X	4/22/16	8/05/16	X	105	X	526	421	*Held over meetings of Mar. 7, 9, Aug. 15, 17, Sept. 12, 14, 19, 20, 2017.
21.	X	X	7/13/16	10/11/16	X	90	X	444	354	*Held over meetings of Mar. 7, 9, Aug. 15, 17, Sept. 12, 14, 19, 20, 2017.
22.	X	X	7/13/16	10/11/16	X	90	X	444	354	*Held over meetings of Mar. 7 and 9, Aug. 15, 17, Sept. 12, 14, 19, 20, 2017.
23.	X	X	6/06/16	12/06/16	X	183	X	481	298	Held over meetings of May 23 and 25, June 6, and 8, 2017.
24.	X	X	9/16/16	12/16/16	X	91	X	379	288	Held over meetings of Apr. 25 and 27, May 23 and 25, June 6, and 8, 21, 22, Aug. 15, 17, Sept. 12, 14, 19, and 20, 2017.
25.	X	X	9/01/16	1/10/17	X	131	X	394	263	Held over meetings of June 21, 22, July 11, and 13 2017.
26.	X	X	9/29/16	1/23/17	X	116	X	366	250	Held over meetings of June 6, 8, 21, 22, Aug. 15, 17, Sept. 12, 14, 19, 20, 2017.
27.	X	X	11/25/16	1/24/17	X	60	X	309	249	Held over meetings of Sept. 12, 14, 19, 20, 2017.
28.	X	X	11/25/16	1/25/17	X	60	X	308	247	Held over meetings of Sept. 12, 14, 19, 20, 2017.
29.	X	X	9/29/16	1/31/17	X	124	X	364	242	Not yet scheduled for an executive session.
30.	X	X	9/30/16	1/31/17	X	123	X	364	242	Not yet scheduled for an executive session.
31.	X	X	9/29/16	2/03/17	X	127	X	365	239	Held over meetings of July 11, 13, Aug. 15, 17, Sept. 12, 14, 19, 20, 2017.
32.	X	X	9/29/16	2/03/17	X	127	X	365	239	Held over meetings of July 11, 13, Aug. 15, 17, Sept. 12, 14, 19, 20, 2017.
33.	X	X	9/29/16	2/03/17	X	127	X	365	239	Held over meetings of July 11, 13, Aug. 15, 17, Sept. 12, 14, 19, 20, 2017.
34.	X	X	10/11/16	2/08/17	X	120	X	354	234	*Held over meetings of Aug. 15 17, Sept. 12, 14, 19, 20, 2017.
35.	X	X	10/11/16	2/08/17	X	120	X	354	234	*Held over meetings of Aug. 15, 17, Sept. 12, 14, 19, 20, 2017.
36.	X	X	12/08/15	2/08/17	X	428	X	662	234	Not yet scheduled for an executive session.
37.	X	X	12/08/15	2/08/17	X	428	X	662	234	Not yet scheduled for an executive session.
38.	X	X	10/14/16	2/10/17	X	119	X	351	232	Held over meetings of Aug. 15 17, Sept. 12, 14, 19, 20, 2017.
39.	X	X	10/14/16	2/10/17	X	119	X	351	232	Held over meetings of Aug. 15 17, Sept. 12, 14, 19, 20, 2017.
40.	X	X	10/14/16	2/10/17	X	119	X	351	232	Held over meetings of Aug. 15 17, Sept. 12, 14, 19, 20, 2017.
41.	X	X	10/14/16	2/10/17	X	119	X	351	232	Held over meetings of Aug. 15 17, Sept. 12, 14, 19, 20, 2017.
42.	X	X	11/29/16	2/21/17	X	85	X	305	221	Not yet scheduled for an executive session.
43.	X	X	6/24/15	3/06/17	X	622	X	829	208	Not yet scheduled for an executive session.
44.	X	X	6/24/15	3/06/17	X	622	X	829	208	Not yet scheduled for an executive session.
45.	X	X	9/22/15	3/21/17	X	546	X	739	193	Not yet scheduled for an executive session.

1	2	3	4	5	6	7	8	9	10	11
#			Date Assigned to OGC Attorney	Date of OGC's Recommendations to Comm'n		Days Between Assignment and OGC's Recommendations to Comm'n		Days Between Assignment and Comm'n Inaction as of 9/30/17	Days Between OGC's Recommendations and Comm'n Inaction as of 9/30/17	Holdovers and Other Relevant Information as of 9/30/17

46.	X	X	9/22/15	3/21/17	X	546	X	739	193	Not yet scheduled for an executive session.
47.	X	X	1/10/17	4/11/17	X	91	X	163	172	Not yet scheduled for an executive session.
48.	X	X	1/11/17	4/13/17	X	92	X	262	170	Held over meetings of May 23, 25, June 6, 8, 21, 22, July 11, 13, Aug. 15 17, Sept. 12, 14, 19, 20, 2017.
49.	X	X	11/29/16	4/13/17	X	135	X	305	170	Held over meetings of June 6, 8, 21, 22, and July 11, 13, Aug. 15, 17, Sept. 12, 14, 19, 20, 2017.
50.	X	X	1/24/17	4/17/17	X	83	X	249	166	Held over meetings of Sept. 12, 14, 19, 20, 2017.
51.	X	X	1/19/17	4/21/17	X	92	X	254	162	Held over meetings of June 6, 8, 2017.
52.	X	X	2/9/17	5/11/17	X	91	X	233	142	Not yet scheduled for an executive session.
53.	X	X	2/15/17	5/15/17	X	89	X	227	138	Held over meetings of July 11, 13, Aug. 15, 17, Sept. 12, 14, 19, 20, 2017.
54.	X	X	6/29/15	5/15/17	X	686	X	824	138	Not yet scheduled for an executive session.
55.	X	X	1/25/17	5/19/17	X	114	X	248	134	Not yet scheduled for an executive session.
56.	X	X	9/21/15	5/19/17	X	606	X	740	134	Not yet scheduled for an executive session.
57.	X	X	2/22/17	5/22/17	X	89	X	220	131	Held over meeting of Sept. 12, 14, 19, 20, 2017.
58.	X	X	1/13/17	5/26/17	X	133	X	260	127	Not yet scheduled for an executive session.
59.	X	X	1/27/17	5/30/17	X	123	X	246	123	Not yet scheduled for an executive session.
60.	X	X	3/03/17	6/02/17	X	90	X	210	120	Not yet scheduled for an executive session.
61.	X	X	1/13/17	6/5/17	X	142	X	259	117	Held over meeting of Sept. 12, 14, 19, 20, 2017.
62.	X	X	3/06/17	6/06/17	X	91	X	207	116	Not yet scheduled for an executive session.
63.	X	X	2/09/17	6/12/17	X	122	X	232	110	Not yet scheduled for an executive session.
64.	X	X	3/16/17	6/15/17	X	91	X	198	107	Held over meetings of Sept. 12, 14, 19, 20, 2017.
65.	X	X	3/16/17	6/15/17	X	91	X	198	107	Held over meetings of Sept. 12, 14, 19, 20, 2017.
66.	X	X	3/16/17	6/15/17	X	91	X	198	107	Held over meetings of Sept. 12, 14, 19, 20, 2017.
67.	X	X	2/15/17	6/16/17	X	120	X	226	106	Not yet scheduled for an executive session.
68.	X	X	2/15/17	6/16/17	X	120	X	226	106	Not yet scheduled for an executive session.
69.	X	X	2/15/17	6/16/17	X	120	X	226	106	Held over meetings of Sept. 12, 14, 19, 20, 2017.
70.	X	X	2/16/17	6/19/17	X	123	X	225	103	Not yet scheduled for an executive session.
71.	X	X	2/16/17	6/19/17	X	123	X	225	103	Not yet scheduled for an executive session.
72.	X	X	2/16/17	6/19/17	X	123	X	225	103	Not yet scheduled for an executive session.
73.	X	X	2/16/17	6/19/17	X	123	X	225	103	Not yet scheduled for an executive session.
74.	X	X	2/16/17	6/19/17	X	123	X	225	103	Not yet scheduled for an executive session.
75.	X	X	2/16/17	6/19/17	X	123	X	225	103	Not yet scheduled for an executive session.
76.	X	X	2/16/17	6/19/17	X	123	X	225	103	Not yet scheduled for an executive session.
77.	X	X	2/16/17	6/19/17	X	123	X	225	103	Not yet scheduled for an executive session.
78.	X	X	2/16/17	6/19/17	X	123	X	225	103	Not yet scheduled for an executive session.
79.	X	X	2/16/17	6/19/17	X	123	X	225	103	Not yet scheduled for an executive session.
80.	X	X	2/16/17	6/19/17	X	123	X	225	103	Not yet scheduled for an executive session.
81.	X	X	2/16/17	6/19/17	X	123	X	225	103	Not yet scheduled for an executive session.
82.	X	X	2/16/17	6/19/17	X	123	X	225	103	Not yet scheduled for an executive session.
83.	X	X	2/16/17	6/19/17	X	123	X	225	103	Not yet scheduled for an executive session.
84.	X	X	2/21/17	6/21/17	X	119	X	220	101	Held over meetings of Sept. 12, 14, 19, 20, 2017.
85.	X	X	2/21/17	6/21/17	X	119	X	220	101	Held over meetings of Sept. 12, 14, 19, 20, 2017.
86.	X	X	5/03/17	8/02/17	X	91	X	150	59	Not yet scheduled for an executive session.
87.	X	X	5/11/17	8/11/17	X	92	X	142	50	Not yet scheduled for an executive session.
88.	X	X	5/15/17	8/15/17	X	92	X	138	46	Not yet scheduled for an executive session.
89.	X	X	5/15/17	8/15/17	X	92	X	138	46	Not yet scheduled for an executive session.
90.	X	X	5/18/17	8/16/17	X	92	X	135	45	Not yet scheduled for an executive session.

1	2	3	4	5	6	7	8	9	10	11
#			Date Assigned to OGC Attorney	Date of OGC's Recommendations to Comm'n		Days Between Assignment and OGC's Recommendations to Comm'n		Days Between Assignment and Comm'n Inaction as of 9/30/17	Days Between OGC's Recommendations and Comm'n Inaction as of 9/30/17	Holdovers and Other Relevant Information as of 9/30/17

91.	X	X	5/19/17	8/18/17	X	91	X	133	43	Not yet scheduled for an executive session.
92.	X	X	6/22/17	8/22/17	X	61	X	100	39	Not yet scheduled for an executive session.
93.	X	X	9/10/14	9/08/17	X	1094	X	1116	22	Not yet scheduled for an executive session.
94.	X	X	6/09/17	9/08/17	X	92	X	113	22	Not yet scheduled for an executive session.
95.	X	X	9/29/14	9/13/17	X	1080	X	1102	17	Not yet scheduled for an executive session.
96.	X	X	9/29/14	9/13/17	X	1080	X	1102	17	Not yet scheduled for an executive session.
97.	X	X	3/28/17	9/14/17	X	170	X	186	16	Not yet scheduled for an executive session.
98.	X	X	8/2/17	9/19/17	X	48	X	59	11	Not yet scheduled for an executive session.
99.	X	X	8/18/17	9/21/17	X	34	X	43	9	Not yet scheduled for an executive session.
100.	X	X	7/24/17	9/22/17	X	60	X	68	8	Not yet scheduled for an executive session.
101.	X	X	5/23/17	9/22/17	X	122	X	130	8	Not yet scheduled for an executive session.

