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Federal Election Commission
Attn: FOIA Requester Service Center
1050 First Street, NE
Washington, DC 20463
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VIA ELECTRONIC MAIL

**Re: Your Freedom of Information Act Request to the Federal Election Commission
FOIA [2022-052]**

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 March 16, 2022. Specifically, you requested:

A copy of the investigation report, Report of Investigation, final report, closing memo, etc. for each FEC OIG investigation closed during Calendar Years 2017, 2018, 2019, 2020 and 2021.

We have searched our records and located responsive documents consisting of a total of 294 pages. We are releasing these documents to you with redactions B(6), B(7)(C), and B(3)(A).

Exemption 3(A) protects from disclosure information that is specifically exempted from disclosure by statute. *See* 5 U.S.C. § 552(b)(3)(A).

Exemption 6 protects personal information, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. *See* 5 U.S.C. § 552(b)(6).

Exemption 7(C) protects from disclosure records or information compiled for law enforcement purposes that if released could reasonably be expected to constitute an unwarranted invasion of personal privacy. *See* 5 U.S.C. § 552(b)(7)(C).

Accordingly, your FOIA request has been granted in part.

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 FOIA@fec.gov, or (202) 694-1650.

Sincerely,

Katrina Sutphin
FOIA/PA Attorney



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

Office of Inspector General

MEMORANDUM

TO: The Commission

FROM: J. Cameron Thurber
Deputy Inspector General

A handwritten signature in dark ink, appearing to be "JCT", is written over the name "J. Cameron Thurber".

SUBJECT: Garage Parking Permit
Case Number INV-16-07

DATE: November 7, 2017

This memorandum transmits the Federal Election Commission (FEC) Office of Inspector General's (OIG) Report of Investigation for case number INV-16-07 dated November 7, 2017.

As a result of findings from the OIG investigation of the FEC's Transit Subsidy, on July 23, 2015, the OIG opened an investigation to determine if an employee was parking in the LAZ operated parking garage with an unauthorized FEC permit.

The review period of the investigation was from October 1, 2015, through June 30, 2016. The OIG investigation revealed that during the investigation period, one employee used the union subsidized parking pass without authority from the Union, FEC employees received both temporary parking passes and transit benefits in violation of FEC Directive 54, the FEC did not conduct a needs assessment for subsidized parking as required by the Government Accountability Office, and the FEC's parking subsidy exceeded the 2016 limit of \$255.00 by \$31.90; the FEC did not report the additional amount as wages to the parking beneficiaries as required by the Internal Revenue Service.

Should you have any questions regarding this report and its conclusions, please contact my office at 202-694-1015. Thank you.

cc: Alec Palmer, Staff Director

**FEDERAL ELECTION COMMISSION
OFFICE OF INSPECTOR GENERAL**



Report of Investigation

Garage Parking Permit

INV-16-07

November 7, 2017

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I. Executive Summary

The Federal Election Commission (FEC) Office of Inspector General (OIG) conducted an investigation of possible fraudulent use of the FEC's transit subsidy. The OIG found that FEC employees were in violation of FEC Directive 54 and were receiving transit benefits in conjunction with parking in the LAZ parking garage located under the FEC building. FEC Directive 54 prohibits FEC employees from receiving transit benefits if they receive a subsidized parking privilege or purchase a parking pass with their own funds. The OIG investigation revealed that four FEC employees were receiving both parking and transit benefits for an extended period of time. As a result of the OIG findings, on June 23, 2016, the OIG decided to open an investigation of the administration and use of FEC subsidized parking spaces.

The review period of the investigation was from October 1, 2015, through June 30, 2016. The FEC enacted a parking policy on August 9, 2010, with a stated purpose of establishing the policy for the management of the parking facility and the spaces occupied by lease or assigned to the agency that are not reserved for official needs. The OIG found that during fiscal year 2016, the FEC leased 25 parking spaces from LAZ Parking for \$80,172.00, plus a charge of \$3,000.00 for night closing. The FEC provided free yearly subsidized parking permits to four FEC Commissioners, six Senior Leaders and to one National Treasury Employees Union (Union) Representative. Parking passes are distributed to all the recipients at the beginning of each fiscal year (October 1st). During the investigation period, 15 temporary parking passes were distributed to employees who had medical conditions or a temporary need for a parking space. The temporary parking spaces are authorized for a month at a time by the Deputy Staff Director. Twelve FEC employees personally pay for leased monthly parking passes directly from LAZ at a cost of \$260.00. The OIG compared transit subsidy records, the garage key card records, FEC subsidized parking records, and LAZ parking records. A review of the records and the FEC parking policy revealed the following:

1. Prior to instituting the policy to purchase parking passes for Senior Leaders and FEC Commissioners, the FEC did not conduct a parking assessment as required by the Government Accountability Office (GAO);
2. Several FEC employees received both temporary parking and transit benefits for an extended period of time in violation of FEC Directive 54. As a result, during the review period, the FEC paid \$3,005.00 worth of transit benefits to employees who were receiving subsidized parking privileges or were leasing a parking space from LAZ directly;
3. The administration and usage of the Union pass is not monitored by the Deputy Staff Director or the Union. As a result, the Union parking pass was utilized by a FEC employee without the knowledge or permission of the Union; and
4. The FEC has no policies to ensure that FEC is compliant with the Internal Revenue Service (IRS) qualified parking limit requirement. FEC's parking subsidy exceeded the

2016 IRS monthly limit of \$255.00 by \$31.90. In accordance with IRS guidelines, \$31.90 a month should be added to the reported wages of yearly and monthly parking beneficiaries.

II. Background

On June 24, 2016, the FEC OIG opened INV-16-06, regarding former FEC employees who still received transit subsidy benefits. Logs obtained by the OIG revealed several FEC employees were also utilizing transit subsidy benefits while receiving garage parking in the FEC headquarters building for an extended time in violation of Directive 54. FEC employees are prohibited from receiving a transit subsidy while utilizing a garage parking pass. The OIG opened an investigation to determine how many employees received transit and parking privileges during the period of October 1, 2015, through June 30, 2016. The OIG's investigation also included a review of FEC procedures to determine if they were compliant with IRS fringe benefits guidelines, GAO requirements, and adherence to FEC's Parking Policy (2010 edition).

A. Relevant Statutes and Policies

FEC Directive 54

FEC Parking Policy (2010 Edition)

IRS Qualified Parking Limit Requirement 2016

B. Scope of Investigation

The investigation was limited to determining whether or not: FEC employees were receiving both parking and transit subsidies or fraudulently receiving parking benefits, the FEC parking policy was in compliance with GAO and IRS guidelines, and the FEC was adhering to its own parking policy procedures.

III. Investigation Findings

A. The FEC did not follow GAO requirements and conduct a parking assessment prior to instituting the FEC subsidized parking policy.

Documentation obtained by the OIG revealed that the FEC leased 25 parking spaces from LAZ Parking during fiscal year 2016 for the yearly fee of \$80,172.00, plus a charge of \$3,000.00 for night closing. The FEC has leased parking spaces from LAZ for several years. The earliest contract sent to the OIG from the FEC Administrative Services Division office was for fiscal year 2014, and an extension for fiscal year 2015 was signed on October 3, 2014. LAZ parking garage is located underneath the FEC building located at 999 E Street NW, Washington, DC.

According to the GAO, in order for an agency to pay for employee parking it must first determine there is a need. The GAO cites in its Comptroller General opinion B-322337, Matter of: U.S. International Trade Commission-Use of Appropriated Funds to Subsidize Employee Parking Permits August 3, 2012 (2012 WL 3143918):

We do not object to an agency's use of appropriated funds to provide parking to its employees; where such parking is necessary to avoid a significant impairment to the agency's operating efficiency. However, in making its determination of significant impairment, the Commission should consider pertinent factors relevant to today's workplace and stated government policies. The Commission also should articulate the consequences for agency operations if it were not to subsidize employees' parking permits.