AGENDA DOCUMENT NO. 15-41-A



FEDERAL ELECTION COMMISSION
Washington, DC 20463

FEDERAL ELECTION
COMMISSION
SECRETARIAT

2015 JUL 14 P 3:20

AGENDA ITEM

MEMORANDUM

For Meeting of 7-16-15

TO: The Commission

FROM: Steven T. Walther
Commissioner *STW*

SUBMITTED LATE

DATE: July 14, 2015

RE: Motion to Set Priorities and Scheduling on Pending Enforcement Matters
Awaiting Reason-to-Believe Consideration

Attached is a memorandum containing a motion to establish a priority and a timetable for the Commissioners to take immediate substantive action on initial enforcement recommendations by the Office of General Counsel that have been pending for one year or more from the date of receipt by the Commissioners.

I have asked to place this document on the agenda for the Open Meeting scheduled for July 16, 2015.

Attachment



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: The Commission

FROM: Steven T. Walther
Commissioner

RE: Motion to Set Priorities and Scheduling on Pending Enforcement Matters
Awaiting Reason-to-Believe Consideration

DATE: July 14, 2015

Motion Objective

The purpose of this motion is to establish a priority and a timetable for the Commissioners to take immediate substantive action on Office of General Counsel (OGC) "reason to believe" (RTB) or other recommendations pending for one year or more from the date of receipt by the Commissioners.

Background

Once a complaint is filed, or once a matter is referred to OGC for possible enforcement action, OGC submits a recommendation to the Commissioners as to whether or not there is RTB that a violation of the Federal Election Campaign Act (FECA) may have occurred, or to take other action.¹

Once a recommendation is submitted to the Commissioners for the first time — generally in a First General Counsel's Report (FGCR) — it must be reviewed and substantively acted upon by the Commissioners. Because all of the information that the Commissioners may consider to take substantive action on OGC's recommendation is contained in documents made available to them by OGC, with rare exceptions, *there is nothing left to be done by the Commissioners* other than to promptly vote on whether or not there is RTB that a violation of the FECA may have occurred, or to vote on other action recommended by OGC. As mentioned below, *the language of the FECA itself suggests that this substantive action can be accomplished in 120 days.*

¹ This memorandum, motion, and attached chart are limited to OGC recommendations and do not address non-OGC enforcement matters such as Administrative Fines, Alternative Dispute Resolution, and Debt Settlement Plan matters.

At present there are, and for an undue time there have been, numerous matters before the Commissioners that have been held for more than a reasonable period of time. Attached is a chart that sets forth all enforcement matters (except those recently circulated for tally vote) that are pending before the Commission, as of June 30, 2015, to consider whether to find RTB or take other recommended action.

Data on Delays

The chart, which has been redacted as appropriate, identifies each matter pending before the Commissioners for substantive initial action as of June 30, 2015, and the amount of time between various stages, to June 30, 2015. The chart sets forth the number of days that have elapsed between the date a complaint was activated or between the date a referral was received by the Commission and June 30, 2015. A principal focus for this motion, however, is the number of days that have elapsed between the date OGC's recommendation was submitted to the Commission and June 30, 2015, which is also provided in the chart. During this latter period, the fate of each matter is within the province of, and the responsibility of, the six Commissioners.

For various reasons, mostly unpersuasive, as discussed below, the Commissioners have delayed voting on many of these pending matters for an excessive period of time. Consider, for example, the first five matters mentioned in the chart:

- With respect items one (1) to three (3), there has been a delay of over three-and-a-half years from the time these recommendations were first submitted to the Commissioners for consideration. The FGCR containing these recommendations was withdrawn by OGC after approximately two months pending before the Commission, and then resubmitted over two years later. The resubmitted report has now been pending before the Commission for over a year; it was scheduled for discussion at the executive sessions of July 14 and 16, 2015, but was held over to the next meeting.
- With respect to items four (4) and five (5), these two matters first came before the Commission on June 6, 2012, over three years ago. The FGCR discussing these matters first appeared on the executive session agenda of October 16, 2012, but has been held over numerous executive sessions without action, including the meetings of October 16, 2012, January 8, 10, and December 3, 2013, January 13, 15, February 10, 12, March 3, 10, 17, 19, April 21, 22, May 19, 21, June 16, 18, 2015, and July 14 and 16, 2015.

In summary, the chart serves as an informational guide to the ongoing status of initial substantive recommendations for enforcement matters prepared by OGC that are now awaiting consideration by the Commissioners. As of June 30, 2015, there were 78 total matters pending before the Commissioners awaiting a substantive vote from them. Of these 78 matters, 58 have not yet been scheduled for an executive session and therefore have not received formal consideration by the Commissioners. Of these 78 matters pending, five have been languishing for three years or more from the date the matter was submitted to the Commissioners for consideration; three have been lying dormant two years or more but less than three years; 15 have been pending for one

year or more but less than two years; and the remaining 55 matters have been pending for less than one year without Commission action.

Thus far during the 2015 calendar year, the Commissioners have met for seven executive session meetings, all of which were continued to a second day for additional Commissioner consideration, and three of those meetings were held over for a third day. All told, and based upon the available information, there have been 40 initial substantive votes (which includes tally votes) taken by the Commissioners on enforcement matters with recommendations by OGC this year.

If we are to bring the docket into a respectable condition before the end of the year, and if the decisional rate per meeting remains the same, there will be a need to hold between two or three times more meetings before the end of this year than the number held for the first six months of this year.

There are many reasons which have been given for the extended periods of time shown on the chart. Some have said that the staff should have acted with more speed (but, as discussed below, once the recommendations are submitted and are received by the Commissioners for action, there is little, and usually nothing, for OGC to do but wait on the Commissioners); some have argued that certain matters involve novel or complex issues that require more time to consider (and are therefore held over multiple times); some have argued certain matters should be delayed in order for them to be discussed along with other pending — or soon to be pending — matters involving similar issues. None of the reasons noted above, or any other reason, can be said to justify taking the excessive amount of time that has elapsed on many of these matters, as the chart reveals.

Those Directly Prejudiced by Commission Delays

The bottom line is that we, the Commissioners, have simply not been doing our work in as timely a fashion as we should, and need to do a better job of managing our duties and responsibilities in this area. When delays of the kind identified in the chart occur, there are four categories of persons that are adversely impacted, and in addition, of course, the Commission as an institution may suffer reputational damage resulting from our delays.

Respondents

Persons are designated as “respondents” as a result of being named in a complaint or referral as having potentially violated the FECA, and who therefore may file responses to such actions. They remain “respondents” until final action has been taken with respect to them; accordingly, delays by the Commission could very well place them under a cloud of suspicion much longer than warranted.

After respondents are served with notice of the allegations of a FECA violation (generally either a sworn complaint filed by a member of the public, or a notice from OGC to the respondent of a referral alerting the respondent of a potential violation), they are provided with an opportunity to respond with facts and/or legal arguments to defend against the allegations.

Once respondents receive notice of the complaint or referral, they may either hire counsel to respond on their behalf, or defend themselves at their own peril. Responding to a complaint or referral can be a complex, time-consuming and very expensive endeavor. Respondents must then wait to learn whether the Commission will actually determine whether or not there is RTB they may have violated the FECA, or take other action. As can be seen from the attached chart, respondents sometimes must wait over three years before their matters come before the Commission *for even the first stage* of Commissioner scrutiny.

Once a recommendation, generally contained in the FGCR, is submitted to the Commissioners, with rare exceptions there is virtually nothing left to be done by the Commissioners other than to act on the recommendation, which, as the chart reveals, sometimes takes years and is fully dependent upon the speed with which the Commissioners decide to take action or address the matter. During this pre-RTB enforcement stage the respondent is effectively held hostage to any dilatory conduct (when it occurs) of the Commissioners. The impact of such delay is even more acute for those respondents whose identities have been disclosed through a public announcement by the complainant that a complaint has been filed. Until the Commissioners take substantive action, the potential reputational injury of being publicly named a respondent alleged to have violated the FECA remains hanging over the head of the respondent. This reputational injury can be especially unfair where the Commission ultimately determines there has been no RTB or dismisses the matter, and even more so as to a candidate named as a respondent if the dismissal could have occurred before an election.

In 2009, the need to increase the efficiency of our enforcement procedures was recognized and partly addressed by the Commission's adoption of Directive 68, a copy of which accompanies this motion. Its principal focus at that time was to assure that pending matters would at least be given sufficiently prompt attention by the Commissioners, and to ensure that appropriate substantive action by the Commission could be taken before the expiration date of the statute of limitations. Unacceptable delays can occur, however, long before the statute of limitations issue becomes relevant to a matter, as indicated by the chart. Directive 68 also provided that the respondent would receive notice once a year of the status of the matter (if no substantive action had been taken), and that the Commissioners would also be provided the same notice on an informational basis. The notice includes a "reasonable estimate" of when the Commission is to vote on the matter.

While Directive 68 requires that respondents receive a status notice on an annual basis, there is no accurate way for OGC to accurately predict when the Commissioners will ultimately take substantive action. Accordingly, OGC can only provide very rough — and often inaccurate — estimates of when the Commission will take action. Despite the required annual notice that the matter is pending, there is no truly reliable way for a respondent to know if there will be a continual need to retain counsel — or whether to hire one — in the event the Commission finds RTB. The respondent may also be faced with having to continually alert prospective witnesses and keep them updated on the progress of the case. During this arbitrary waiting period, memories can grow old and witnesses or evidence that may assist the respondent's defense may become unavailable, and justice inevitably suffers.

Complainants

The second category of those impacted by delay are persons who file sworn complaints with the Commission (complainants). Unlike respondents, other than receiving an acknowledgement letter that OGC has received the complaint, the complainant receives no notice whatsoever as to the first substantive action taken by the Commissioners and may not receive any notice until the matter has been concluded and the entire file is closed. Until that time — from the conclusion of the pre-RTB period through any subsequent stages of the enforcement process — the complainant may have no idea as to the status of the case.

The matter may languish for years, and the delay of time can be frustrating, time-consuming and, sometimes, expensive for complainants; this is especially so if the complainant believes the only way to find out if the Commission has taken action is to file suit against the Commission alleging unreasonable delay, which a complainant has the right to do under the FECA at 52 U.S.C.

§ 30109(a)(8)(A).² As previously mentioned, the language in this provision seems to suggest a matter could generally be acted upon at the RTB stage within 120 days of the date of the filing of a complaint, a time period seldom reached by the Commission. The complainant in such a lawsuit, however, may not have any information from the Commission as to whether any action has been taken, thus in some instances making such effort spurious at best.

In a recent case an action was filed by a complainant in the U.S. District Court for D.C. after the 120-day period, alleging unreasonable delay by the Commission. The Commission responded in the court proceeding that the matter had been acted upon, *but only after the court action was filed*, and the court case was then dismissed. The cost of legal fees to file such an action should not be a complainant's first, and essentially only, resort.

In contrast, while respondents will have at least received annual status updates in writing that contain an OGC estimate of when the Commission will take action on their matters, there is currently no procedure for providing similar updates to complainants (other than resorting to litigation), who may often wait several years before learning of any action the Commission may have taken.

Commission Staff

The third category negatively impacted by Commissioner delay are the dedicated staff members who are responsible for preparing and presenting enforcement matters to the Commissioners. These presentations are primarily given at Commission meetings held in confidential executive session. These delays negatively impact the morale, and ultimately, in some instances, the performance, of the Commission's staff. Multiple delays result in staff needlessly and repeatedly expending time to prepare for matters that are often held over by the Commission on numerous occasions, often just before the matter is scheduled to be discussed. This results in delays for other matters, not to mention the disruption of work schedules and the personal plans of the

² Section 30109(a)(8)(A) provides that "Any party aggrieved by an order of the Commission dismissing a complaint filed by such party ..., or by a failure of the Commission to act on such complaint during the 120-day period beginning on the date the complaint is filed, may file a petition with the United States District Court for the District of Columbia...." (emphasis added).

affected staff. This can be, and has been, dispiriting and demoralizing for the staff, who in my view are tremendously competent and professional in dealing with these obstacles.

During these prolonged periods, the composition of enforcement team and team leaders who prepared OGC's report may shift substantially; in those instances, those preparing for the executive session may be new to the matter. For those who remain assigned to the matter, in each instance of a delay or holdover, they must prepare anew, with that case necessarily taking precedence over other case assignments.

The Public

Finally, members of the public, including the press, may tend not to focus attention on enforcement matters that are several years old by the time the case files are publicly released. The public and press may show great interest when a complaint is first filed with the Commission, particularly if the allegations involve potentially serious misconduct, and/or high-profile individuals or entities are publicly disclosed as respondents. In instances when delay occurs, by the time action is taken by the Commission and the matter is closed, the public may lose interest, and may no longer view the matter as very important. Just as important, the results of the Commission action, when delayed, may not reach the voter in sufficient time to take in to consideration the Commission action before entering the voting booth. As a result, the transparency goals of the FECA and credibility of the Commission's overall enforcement process suffer — and cynicism increases.

Accordingly, at this juncture, we should take special steps to establish a workable priority and timetable for resolving these matters with reasonable dispatch.

The Need for Accelerated Scheduling and Prioritization

For the forgoing reasons, the scheduling of enforcement matters should be based, as to the First Tier of cases, solely on age according to amount of time pending for substantive action before the Commissioners over one year, and as to the Second Tier, based on the overall time the matter been pending since the date of the complaint or referral, with both tiers prioritized on the basis of age, as mentioned below. Under this proposal each matter would be set on the agenda and removed or modified only with the procedure contemplated by Directive 10, Section E.7(e),³ assuming if in any instance three is a majority, that the three may not be of the same political party.

To accomplish this proposal, the Chair (with the assent and cooperation of the Commissioners) would:

³ Directive 10, Section E.7(e) provides: "A motion to lay a matter over. Any such motion shall require a majority vote of at least three members of the Commission; at least three votes will be required for any subsequent motion to take any such matter from the table. Any such motion shall be undebatable. Any such matter which is laid on the table pursuant to these rules shall be taken from the table pursuant to these rules at the next subsequent meeting or the matter dies. . . ."

- a. Set all matters listed from numbers one (1) through twenty-three (23) — which were submitted to the Commissioners by OGC at least one year ago as of June 30, 2015 — on the agenda for priority consideration for the next executive session (the First Tier);
- b. schedule immediately a series of executive sessions during which those matters will be considered and voted upon by the Commissioners; and
- c. prioritize all matters following number twenty-three (23), and which were received by the Commission over one year ago based on the date of the complaint or referral (the Second Tier).

As to these matters, the Commission would not hold any matters over, but would vote on them when they come before the Commission on the priority basis envisioned here.

It has been unfortunately suggested that, on occasion, considerations of politics, party or ideology may have influenced the timing of when these and other matters are placed on the agenda, or once having been placed on the agenda, the timing of when they are voted on by the Commission. To eliminate any such contention or impression with regard to the handling of these matters going forward, it would be best to proceed *without any consideration other than the age* for determining the sequence to follow for considering the merits of OGC's recommendations. Any failure to do so would be inviting further unwanted and unneeded speculation of that kind.

As mentioned above, it is clear the Commissioners will need to meet — and act — much more often for the next several months than in the recent past. A good beginning would be to meet in executive session two full days each week for six to eight weeks, commencing immediately, and then finalize a plan. Deadlines are offered in the motion below. A meeting pace such as this has worked in the past.

This memorandum and the motion below are directed to Commissioner performance and responsibility only. The above comments and the motion below should not be construed in any way to reflect negatively on the performance of our dedicated and professional enforcement staff. Any issues regarding delays in the Commission's enforcement process, and any actions taken to improve the process going forward, are ultimately the responsibility of the Commissioners. The Commission is fortunate to have such highly qualified, competent, and motivated employees who consistently provide thoughtful recommendations to the Commission regardless of any failings of the Commissioners.

Attachments

MOTION

Based upon the forgoing, I move:

1. That all matters identified in the attached chart as numbers one (1) through twenty-three (23), which have been awaiting Commission action for one year or more *since the date OGC circulated its recommendations* as of June 30, 2015, be placed on the agenda for the next executive session and every consecutive session thereafter until substantive action has been taken on each one of them;
2. That the forty (40) matters following number twenty-three (23) in the attached chart that have been awaiting Commission action for one year or more *since the date of receipt of the complaint or referral* be placed before the Commission by having the same placed on the agenda for the next executive session (to trail immediately following the actions identified in Paragraph 1) and every consecutive session thereafter until substantive action has been taken on each of them. These matters are listed *based on age* as of June 30, 2015 (and grouped by number of years) as follows: matters pending three years or more since the date of receipt of the complaint or referral, identified in the attached chart as items 24 and 29; matters pending two years or more but less than three years, identified in the attached chart as items 28, 61, 32, 30, 25, and 31; and matters pending one year or more but less than two years, identified in the attached chart as items 27, 42, 35, 26, 40, 50, 43, 44, 45, 48, 33, 36, 53, 49, 38, 34, 39, 46, 41, 37, 51, 54, 56, 52, 57, 55, 47, 59, 60, 58, 65 and 72;
3. That the Chair call a sufficient number of meetings, beginning immediately, such that consideration of each of the matters identified in Paragraphs 1 and 2 of the attached chart shall be discussed and voted upon with substantive action taken by September 30, 2015, which is the end of the FEC's fiscal year;
4. That all matters identified in Paragraphs 1 and 2 in the attached chart, once placed on the agenda, shall remain without change in priority, unless and until, as to any such matter or matters, the procedure set forth in Directive 10, Section E.7(e) is followed; and
5. That all remaining matters identified in the attached chart be considered immediately after the Commission takes substantive action on each of the matters identified in Paragraphs 1 and 2, to be voted upon with substantive action taken as of November 30, 2015.

Relevant Dates for Initial Substantive Recommendations

Submitted by OGC to the Commissioners

(sorted by days between OGC's recommendations and Commission inaction)

Item #	A	B	Date Assigned to OGC Attorney	Date of OGC's Recommendations to Comm'n	C	Days Between Assignment and OGC's Recommendations to Comm'n	D	Days Between Assignment and Comm'n Inaction (as of 6/30/15)	Days Between OGC's Recommendations and Comm'n Inaction (as of 6/30/15)	Holdovers and Other Relevant Information
1.	X	X	8/30/11	11/29/11 resubmitted 4/29/14	X	91	X	1,400	1,309	FGCR submitted to Comm'rs Nov. 29, 2011, and withdrawn Jan. 31, 2012. Resubmitted Apr. 29, 2014. Held over meetings of July 14, 16, 2015.
2.	X	X	8/30/11	11/29/11 resubmitted 4/29/14	X	91	X	1,400	1,309	FGCR submitted to Comm'rs Nov. 29, 2011, and withdrawn Jan. 31, 2012. Resubmitted Apr. 29, 2014. Held over meetings of July 14, 16, 2015.
3.	X	X	8/30/11	11/29/11 resubmitted 4/29/14	X	91	X	1,400	1,309	FGCR submitted to Comm'rs Nov. 29, 2011, and withdrawn Jan. 31, 2012. Resubmitted Apr. 29, 2014. Held over meetings of July 14, 16, 2015.
4.	X	X	11/16/11	6/06/12	X	203	X	1,322	1,119	Held over meetings of Oct. 16, 2012; Jan. 8, 10, Dec. 3, 2013; Jan. 13, 15, Feb. 10, 12, Mar. 3, 10, 17, 19, Apr. 21, 22, May 19, 21, June 16, 18, July 14, 16, 2015. Tentatively scheduled for an upcoming executive session.
5.	X	X	11/16/11	6/06/12	X	203	X	1,322	1,119	Held over meetings of Oct. 16, 2012; Jan. 8, 10, Dec. 3, 2013; Jan. 13, 15, Feb. 10, 12, Mar. 3, 10, 17, 19, Apr. 21, 22, May 19, 21, June 16, 18, July 14, 16, 2015. Tentatively scheduled for an upcoming executive session.
6.	X	X	11/16/11	8/28/12	X	286	X	1,322	1,036	Held over meetings of Oct. 16, 2012; Jan. 8, 10, Dec. 3, 2013; Jan. 13, 15, Feb. 10, 12, Mar. 3, 10, 17, 19, Apr. 21, 22, May 19, 21, June 16, 18, July 14, 16, 2015. Tentatively scheduled for an upcoming executive session.
7.	X	X	10/09/12	2/26/13	X	140	X	994	854	FGCR submitted to Comm'rs on Feb. 1, 2013, and withdrawn Feb. 19, 2013. Resubmitted Feb. 26, 2013. Held over meetings of Apr. 22, May 6, 20, Jun. 10, 2014; Feb. 10, 12, Mar. 3, 10, 17,