General Rule: *Where an appropriation is not specifically available for a particular item, its purchase may be authorized as a necessary expense if there is a reasonable relationship between the object of the expenditure and the general purpose for which the funds were appropriated, so long as the expenditure is not otherwise prohibited by law. However, appropriated funds are generally not available for the personal expenses of an employee.*

Test: *Whether the agency or the individual receives the primary benefit. If the primary beneficiary is the individual, not the agency or the government, the rule is that such an expenditure is not an authorized use of appropriated funds. The GAO provides factors to consider in its opinion.*

The OIG found no evidence that the FEC conducted a needs assessment as required by GAO prior to entering into its contract with LAZ or creating the policy allowing subsidized parking for FEC Commissioners and Senior Leaders, or that the FEC's Office of General Counsel (OGC) was consulted. The OIG interviewed the Deputy Staff Director of Administration, Edward Holder, the Administrative Services Manager, India Robinson, the Deputy General Counsel for

Administration, Greg Baker, an Assistant General Counsel, Katie Higginbotham, and the then-Assistant to the Commissioner, Dayna Brown, regarding FEC's subsidized parking procedures.

On January 6, 2017, Brown advised that there are no FEC records that the Commission voted on the parking policy. However, the policy itself states the policy was signed and approved on July 20, 2010, by Staff Director Alec Palmer and became effective on August 9, 2010. On January 6, 2017, Higginbotham advised that she has no record of the OGC conducting a parking needs analysis. Higginbotham advised that Special Counsel Lawrence Calvert worked on administrative and appropriation matters prior to her employment in 2013, but he was on extended leave during this investigation due to (b) (6). On January 12, 2017, Baker advised the OIG that he had spoken to Calvert and researched the matter and could not find any record that the OGC had provided an opinion or conducted research regarding the FEC's subsidized parking policy.

The OIG investigation revealed that the FEC's current parking subsidy and policy may be in violation of the GAO requirement for a needs assessment, resulting in the FEC potentially allocating funds inappropriately. The GAO can provide FEC management guidance on how to comply with GAO needs assessment.

B. The administration and usage of the Union parking permit is not monitored by the Deputy Staff Director or the Union, and was utilized in fiscal year 2016 by a FEC employee without the knowledge or permission of the Union.

Pursuant to Article 34, Section 1, of the 2015 Labor Management Agreement (LMA) between the FEC and the Union, the FEC is required to allot one parking space without charge to the Union. The LMA provides that in allotting the space, "The Union will consider such equitable factors as the use of an employee's vehicle for employee carpooling and the FEC seniority of the employees applying for the space." The parking permit expires at the end of each fiscal year. The FEC Parking Policy for Agency Leased Spaces not Reserved for Official Needs (2010 edition), states that one agency leased parking space will be allotted to the Union pursuant to Article 38 of the 2007 LMA.

The OIG investigation revealed that the last authorized Union member to receive the pass during the period under review was (b) (7)(C). FEC records revealed that (b) (7)(C) carpooled with (b) (7)(C) who is also a union member. (b) (7)(C) retired (b) (7)(C) and (b) (7)(C) continued to park in the garage through the rest of the fiscal year. The OIG also reviewed parking registration forms for fiscal year 2016, and found that (b) (7)(C) signed a permit registration form and was assigned permit 0013 on September 30, 2015. The form acknowledges that (b) (7)(C) participated in a car pool with (b) (7)(C). However, when the OIG reviewed the FEC signature list for parking permits, (b) (7)(C) was listed as the owner of permit 0011 and (b) (7)(C) as

the owner of permit 0013. (b) (7) signed for both permits, 0013 and 0011, on October 1, 2015. Further (b) (7)(C) signature is crossed out for permit 0013 (the permit listed under (b) (7) name) but (b) (7) signature remains for 0011 (permit under (b) (7) name). According to FEC parking records, (b) (7) did not pay for a parking permit, nor was (b) (7) awarded the Union or a carpool parking permit. The FEC's Parking Policy states that the agency may provide quarterly parking spaces to employees who carpool or van pool to and from work, subject to availability. (b) (7)(C) and (b) (7) carpooled, but they used (b) (7)(C) pass, who had received it as a Union leader. (b) (7)(C) was last provided the pass during the 2016 fiscal year, which ended September 31, 2016.

The OIG interviewed the Union President, Ana Pena-Wallace, the Acting Staffing Director for Administration, Edward Holder, and the Administrative Services Manager, India Robinson. The OIG found that Pena-Wallace and Holder were unaware of the policy and procedure for the Union parking permit, and were not aware who was currently using it. Pena-Wallace stated she was not aware of the pass until there was talk of using it during the time Washington Metro Area Transit Authority service would be suspended. Holder stated that the Union decides who receives the pass and he does not know the process. Robinson was aware of the permit, stated that the permit was given by seniority, and that she knew (b) (7)(C) used the permit. Robinson also confirmed that there were no approved carpools at the time of her interview.