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Item #	A	B	Date Assigned to OGC Attorney	Date of OGC's Recommendations to Comm'n	C	Days Between Assignment and OGC's Recommendations to Comm'n	D	Days Between Assignment and Comm'n Inaction (as of 6/30/15)	Days Between OGC's Recommendations and Comm'n Inaction (as of 6/30/15)	Holdovers and Other Relevant Information
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										19, Apr. 21, 22, May 19, 21, June 16, 18, July 14, 16, 2015.
8.	X	X	5/10/12	2/27/13	X	293	X	1,146	853	Held over meetings of Sept. 24, 26, 2013; Dec. 9, 11, 16, 2014; Jan. 13, 15, Feb. 10, 12, Mar. 3, 10, 17, Apr. 21, 22, May 19, 21, June 16, 18, 2015. Tentatively scheduled for an upcoming executive session.
9.	X	X	4/17/13	11/08/13	X	205	X	804	599	Held over meeting of Apr. 22, 2014. Held in abeyance by a vote of Comm'rs on Sept. 16, 2014. Not yet scheduled for an executive session.
10.	X	X	4/23/13	1/14/14	X	266	X	798	532	FGCR submitted to Comm'rs on Jan. 14, 2014, withdrawn and resubmitted on Mar. 31, 2015. Held over meetings of May 19, 21, June 16, 18, 2015. Held in abeyance by a vote of Comm'rs on June 18, 2015. Tentatively scheduled for an upcoming executive session.
11.	X	X	4/08/13	3/07/14	X	333	X	813	480	Tentatively scheduled for an upcoming executive session.
12.	X	X	4/02/13	3/07/14	X	339	X	819	480	Tentatively scheduled for an upcoming executive session.
13.	X	X	10/09/12	3/10/14	X	517	X	629	477	Held over meetings of Feb. 10, 12, Mar. 3, 10, 17, 19, Apr. 21, 22, May 19, 21, June 16, 18, July 14, 16, 2015.
14.	X	X	4/03/13	3/11/14	X	342	X	818	476	Held over meetings of Apr. 22, May 6, 20, Jun. 10, 2014; Mar. 3, 10, 17, 19, Apr. 21, 22, May 19, 21, June 16, 18, July 14, 16, 2015. Tentatively scheduled for an upcoming executive session.
15.	X	X	1/16/14	5/15/14	X	119	X	530	411	Not yet scheduled for an executive session.
16.	X	X	1/15/14	5/15/14	X	120	X	531	411	Not yet scheduled for an executive session.

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Item #	A	B	Date Assigned to OGC Attorney	Date of OGC's Recommendations to Comm'n	C	Days Between Assignment and OGC's Recommendations to Comm'n	D	Days Between Assignment and Comm'n Inaction (as of 6/30/15)	Days Between OGC's Recommendations and Comm'n Inaction (as of 6/30/15)	Holdovers and Other Relevant Information
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17.	X	X	1/21/14	5/16/14; resubmitted 5/21/14	X	115	X	525	410	Not yet scheduled for an executive session.
18.	X	X	2/03/14	5/28/14	X	114	X	512	398	Not yet scheduled for an executive session.
19.	X	X	2/03/14	5/28/14	X	114	X	512	398	Not yet scheduled for an executive session.
20.	X	X	2/03/14	5/28/14	X	114	X	512	398	Not yet scheduled for an executive session.
21.	X	X	7/30/13	6/18/14	X	323	X	700	377	Not yet scheduled for an executive session.
22.	X	X	12/03/13	6/20/14	X	199	X	574	375	Not yet scheduled for an executive session.
23.	X	X	10/03/13	6/30/14	X	270	X	635	365	Not yet scheduled for an executive session.
24.	X	X	7/24/12	7/01/14	X	707	X	1,071	364	Not yet scheduled for an executive session.
25.	X	X	8/13/13	7/01/14	X	322	X	686	364	Not yet scheduled for an executive session.
26.	X	X	4/15/14	7/09/14	X	85	X	441	356	Not yet scheduled for an executive session.
27.	X	X	3/25/14	7/23/14	X	120	X	462	342	Not yet scheduled for an executive session.
28.	X	X	1/15/13	8/04/14	X	566	X	896	330	Not yet scheduled for an executive session.
29.	X	X	9/13/12	8/22/14	X	708	X	1,020	312	Not yet scheduled for an executive session.
30.	X	X	8/19/13	8/27/14	X	373	X	680	307	Not yet scheduled for an executive session.
31.	X	X	8/19/13	8/27/14	X	373	X	680	307	Not yet scheduled for an executive session.
32.	X	X	5/14/13	9/04/14	X	478	X	777	299	Not yet scheduled for an executive session.
33.	X	X	6/10/14	9/09/14	X	91	X	385	294	Not yet scheduled for an executive session.

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Item #	A	B	Date Assigned to OGC Attorney	Date of OGC's Recommendations to Comm'n	C	Days Between Assignment and OGC's Recommendations to Comm'n	D	Days Between Assignment and Comm'n Inaction (as of 6/30/15)	Days Between OGC's Recommendations and Comm'n Inaction (as of 6/30/15)	Holdovers and Other Relevant Information
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34.	X	X	7/09/14	9/09/14	X	62	X	356	294	Not yet scheduled for an executive session.
35.	X	X	6/17/14	9/10/14	X	85	X	378	293	Not yet scheduled for an executive session.
36.	X	X	5/20/14	9/11/14	X	114	X	406	292	Not yet scheduled for an executive session.
37.	X	X	6/17/14	9/16/14	X	91	X	378	287	Not yet scheduled for an executive session.
38.	X	X	5/28/14	9/25/14	X	120	X	398	278	Not yet scheduled for an executive session.
39.	X	X	6/12/14	10/08/14	X	118	X	383	265	Not yet scheduled for an executive session.
40.	X	X	7/16/14	10/14/14	X	90	X	349	259	Not yet scheduled for an executive session.
41.	X	X	7/18/14	10/16/14	X	90	X	347	257	Tentatively scheduled for an upcoming executive session.
42.	X	X	6/19/14	10/17/14	X	120	X	376	256	Not yet scheduled for an executive session.
43.	X	X	7/02/14	10/29/14	X	119	X	363	244	Not yet scheduled for an executive session.
44.	X	X	7/02/14	10/29/14	X	119	X	363	244	Not yet scheduled for an executive session.
45.	X	X	7/02/14	10/29/14	X	119	X	363	244	Not yet scheduled for an executive session.
46.	X	X	8/07/14	11/03/14	X	88	X	327	239	Not yet scheduled for an executive session.
47.	X	X	7/08/14	11/06/14	X	121	X	357	236	Not yet scheduled for an executive session.
48.	X	X	7/08/14	11/07/14	X	122	X	357	235	Not yet scheduled for an executive session.
49.	X	X	7/08/14	11/07/14	X	122	X	357	235	Not yet scheduled for an executive session.
50.	X	X	7/21/14	11/18/14	X	120	X	344	224	Not yet scheduled for an executive session.
51.	X	X	8/27/14	11/25/14	X	90	X	307	217	Not yet scheduled for an executive session.

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Item #	A	B	Date Assigned to OGC Attorney	Date of OGC's Recommendations to Comm'n	C	Days Between Assignment and OGC's Recommendations to Comm'n	D	Days Between Assignment and Comm'n Inaction (as of 6/30/15)	Days Between OGC's Recommendations and Comm'n Inaction (as of 6/30/15)	Holdovers and Other Relevant Information
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52.	X	X	9/04/14	11/26/14	X	83	X	299	216	Not yet scheduled for an executive session.
53.	X	X	7/28/14	11/28/14	X	123	X	337	214	Not yet scheduled for an executive session.
54.	X	X	9/04/14	12/05/14	X	92	X	299	207	Not yet scheduled for an executive session.
55.	X	X	9/04/14	12/05/14	X	92	X	299	207	Not yet scheduled for an executive session.
56.	X	X	9/17/14	12/16/14	X	90	X	286	196	Not yet scheduled for an executive session.
57.	X	X	10/23/14	1/22/15	X	91	X	250	159	Not yet scheduled for an executive session.
58.	X	X	10/29/14	1/29/15	X	92	X	244	152	Not yet scheduled for an executive session.
59.	X	X	10/07/14	2/05/15	X	121	X	266	145	Not yet scheduled for an executive session.
60.	X	X	10/14/14	2/12/15	X	121	X	259	138	Not yet scheduled for an executive session.
61.	X	X	8/19/14	2/24/15	X	189	X	315	126	Not yet scheduled for an executive session.
62.	X	X	10/28/14	2/25/15	X	120	X	245	125	Not yet scheduled for an executive session.
63.	X	X	10/28/14	2/25/15	X	120	X	245	125	Not yet scheduled for an executive session.
64.	X	X	1/08/15	3/04/15	X	55	X	173	118	Not yet scheduled for an executive session.
65.	X	X	11/05/14	3/09/15	X	124	X	237	114	Not yet scheduled for an executive session.
66.	X	X	11/05/14	3/09/15	X	124	X	237	113	Not yet scheduled for an executive session.
67.	X	X	10/29/14	3/09/15, resubmitted 6/15/15	X	131	X	244	113	Report submitted to Comm'rs Mar. 6, 2015, and withdrawn May 15, 2015. Resubmitted May 15, 2015. Tentatively scheduled for an upcoming executive session.
68.	X	X	11/20/14	3/20/15	X	120	X	222	102	Not yet scheduled for an executive session.

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Item #	A	B	Date Assigned to OGC Attorney	Date of OGC's Recommendations to Comm'n	C	Days Between Assignment and OGC's Recommendations to Comm'n	D	Days Between Assignment and Comm'n Inaction (as of 6/30/15)	Days Between OGC's Recommendations and Comm'n Inaction (as of 6/30/15)	Holdovers and Other Relevant Information
69.	X	X	11/20/14	3/20/15	X	120	X	222	102	Not yet scheduled for an executive session.
70.	X	X	1/13/15	3/30/15	X	76	X	168	92	Not yet scheduled for an executive session.
71.	X	X	1/14/15	5/12/15	X	118	X	167	49	Not yet scheduled for an executive session.
72.	X	X	1/13/15	5/14/15	X	121	X	168	47	Not yet scheduled for an executive session.
73.	X	X	2/03/15	5/27/15	X	113	X	147	34	Tentatively scheduled for an upcoming executive session.
74.	X	X	1/27/15	5/27/15	X	120	X	154	34	Tentatively scheduled for an upcoming executive session.
75.	X	X	1/29/15	5/29/15	X	120	X	152	32	Tentatively scheduled for an upcoming executive session.
76.	X	X	1/29/15	5/29/15	X	120	X	152	32	Not yet scheduled for an executive session.
77.	X	X	2/05/15	6/04/15	X	119	X	145	26	Not yet scheduled for an executive session.
78.	X	X	3/27/15	6/17/15	X	82	X	95	13	Tentatively scheduled for an upcoming executive session.

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FEDERAL ELECTION COMMISSION		
MANUAL OF DIRECTIVES	COMMISSION DIRECTIVE:	
	REVOKES:	NO. 68
	EFFECTIVE DATE: December 31, 2009	
SUBJECT: Enforcement Procedures		

The purpose of this directive is to provide written guidelines on providing status reports to respondents and the Commission in enforcement matters, providing the Status of Enforcement to the Commission, and accelerating the processing of enforcement matters and compliance matters that have the potential of not being completed before the expiration of the statute of limitations.

I. STATUS REPORTS TO RESPONDENTS

A. General.

1. Before the Commission Finds Reason to Believe ("RTB") or Otherwise Closes a Matter. The Office of General Counsel and the Office of Alternative Dispute Resolution will provide a status report to respondents and the Commission if the Commission has not voted to find reason to believe, no reason to believe, or to dismiss the matter within twelve (12) months from receipt of the complaint, referral from another government agency, referral to the Office of General Counsel or the Office of Alternative Dispute Resolution from the Reports Analysis Division or the Audit Division, or *sua sponte* submission, and at every twelve (12) month interval thereafter.
2. After the Commission Finds RTB. The Office of General Counsel and the Office of Alternative Dispute Resolution will provide respondents and the Commission with a status report if the Commission has not voted on the matter within twelve (12) months of the reason to believe finding and at every twelve (12) month interval thereafter.

B. Content. The status report shall include the following information:

- 1) The matter number and date of receipt of a complaint, *sua sponte* submission or referral;
- 2) Whether the matter is pending with the Office of General Counsel, the Office of Alternative Dispute Resolution, or the Commission; and
- 3) A reasonable estimate as to the date by which the Commission is expected to vote on the matter.

C. Timing. The Office of General Counsel will provide the status report within five (5) business days of the matter reaching twelve (12) months from receipt and twelve (12)

months from a reason to believe finding. The Office of General Counsel will also circulate the status report to the Commission on an informational basis.

II. STATUS OF ENFORCEMENT REPORTS TO THE COMMISSION

- A. General. The Office of General Counsel will circulate the Status of Enforcement on a quarterly basis to the Commission as an automatic agenda item for the next regularly scheduled Executive Session. The Status of Enforcement shall be based on information that shall be made readily accessible to the Commissioners electronically.
- B. Content. The Status of Enforcement shall include the following information:
- 1) Statistical information measuring the enforcement program's performance with respect to critical stages of the enforcement process (initial case processing, First General Counsel's Reports, pre-probable cause conciliation, post-probable cause conciliation, investigation, and case closings) and statistical information on civil penalties;
 - 2) A list of all enforcement matters that have been pending for more than twelve (12) months from receipt without a Commission vote on whether to find reason to believe, no reason to believe, or to dismiss the matter, and the date the recommendations of the Office of General Counsel circulated or are expected to circulate to the Commission. The Status of Enforcement shall also indicate the date upon which each respondent was sent a status report in accordance with Section I, above.
 - 3) A list of all enforcement matters that are statute of limitations-sensitive, which includes all enforcement matters for which part or all of the violations will fall outside the five year statute of limitations within the next twelve (12) months, and as to each matter, the date a matter was received by OGC, the date(s) upon which violation(s) will fall outside the statute of limitations, whether the respondent has signed an agreement to toll the statute of limitations, and the Office of General Counsel's proposed plan for completing each remaining enforcement stage, including a proposed schedule and plan for bringing the matter to the Commission for a vote on probable cause at least six (6) months prior to any violation falling outside the statute of limitations.
 - 4) A list of all open enforcement matters that are beyond the "reason to believe" stage (investigation, pre-probable cause conciliation, probable cause, and post-probable cause conciliation) with a brief update as to the status of each matter and a reasonable estimate as to the date upon which the matter will next circulate to the Commission.
- C. Timing. The Office of General Counsel will circulate the Status of Enforcement, including a proposed plan for each matter that is statute of limitations-sensitive, by the end of the month following the end of each quarter in the fiscal year, namely January 31, April 30, July 31, and October 31.

III. REPORT TO THE COMMISSION ON STATUTE OF LIMITATIONS-SENSITIVE COMPLIANCE MATTERS

- A. General. Representatives of the Office of General Counsel, the Alternative Dispute Resolution Office, the Reports Analysis Division and the Audit Division will work cooperatively as a committee (the "Case Management Committee") to prepare and circulate to the Commission on a quarterly basis a report of all statute of limitations-sensitive compliance matters. The report shall be based on information that shall be made readily accessible to the Commissioners electronically.
- B. Content. The report of all statute of limitations-sensitive compliance matters shall include the following information:
- 1) A list of all compliance matters that are statute of limitations-sensitive, which includes all compliance matters for which part or all of any reasonably foreseen violation that is eligible for referral to the Office of General Counsel for enforcement will fall outside the five year statute of limitations within the next twenty-four (24) months), and as to each matter, the date(s) upon which the reasonably foreseen and referable violation(s) will fall outside the statute of limitations; and
 - 2) the proposed plan for completing the remaining compliance and enforcement stages, including a proposed schedule and plan for bringing the matter to the Commission for a vote on probable cause at least six (6) months prior to any reasonably foreseen violation falling outside the statute of limitations.
- C. Timing. The Office of General Counsel, the Alternative Dispute Resolution Office, the Reports Analysis Division and the Audit Division will jointly circulate the report of all statute of limitations-sensitive compliance matters, including a proposed plan for each matter that is statute of limitations-sensitive, by the end of the month following the end of each quarter in the fiscal year, namely January 31, April 30, July 31, and October 31.

IV. ACCELERATED PROCESSING OF STATUTE OF LIMITATIONS-SENSITIVE ENFORCEMENT MATTERS

- A. General. In accordance with the procedures outlined in sections II.B.3, above, the Office of General Counsel and Commission will accelerate the processing of all open enforcement matters that are statute of limitations-sensitive. For enforcement matters, "statute of limitations-sensitive" includes all matters in which part or all of the violations will fall outside the five year statute of limitations within twelve (12) months. All accelerated processing under this section must include a plan for bringing each matter to the Commission for a vote on probable cause at least six (6) months prior to any violation falling outside the statute of limitations
- B. Initial Case Processing. The Office of General Counsel will activate (assign to an Enforcement attorney) statute of limitations-sensitive matters within fifteen (15) days of the last response to the complaint or referral or within fifteen (15) days of receipt of a *sua sponte* submission.
- C. First General Counsel's Reports. In statute of limitations-sensitive matters, the Office of General Counsel will assign 30-day deadlines to the circulation of the First General

Counsel's Report to the Commission, and the Office of General Counsel will submit the First General Counsel's Report to the Commission's Secretary for circulation consistent with Section II of Commission Directive 52 (Circulation Vote Procedures).

V. AGREEMENTS TO TOLL THE STATUTE OF LIMITATIONS

Any agreement to toll the statute of limitations must be in writing and must be signed either by the party entering into the agreement with the Commission or by the party's legal representative.

The Commission approved Directive Number 68 on December 17, 2009.

A handwritten signature in black ink, appearing to read 'Alec Palmer', is written over a horizontal line.

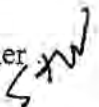
Alec Palmer
Acting Staff Director



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: The Commission

FROM: Steven T. Walther 
Commissioner

RE: Motion to Amend Directive 68 to Establish Deadlines for the Timely
Processing of Enforcement Matters

DATE: May 1, 2019

I intend to move, at the open meeting of May 9, 2019, that the Commission approve amendments to Directive 68 ("Enforcement Procedures") that establish deadlines for the timely processing of enforcement matters before the Commission. *See* Attachment 1.

The main purpose of Directive 68 is to provide written guidelines on status reports to respondents, and on quarterly reports to the Commission that include information regarding the Commission's enforcement caseload, including a procedure to accelerate the processing of statute-of-limitations imperiled matters.

Directive 68 was last amended by the Commission on December 14, 2017, pursuant to a motion I made to improve the transparency of the enforcement process. *See* Attachment 2.¹ My intention at that time was to supplement the information contained in the Commission's quarterly Status of Enforcement reports ("SOE reports") and, to the extent possible, make the information in those reports available to the public. Pursuant to those amendments, each SOE report is now placed on the Commission's website in redacted form within 15 days of circulation of the report to the Commission.² The versions made available to the public include a wealth of informative statistics, including information regarding the Commission's enforcement caseload and charts showing the number of cases at each stage of the enforcement process.

¹ Directive 68 is also available on the Commission's website at https://www.fec.gov/resources/cms-content/documents/directive_68.pdf.

² *See* <https://transition.fec.gov/em/enfpro/EnforcementProfile.shtml>.

There is, however, more that can be done to improve the efficiency of the process, given the current backlog of enforcement matters before the Commission. As indicated in the most recent SOE report placed on the Commission's website, there are 75 reports with recommendations from the Office of General Counsel that were awaiting Commission action as of March 12, 2019.³

The proposed amendments (Attachment 1), labeled as Section VI to follow current Section V of Directive 68 (Attachment 2), are intended to speed up the entire enforcement process, starting from the time a complaint or other enforcement matter is first received through formal action being taken by the Commission.

There have been previous proposals to increase the Commission's efficiency in this regard, but so far none have garnered the support of at least four Commissioners. For example, several memoranda I have made public over the past few years have included charts containing categories of data relevant to the Commission's prioritization of its enforcement docket.⁴ The proposed amendments attached herein would serve to further promote efficiency and accountability regarding the Commission's performance on enforcement matters.

Attachments (2)

³ See https://www.fec.gov/resources/cms-content/documents/Status_of_Enforcement_FY2019_1stQtr.pdf

⁴ The dates on which these memoranda were made public are as follows: Priorities Motion I: July 14, 2015 (https://www.fec.gov/resources/updates/agendas/2015/mtgdoc_1541-a.pdf); Priorities Motion II: Sept. 15, 2015 (https://www.fec.gov/resources/updates/agendas/2015/mtgdoc_1548-a.pdf); Priorities Motion III: Nov. 9, 2015 (https://www.fec.gov/resources/updates/agendas/2015/mtgdoc_1563-a.pdf); Priorities Motion IV: Aug. 12, 2016 (https://www.fec.gov/resources/updates/agendas/2016/mtgdoc_1683-a.pdf); Assessment of Commission Action: Nov. 15, 2017 (https://www.fec.gov/resources/cms-content/documents/mtgdoc_1752-a.pdf). The motions I made in connection with those memoranda were not approved by the Commission. In addition, Chair Weintraub offered a proposal in 2015 that would have improved the timely resolution of enforcement reports circulated to the Commission by the Office of General Counsel. On September 17, 2015, the vote to adopt that proposal failed 3-3 (https://www.fec.gov/resources/updates/agendas/2015/mtgdoc_1525-b.pdf).

MOTION TO AMEND DIRECTIVE 68 TO ESTABLISH DEADLINES FOR THE TIMELY PROCESSING OF ENFORCEMENT MATTERS

I hereby move that the Commission amend Directive No. 68 – which addresses “Enforcement Procedures” – to include new Section VI, as follows:

VI. TIMING OF COMMISSION ACTION ON ENFORCEMENT MATTERS

- A. Circulation of Recommendations to the Commission by the Office of General Counsel: Regardless of whether an enforcement matter is statute of limitations-sensitive (and therefore subject to the procedures set forth in Sections III and IV of this Directive), the Office of General Counsel will circulate substantive recommendations to the Commission on all matters within nine (9) months of the date that a matter is received by the Office of General Counsel. General Counsel’s Reports containing such recommendations will be submitted to the Commission’s Secretary for circulation consistent with Section II of Commission Directive 52 (Circulation Vote Procedures).

A “substantive” recommendation means a recommendation of whether to find reason to believe with respect to one or more respondents related to one or more potential violations, or otherwise whether to close the file with respect to a respondent through dismissal or other action.

The date an enforcement matter is received means the date of receipt of the complaint, referral from another government agency, or referral to the Office of General Counsel or the Office of Alternative Dispute Resolution from the Reports Analysis Division or the Audit Division.

Any enforcement matter in which the Office of General Counsel is unable to meet the nine (9) month deadline shall be automatically tabled for discussion on the agenda for the next regularly scheduled Executive Session.

- B. Enforcement Matters Circulated to the Commission with Recommendations by the Office of General Counsel. Regardless of whether an enforcement matter is statute of limitations-sensitive (and therefore subject to the procedures listed in Sections III and IV of this Directive), the Commission shall take substantive action on all substantive recommendations circulated to the Commission by the Office of General within three (3) months of the date of circulation, unless four or more Commissioners vote to extend the date for taking such action to a specific future date. “Substantive action” means a Commission vote on whether or not to proceed with enforcement action with respect to one or more respondents in a particular enforcement matter regarding the main allegations or legal issues.
- C. Enforcement Matters Pending for 12 (Twelve) Months Without A Substantive Recommendation. Regardless of whether the Office of General Counsel has circulated substantive recommendations, the Commission shall take substantive

action on all enforcement matters within twelve (12) months of the date of receipt of a complaint, referral from another government agency, or referral to the Office of General Counsel or the Office of Alternative Dispute Resolution from the Reports Analysis Division or the Audit Division. The date of the vote may be extended if four or more Commissioners vote to extend the date for taking such action to a specific future date.

- D. Commissioner Requests to Hold Over Enforcement Matters Tabled for Discussion at Executive Session. For any enforcement matter item scheduled for discussion at an Executive Session, a Commissioner may move to hold the item over until the next regularly scheduled Executive Session, or to any closed session that occurs prior to the next regularly scheduled Executive Session. Notwithstanding Directive 10, Section E.7(e) (“A motion to lay a matter over”), four or more Commissioners must approve such a motion, and no more than two such motions shall be entertained per item circulated.
- E. Commissioner Proposals to Revise Documents Circulated by the Office of General Counsel. For any documents recommended for the Commission’s approval by the Office General Counsel (e.g., Factual & Legal Analyses and Conciliation Agreements), Commissioners shall circulate by email any proposed changes to such documents at least 24 hours before the start of any Executive Session at which such documents are scheduled for vote.
- F. Matters in Abeyance. The deadlines set forth in this section shall be suspended pursuant to the terms of any abeyance request approved by the Commission, as follows:
- 1) Only the Commission may approve a request from a law enforcement agency or other entity to hold all or a portion of a pending enforcement or compliance matter or investigation in abeyance. All such abeyances must be limited to a specified period of time.
 - 2) The grant of a request for abeyance will be conditioned on the requesting agency or entity providing the Commission with regular status updates and, if legally permissible, appropriate sharing of information in the requesting agency’s or entity’s possession.
 - 3) A request for an abeyance lasting for more than six months will not be granted, except in unusual circumstances. However, upon expiration of any abeyance period, a requesting agency or entity may seek to extend the abeyance by renewing its request for an additional period of time.
 - 4) All abeyance requests must be in writing, must be directed to the Associate General Counsel for Enforcement, and must be limited to a specified period of time. If appropriate, the Associate General Counsel for Enforcement will seek to limit the scope of a request for abeyance in an effort to allow the Office of General Counsel to

continue working on portions of a matter that may be unrelated or merely tangential to the underlying reason supporting the request for abeyance.

- 5) The Associate General Counsel for Enforcement or his or her designee, in consultation with the General Counsel, will prepare a formal memorandum, and within five business days of receipt of the written request or as soon as practicable thereafter, the General Counsel will circulate the memorandum with appropriate recommendations in accordance with Section 2.A of Directive 52.
- 6) The memorandum will, at a minimum, describe: (a) the requesting law enforcement agency or entity; (b) the date the request was made; (c) the nature and scope of the request; (d) the reason given by the requesting agency or entity for the request; (e) the likely time during which the matter is expected to remain in abeyance; (f) what effect, if any, the proposed abeyance would have with respect to the applicable statute of limitations; and (g) the course of action recommended by General Counsel.
- 7) Pending Commission resolution of the abeyance request, if the matter is at a stage prior to the Commission making a reason to believe finding, or if the matter is “statute of limitations-sensitive” as defined in this Directive, the Office of General Counsel will continue to proceed with the matter as if no request for abeyance had been made. However, if the Commission has already made a reason to believe finding, the Office of General Counsel will, on a preliminary basis, but in no event for longer than 30 days, hold a matter in abeyance pending a decision from the Commission regarding the abeyance request.
- 8) If any Commissioner objects to a recommendation regarding a request for abeyance, the matter will be calendared for the next scheduled Executive Session, and, if not resolved, for each subsequent Executive Session until a resolution is achieved.

FEDERAL ELECTION COMMISSION		
MANUAL OF DIRECTIVES	COMMISSION DIRECTIVE:	
	REVOKES: (revises Section II.B and II.C)	NO. 68
		EFFECTIVE DATE: December 14, 2017
SUBJECT: Enforcement Procedures		

The purpose of this directive is to provide written guidelines on providing status reports to respondents and the Commission in enforcement matters, providing the Status of Enforcement to the Commission, and accelerating the processing of enforcement matters and compliance matters that have the potential of not being completed before the expiration of the statute of limitations.

I. STATUS REPORTS TO RESPONDENTS

A. General.

1. Before the Commission Finds Reason to Believe ("RTB") or Otherwise Closes a Matter. The Office of General Counsel and the Office of Alternative Dispute Resolution will provide a status report to respondents and the Commission if the Commission has not voted to find reason to believe, no reason to believe, or to dismiss the matter within twelve (12) months from receipt of the complaint, referral from another government agency, referral to the Office of General Counsel or the Office of Alternative Dispute Resolution from the Reports Analysis Division or the Audit Division, or *sua sponte* submission, and at every twelve (12) month interval thereafter.
2. After the Commission Finds RTB. The Office of General Counsel and the Office of Alternative Dispute Resolution will provide respondents and the Commission with a status report if the Commission has not voted on the matter within twelve (12) months of the reason to believe finding and at every twelve (12) month interval thereafter.

B. Content. The status report shall include the following information:

- 1) The matter number and date of receipt of a complaint, *sua sponte* submission or referral;
- 2) Whether the matter is pending with the Office of General Counsel, the Office of Alternative Dispute Resolution, or the Commission; and
- 3) A reasonable estimate as to the date by which the Commission is expected to vote on the matter.

C. Timing. The Office of General Counsel will provide the status report within five (5) business days of the matter reaching twelve (12) months from receipt and twelve (12)

months from a reason to believe finding. The Office of General Counsel will also circulate the status report to the Commission on an informational basis.

II. STATUS OF ENFORCEMENT REPORTS TO THE COMMISSION

A. General. The Office of General Counsel will circulate the Status of Enforcement on a quarterly basis to the Commission as an automatic agenda item for the next regularly scheduled Executive Session. The Status of Enforcement shall be based on information that shall be made readily accessible to the Commissioners electronically.

B. Content. The Status of Enforcement shall include the following information:

- 1) Statistical information measuring the enforcement program's performance with respect to critical stages of the enforcement process (initial case processing, First General Counsel's Reports, pre-probable cause conciliation, post-probable cause conciliation, investigation, and case closings) and statistical information on civil penalties;
- 2) For all enforcement matters for which there is a pending First General Counsel's Report ("FGCR") before the Commission, a list that includes, for each matter:
 - a. the date of receipt of a complaint or referral;
 - b. the date of assignment of an enforcement matter to the staff attorney;
 - c. the date of OGC's recommendations to the Commission;
 - d. the number of days between the date of receipt of a complaint or referral and date of submission of the FGCR to the Commission;
 - e. the number of days between date of assignment to staff and date of submission of the FGCR to the Commission;
 - f. the number of days between date of receipt of a complaint or referral and Commission inaction calculated by the close of the quarter;
 - g. the number of days between date of assignment to staff and Commission inaction calculated by the close of the quarter;
 - h. the number of days between the date of submission of the FGCR and Commission inaction calculated by the close of the quarter;
 - i. all dates that a matter was requested to be held over; and
 - j. the name(s) of the requestor(s) and any pertinent information provided by the person holding the matter over.

The enforcement matters identified in this subsection shall be listed according to the date of submission of the FGCR.

- 3) A list of all enforcement matters that have been pending for more than twelve (12) months from the date of receipt of a complaint or referral without a Commission vote on whether to find reason to believe, no reason to believe, or to dismiss the matter, and the date the recommendations of the Office of General Counsel circulated or are expected to circulate to the Commission. This list shall also indicate the date of receipt of the complaint or referral, the number of days between the date of receipt of the complaint or referral and Commission inaction calculated by the close of the quarter, and the date upon which each

respondent was sent a status report in accordance with Section I, above. The enforcement matters identified in this subsection shall be listed according to the date of receipt of the complaint or referral.

- 4) A list of all enforcement matters that are statute of limitations-sensitive, which includes all enforcement matters for which part or all of the violations will fall outside the five year statute of limitations within the next twelve (12) months, and as to each matter, the date a matter was received by OGC, the date(s) upon which violation(s) will fall outside the statute of limitations, whether the respondent has signed an agreement to toll the statute of limitations, and the Office of General Counsel's proposed plan for completing each remaining enforcement stage, including a proposed schedule and plan for bringing the matter to the Commission for a vote on probable cause at least six (6) months prior to any violation falling outside the statute of limitations.
- 5) A list of all open enforcement matters that are beyond the "reason to believe" stage (investigation, pre-probable cause conciliation, probable cause, and post-probable cause conciliation) with a brief update as to the status of each matter and a reasonable estimate as to the date upon which the matter will next circulate to the Commission.

- C. Timing. The Office of General Counsel will circulate the Status of Enforcement, including a proposed plan for each matter that is statute of limitations-sensitive, by the end of the month following the end of each quarter in the fiscal year, namely January 31, April 30, July 31, and October 31. An appropriately redacted version of the quarterly report shall be publicly disclosed in an easily accessible manner on the Commission's website within fifteen (15) days of circulation of the unredacted report to the Commission.

III. REPORT TO THE COMMISSION ON STATUTE OF LIMITATIONS-SENSITIVE COMPLIANCE MATTERS

- A. General. Representatives of the Office of General Counsel, the Alternative Dispute Resolution Office, the Reports Analysis Division and the Audit Division will work cooperatively as a committee (the "Case Management Committee") to prepare and circulate to the Commission on a quarterly basis a report of all statute of limitations-sensitive compliance matters. The report shall be based on information that shall be made readily accessible to the Commissioners electronically.
- B. Content. The report of all statute of limitations-sensitive compliance matters shall include the following information:
 - 1) A list of all compliance matters that are statute of limitations-sensitive, which includes all compliance matters for which part or all of any reasonably foreseen violation that is eligible for referral to the Office of General Counsel for enforcement will fall outside the five year statute of limitations within the next twenty-four (24) months, and as to each matter, the date(s) upon which the reasonably foreseen and referable violation(s) will fall outside the statute of limitations; and

- 2) the proposed plan for completing the remaining compliance and enforcement stages, including a proposed schedule and plan for bringing the matter to the Commission for a vote on probable cause at least six (6) months prior to any reasonably foreseen violation falling outside the statute of limitations.

- C. Timing. The Office of General Counsel, the Alternative Dispute Resolution Office, the Reports Analysis Division and the Audit Division will jointly circulate the report of all statute of limitations-sensitive compliance matters, including a proposed plan for each matter that is statute of limitations-sensitive, by the end of the month following the end of each quarter in the fiscal year, namely January 31, April 30, July 31, and October 31.

IV. ACCELERATED PROCESSING OF STATUTE OF LIMITATIONS-SENSITIVE ENFORCEMENT MATTERS

- A. General. In accordance with the procedures outlined in sections II.B.3, above, the Office of General Counsel and Commission will accelerate the processing of all open enforcement matters that are statute of limitations-sensitive. For enforcement matters, "statute of limitations-sensitive" includes all matters in which part or all of the violations will fall outside the five year statute of limitations within twelve (12) months. All accelerated processing under this section must include a plan for bringing each matter to the Commission for a vote on probable cause at least six (6) months prior to any violation falling outside the statute of limitations
- B. Initial Case Processing. The Office of General Counsel will activate (assign to an Enforcement attorney) statute of limitations-sensitive matters within fifteen (15) days of the last response to the complaint or referral or within fifteen (15) days of receipt of a *sua sponte* submission.
- C. First General Counsel's Reports. In statute of limitations-sensitive matters, the Office of General Counsel will assign 30-day deadlines to the circulation of the First General Counsel's Report to the Commission, and the Office of General Counsel will submit the First General Counsel's Report to the Commission's Secretary for circulation consistent with Section II of Commission Directive 52 (Circulation Vote Procedures).

V. AGREEMENTS TO TOLL THE STATUTE OF LIMITATIONS

Any agreement to toll the statute of limitations must be in writing and must be signed either by the party entering into the agreement with the Commission or by the party's legal representative.

The Commission approved Directive Number 68 on December 14, 2017.



Alec Palmer
Staff Director

46. *What are the greatest challenges to the Commission's ability to fulfill its mission and mandate? Each Commissioner is invited to answer this question separately.*

Response of
Vice Chairman Matthew S. Petersen and Commissioner Caroline C. Hunter

In our view, one of the greatest challenges to the Federal Election Commission's ability to fulfill its mission and mandate is the common misperception that adherence to the rule of law and sensitivity to Americans' First Amendment rights reflect hostility towards enforcing the law or, even, towards the Commission itself. This misperception feeds into a false narrative of Commission "dysfunction" that undermines public confidence in the Commission's ability to administer and enforce campaign finance laws. It's high time to focus on facts instead of spurious statistics and real issues instead of mindless refrains.

The Commission is unique among federal agencies in that its core mission involves regulating political association and speech. Virtually everything that the Commission does — through regulations, enforcement actions, audits, litigation, disclosure, advisory opinions, and even education and outreach — has an impact on Americans' exercise of their First Amendment rights. For this reason, the Commission has, in the words of the D.C. Circuit Court of Appeals, a "unique prerogative to safeguard the First Amendment when implementing its congressional directives."¹ Consequently, a fair and bipartisan Commission that administers the laws as written by Congress and interpreted by the courts, while being respectful to the First Amendment, is vital to our democracy.

The Commission is an independent agency. By law, no more than three Commissioners may be affiliated with the same political party. And before the Commission can act to regulate, interpret, or enforce the law, at least four Commissioners must agree and vote in favor of the action. This structure ensures that no single political party or administration can dominate the Commission's decisionmaking, subpoena power, or rulemaking authority, and that no single viewpoint will automatically prevail.

As a result, and by design, members of the Commission reflect different views on the same difficult legal issues that often divide the American public, members of the judiciary, and Congress. Unfortunately, disagreements among Commissioners are often mischaracterized as "dysfunction," rather than accepted as a natural consequence of the Commission's unique structure and mandate.

¹ *Van Hollen v. FEC*, 811 F.3d 486, 501 (D.C. Cir. 2016) (citing *AFL-CIO v. FEC*, 333 F.3d 168, 170 (D.C. Cir. 2003)).

We are particularly sensitive to the constitutional rights of Americans to speak and associate freely, and we understand that overly aggressive regulatory and enforcement actions could harm those rights. The Supreme Court has said, “Where the First Amendment is implicated, the tie goes to the speaker, not the censor.”² Thus, we should issue new regulations only when they are clearly necessary, and authorize investigations of Americans’ political activities only upon a showing that the allegations against them are based on more than speculation and concern actions that, if proven, would be clearly prohibited. We administer and enforce the law as written by Congress and interpreted by the courts, not as others wish it to be.

While we welcome and encourage a meaningful debate on the weighty questions we must decide, we caution against overly simplistic attempts to evaluate Commission performance based on numbers with limited value. If numbers are to be considered, they must not mislead. Thus, a rational and fair-minded analysis of Commission actions based on the Commission’s voting history must take into account the total universe of votes taken by the Commission. Focusing only on the number of “deadlocked” votes in Matters Under Review considered in Executive Session automatically limits the scope of such analysis to only the most complex and controversial enforcement cases. It necessarily excludes all votes in enforcement matters approved by Commissioners on tally, or handled through another mechanism — such as the thousands of matters resolved through the administrative fines program or the Office of Alternative Dispute Resolution — or dismissed under the Enforcement Priority System.

Moreover, the number of deadlocked votes does not correlate with the outcome of an enforcement action. Commissioners regularly call for votes on motions in Executive Session even when they expect the motions to fail; this can help to create a record of Commissioners’ positions on issues, which not only is part of the normal give-and-take prior to reaching consensus but may also provide useful guidance to the public. Thus, a matter with deadlocked votes often reflects the opposite of dysfunction: Commissioners staking out their ideal positions while on the path to compromise.

Take for example MUR 7122 (*American Pacific International Capital, Inc., et al.*). In this matter, Commissioners made 13 different motions, more than half of which failed, before ultimately voting to approve conciliation agreements in which the respondents agreed to pay nearly \$1,000,000 in fines. The deadlocked votes were a necessary part of the deliberative process that achieved a consensus result.

We do not mean to suggest that consensus is achieved in nearly every matter. But true deadlocks, in which at least four Commissioners cannot agree on a path forward, occur infrequently and reflect principled disagreements on the proper interpretation and application of the law. This exercise of independent judgment is generally far more challenging than simply

² *FEC v. Wisconsin Right to Life*, 551 U.S. 449, 474 (2007).

adopting the recommendations of Commission staff — but it is a vital part of the work that we took an oath to perform. While we do not seek to dismiss the significance of disagreements over issues like express advocacy or political committee status, they should not overshadow the Commission’s successes in promoting legal compliance and providing the public timely, robust access to the fundraising and spending activities of candidates, parties, and PACs.

For these reasons, attempts to assess Commission performance using statistical measures must take into account the full context in order to be meaningful data points for members of Congress, the public, and the media to use. Inaccurate or misleading numbers might produce tasty sound bites and good theater, but they will not help produce sound policy or law.

We thank the Committee for providing us an opportunity to respond to this important question about the Commission’s mission.

From:John Quinlan
To:Nida Awan
Sent:2019-05-03T16:16:18.0000000Z
Subject:FW: Many thanks

Here are the answers to the questions. See number 8, which says that FEC will post a position by early May.

John Quinlan
Chief Financial Officer
Federal Election Commission
1050 First Street NE
Washington DC 20463
Phone 202-694-1217
Cell 202-213-7686
jquinlan@fec.gov

From: Duane Pugh
Sent: Thursday, May 02, 2019 11:29 AM
To: Alec Palmer <APalmer@fec.gov>; Lisa Stevenson <LStevenson@fec.gov>; John Quinlan <JQuinlan@fec.gov>; Patricia Orrock <POrrock@fec.gov>; Katie Higginbotham <KHigginbotham@fec.gov>; Kevin Deeley <kdeeley@fec.gov>; Neven Stipanovic <NStipanovic@fec.gov>; Dayna Brown <dbrown@fec.gov>; Laura Sinram <LSinram@fec.gov>; Lauren H Lien <LLien@fec.gov>; Krista Roche <KRoch@fec.gov>; Rhiannon Magruder <RMagruder@fec.gov>; Debbie Chacona <dchacona@fec.gov>; Peter Blumberg <pblumberg@fec.gov>; Stephen Gura <SGura@fec.gov>; Lorenzo Holloway <lholloway@fec.gov>; Amy Kort <akort@fec.gov>; Rebecca Hough <RHough@fec.gov>; Gilbert A. Ford <GFord@fec.gov>; Robert Kahn <RKahn@fec.gov>; Robert Knop <rknop@fec.gov>; Lawrence Calvert <LCalvert@fec.gov>; Jeff Jordan <jjordan@fec.gov>; Tony Buckley <tbuckley@fec.gov>; Kevin P. Hancock <KHancock@fec.gov>; Gregory Baker <gbaker@fec.gov>; Amy Pike <APike@fec.gov>; Kristina Portner <KPortner@fec.gov>; Carla Smith <CaSmith@fec.gov>; Erica Lee <elee@fec.gov>; Kendrick Smith <ksmith@fec.gov>; Sarah Rozensky <srozensky@fec.gov>; Theodore Lutz <TLutz@fec.gov>
Subject: Many thanks

Many thanks to this entire team of folks who contributed greatly to preparing the Commission’s response to its oversight committee’s many questions! It was a genuine team effort, with folks throughout the agency turning away from their normal duties, often to prepare a rushed and yet scrutinized answer. Each of your efforts contributed to the fine products attached, and I think we can all be proud of the work we did in compiling them. I’m sure there were others who also contributed, and I ask you to thank them for me too.

Thanks,
Duane

J. Duane Pugh Jr.
Director
Congressional, Legislative and Intergovernmental Affairs
FEDERAL ELECTION COMMISSION
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Congress of the United States
House of Representatives
COMMITTEE ON HOUSE ADMINISTRATION
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(202) 225-2061
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April 1, 2019

The Hon. Ellen Weintraub
Chair
Federal Election Commission
1050 First Street NE
Washington, D.C. 20463

The Hon. Matthew Petersen
Vice Chair
Federal Election Commission
1050 First Street NE
Washington, D.C. 20463

The Hon. Caroline Hunter
Commissioner
Federal Election Commission
1050 First Street NE
Washington, D.C. 20463

The Hon. Steven Walther
Commissioner
Federal Election Commission
1050 First Street NE
Washington, D.C. 20463

Dear Commissioners:


As Chairperson of the Committee charged with Federal Election Commission oversight, I write to request your attention to the matters discussed herein.

The Commission has a central role in administering federal campaign finance law, including public disclosure of funds raised and spent to influence federal elections and enforcement of source and contribution limits. Federal campaign finance jurisprudence, fundraising tactics, and technology have evolved significantly since the last time the Commission testified before Congress in November 2011. The Commission itself has changed over the years, with several Commissioners joining and departing the Commission since the Committee's last FEC oversight hearing.

The Committee looks forward to hearing from the Commission regarding its opportunities and challenges, and to be apprised of the Commission's plans as it prepares for the 2020 federal election cycle.

Enclosed are questions to the Commission. I respectfully respect your responses by May 1, 2019.

Sincerely,



Zoe Lofgren
Chairperson

QUESTIONS

1. Why has the position of General Counsel been vacant or filled in an acting capacity since July 2013?
2. What challenges has the Commission faced in hiring a General Counsel?
3. What is the status of hiring a permanent General Counsel, and when do you expect to decide on a hire?
4. Why has the position of Inspector General been vacant since March 2017?
5. How has the lack of an Inspector General affected the Commission, including the simultaneous vacancy of a Deputy Inspector General?
6. What is the status of hiring a permanent Inspector General, and when do you expect to decide on a hire?
7. What is the status of hiring a permanent Deputy Inspector General?
8. What other positions are filled by individuals in an acting capacity?
9. What committees exist at the Commission, and what is each committee's purpose?
10. For each committee listed in Question 9, how many times has it met each year since 2012? Please provide a copy of any agendas and minutes from these committee meetings.
11. How have the two Commissioner vacancies affected the Commission?
12. According to the Inspector General Statement on the Federal Election Commission's Management and Performance Challenges (2018), the Inspector General contracted with a consultant company to conduct a study to determine the root causes of low employee morale at the agency. The Inspector General wrote that it "believe[s] that an action plan from top level management to address all the root causes of low employee morale is still critical." Has the Commission established an "action plan?" If so, please describe it. If the Commission has not created an action plan, why not?
13. How is the Commission addressing the root causes of low employee morale?
14. According to the Inspector General Statement on the Federal Election Commission's Management and Performance Challenges (2018), "the senior leadership roles of the Staff Director and Chief Information Officer (CIO) are filled by the same individual. As both senior leader positions are critical to the agency, we strongly believe these two positions should have separate full-time personnel solely dedicated to each position." Do you agree with the Inspector General?
15. According to the Office of Inspector General's most recent Semiannual Report to Congress (November 2018), a total of 7 Office of Inspector General Audits and

Inspections had 50 recommendations that still required Commission follow-up as of August 2018. This includes 23 recommendations that have been 7 years outstanding (2010 Follow-up Audit of Privacy and Data Protection); 1 recommendation that is 6 years outstanding (2010 Follow-up Audit of Procurement and Contract Management); 7 recommendations that are 5 years outstanding (Inspection of the FEC's Disaster Recovery Plan and Continuity of Operations Plans); 3 recommendations that are 4 years outstanding (Audit of the FEC's Office of Human Resources); 4 other recommendations that are 4 years outstanding (Inspection of FEC's Compliance with FMFIA/OMB A-123); 9 recommendations that are 2 years outstanding (Audit of the FEC Telework Programs); and 3 recommendations that are 9 months outstanding (Required Review Under the DATA Act). Why are these recommendations still outstanding? Please provide the Committee with a status update on each of these recommendations.

16. Please provide a summary of any improvements that the Commission has made to its IT systems since Chinese hackers crashed them during the 2013 government shutdown. What is the Commission doing to address and anticipate future problems?
17. In the Chair's opening remarks at the February 7, 2019 open meeting, the Chair noted that the Commission has "hundreds of cases on our enforcement docket, 326 to be precise, over 50 already imperiled by a looming statute of limitations."
 - a. How many cases are on the enforcement docket as of the date of this letter?
 - b. How many cases are imperiled by a looming statute of limitations?
 - c. How does the Commission plan to address the hundreds of cases?
 - d. How often does the Commission plan to meet for the remainder of 2019 in Executive Session to dispose of these cases?
18. How many Matters Under Review are considered in a typical Executive Session?
19. According to the "Status of Enforcement – Fiscal Year 2018" memorandum from the Office of General Counsel, there was a caseload of 317 cases, including 113 "inactive" cases" and 204 "active" cases. What distinguishes an "inactive" case from an "active" case?
20. According to the "Status of Enforcement – Fiscal Year 2018" memorandum from the Office of General Counsel to the Commission, of First General Counsel's Reports Pending with the Commission, numerous cases – including one dating back to 2012 – have been pending for years and have been "held over" on multiple dates. See, for example, the following excerpt from the memorandum:

Receipt	Assigned	Circ.	# of Days Receipt to Circ.	# Days Assigned to Circ.	# of Days Receipt to Close of Quarter	# of Days Circ. to Close of Quarter	Held Over Dates
06/20/12	10/09/12	03/10/14	628	517	2293	1665	02/10/15; 03/09/15; 03/17/15; 04/21/15; 08/11/15; 09/15/15; 11/17/15; 12/10/15; 08/15/17; 09/12/17;
02/11/14	07/02/14	10/28/14	259	118	1692	1433	04/12/16; 04/26/16; 01/24/17; 01/25/17; 09/06/18
02/21/14	07/02/14	10/28/14	249	118	1682	1433	04/12/16; 04/26/16; 01/24/17; 01/25/17; 09/06/18
03/27/14	07/02/14	10/28/14	215	118	1648	1433	04/12/16; 04/26/16; 01/24/17; 01/25/17; 09/06/18
05/21/14	10/07/14	02/04/15	259	120	1593	1334	06/28/16; 01/24/17
03/31/15	06/29/15	05/12/17	773	683	1279	506	11/7/17; 11/8/17; 11/14/17; 11/16/17; 9/25/18; 10/9/18; 10/11/18
12/04/14	06/04/15	11/13/15	344	162	1396	1052	11/15/16; 12/06/16; 12/08/16; 01/24/17; 01/25/17; 05/22/18; 07/07/18
05/06/16	09/01/16	01/09/17	248	130	877	629	06/06/17; 12/12/17
03/31/15	04/01/16	02/08/17	680	313	1279	599	9/25/17; 10/11/18; 9/25/18; 10/9/18; 10/11/18;
02/23/15	06/24/15	03/06/17	742	621	1315	573	10/11/17; 10/12/17; 10/24/17; 10/26/17; 11/7/17; 11/8/17; 11/14/17; 11/16/17; 9/25/18; 10/9/18; 10/11/18

Why are some enforcement cases held over – sometimes for years – without resolution?

21. From January 1, 2012 to the present, how many enforcement actions were initiated as a result of:
 - a. Complaint-generated matters?
 - b. Internally-generated matters?
 - c. External referrals?
 - d. *Sua sponte* submissions?
22. How many enforcement cases, organized by election cycle, are still unresolved and not yet closed?
23. How many Administrative Fines cases has the Commission closed since January 1, 2012?
24. Does the Commission plan to expand the Administrative Fines Program to cover other reporting violations, as authorized by Public Law 113-72?

25. How many Matters Under Review has the Commission closed since January 1, 2012?
26. How many and what percentage of the Matters Under Review in Question 25 were resolved exclusively on a tally vote?
27. For purposes of this question, assume a "deadlocked vote" is an equally divided vote of the Commission or any other vote that lacks four affirmative votes. Of Matters Under Review considered in Executive Session since January 1, 2012 and that are now closed, how many and what percentage of the MURs included at least one deadlocked vote of the Commission during Executive Session? Please provide, categorized by year since 2012, the count and percentages. Please also provide the MUR number for each MUR that included at least one deadlocked vote.
28. For purposes of this question, assume a "deadlocked vote" is an equally divided vote of the Commission or any other vote that lacks four affirmative votes. Of Matters Under Review considered in Executive Session since January 1, 2012 and that are now closed, how many and what percentage of the MURs deadlocked on all votes taken during Executive Session, other than a vote to close the file and send the appropriate letter(s)? Please provide, categorized by year since 2012, the count and percentages. Please also provide the MUR numbers and MUR subject of the cases that deadlocked on all votes taken in Executive Session (other than a vote to close the file and send the appropriate letter(s)).
29. Once the Commission deadlocks on a recommendation from the Office of General Counsel, is it the Commission's position that the Office of General Counsel should not make the same recommendation in an analogous case?
30. Since the Supreme Court's decision in *Citizens United*, how many times has the Commission found a violation of the coordination regulations? Please provide the Matter Under Review numbers.
31. Since January 1, 2012, how many enforcement cases has the FEC pursued through litigation after attempting conciliation?
32. What is the current relationship between the FEC and the Department of Justice regarding enforcement matters? Do FEC enforcement staff have the ability to consult with Department of Justice staff where appropriate?
33. How many rulemakings has the Commission completed since January 1, 2012, excluding Civil Monetary Penalties Inflation Adjustments? Please provide a brief summary of each new rule.
34. Please provide a brief summary, including the current status of Commission action, for each Advance Notice of Proposed Rulemaking (ANPRM) that the Commission has opened or reopened since January 1, 2012. In the summary, please provide the status of the Commission's deliberations on these matters, including but not limited to whether and when it expects to take further action on each ANPRM.

35. Please provide a brief summary, including the current status of Commission action, for each Notice of Proposed Rulemaking (NPRM) that the Commission has opened or reopened since January 1, 2012. In the summary, please provide the status of the Commission's deliberations on these matters, including but not limited to whether and when it expects to take further action on each NPRM.
36. Please provide a brief summary, including the current status of Commission action, of any petition for rulemaking for which the Commission approved a Notice of Availability since January 1, 2012. In the summary, please provide the status of the Commission's deliberations on these matters, including but not limited to whether and when it expects to take further action on each petition.
37. What further action does the Commission anticipate taking on REG 2011-02 concerning internet communication disclaimers? When does it anticipate taking this further action, if any?
38. How many litigation cases has the Commission appealed in the past 10 years after an adverse court ruling?
39. For the past decade, how many requests for advisory opinions lacked four affirmative votes to provide an answer? Please provide the numbers and advisory opinion citations by year.
40. Do you view advisory opinions as binding on analogously-situated parties?
41. In the Minutes of an Open Meeting from Sept. 15, 2016, then-Chair Petersen stated that, without objection, the General Counsel's Office was "directed to prioritize cases involving allegations of foreign influence." What is the status of this direction to the Office of General Counsel? How many cases have been prioritized and what is their disposition?
42. Besides efforts to encourage voluntary compliance with the law and deadlocks on enforcements matters, what action has the Commission taken to address the threat of foreign interference in American elections?
43. What have been the effects of Directive 70 on the audit process?
44. Have any Commissioners put forward proposals to change any aspect of Directive 70 on processing audits?
45. What is the average time that it takes to complete an audit under Directive 70?
46. What are the greatest challenges to the Commission's ability to fulfill its mission and mandate? Each Commissioner is invited to answer this question separately.