The OIG reviewed the administrative office's monthly parking memorandum (memo) that is sent to the Staff Director, Alec Palmer. The OIG found that the memo is sometimes sent monthly or quarterly. The memo provides a list of numbered parking permits and FEC employees who are assigned to the permits. According to the administrative records for the months of October 2015 through June 2016, the same permit awarded to (b) (7)(C) was the permit awarded to (b) (7)(C) prior to her retirement. The OIG did not find any documentation that the Union parking permit was awarded to (b) (7)(C) by the Union once (b) (7)(C) retired. Pena-Wallace stated the Union had not voted on the matter. Per FEC parking policy, the Union permit should have been returned to the administrative office when (b) (7)(C) retired.

Based on the evidence gathered from the OIG, (b) (7)(C) did not have permission to use the Union parking permit and should have personally paid a monthly rental fee for each month he used the permit instead of using a government-paid space. FEC's monthly cost per parking space is \$267.24, plus \$10.00 for closing fee per space. The records obtained by the OIG revealed that although the administrative office allowed (b) (7)(C) to park in the garage, (b) (7)(C) did not receive permission from the Union, did not fill out a parking registration permit form, and the administrative office failed to retrieve the parking pass once (b) (7)(C) retired. It is the OIG's understanding that (b) (7)(C) still used the pass until the end of fiscal year 2016, and was issued a parking pass for fiscal year 2017. The OIG calculates that during the OIG investigation period, (b) (7)(C) solely used the parking pass without permission for nine months (January 2016 through September 2016). The accumulated amount of parking fees for fiscal year 2016 is \$2,495.16 (\$277.24 x 9).

C. Employees are receiving transit subsidy and parking benefits for an extended period of time in violation of FEC Directive 54.

The FEC Parking Policy (2010 edition) states that the Agency may provide courtesy parking permits to individuals on a one-time, occasional, or temporary basis, subject to availability. This category is of the lowest priority and maybe considered for health related issues and only if there is space available due to no other higher priority requests taking precedence. Examples given for consideration include an employee retiring and needing space to gather belongings; bringing supplies to work; or an employee suffering from health condition that is lessened by refraining from public transportation. The policy further states that any employee who is provided with longer term parking permit (i.e., more than two weeks) must consult with the Office of Human Resources (OHR) to determine their eligibility to receive a transit subsidy benefits under the FEC Employee Transit Benefit Program.

According to the policy, all requests must be submitted in writing to the Agency's Disability Program Manager (DPM, formerly Reasonable Accommodation Coordinator, or RAC) for health related parking passes. The DPM then coordinates with the appropriate Agency personnel. Non-health related parking passes must be submitted in writing within 24 hours in advance of the need or as soon as possible. The employee's supervisor must be copied on the request.

The OIG found that staff members were retaining their subsidy benefits when they received temporary parking benefits for an extended period of time, and with health related permits, there is no communication between OHR Director Derrick Allen and Cheryl Painter, the FEC's DPM. According to Deputy Staff Director for Administration Edward Holder, Administrative Assistant Donna Short handles all requests and drafts the monthly list that is sent to the Staff Director's office. Administrative Assistant Pat Dunn then sends the request to the LAZ parking garage. Holder also stated that OHR is contacted when a request is received.

According to Administrative Services Manager Robinson, when an employee needs a temporary parking pass due to a medical condition for an extended time, the administrative office is notified by the DPM via email of the employee's name and the duration of time the pass is needed. Robinson stated that she does not contact the OHR when a request for temporary parking for an extended period of time is sent to her office. The request is sent to her office by the individual applicant and the manager is copied. The request is then sent to the Deputy Staff Director for approval.

The FEC Parking Policy states:

Employees who participate in the Employee Transit Benefit Program and are approved for a parking permit under this policy are REQUIRED to contact the Transit Subsidy benefits coordinator or OHR to ensure compliance with the requirements of the Transit

Subsidy Program and FEC Directive. When applicable, employees who receive parking permits and are still eligible to participate in the Transit Subsidy Program, are responsible for adjusting their monthly allotment pursuant to the procedures of the transit Subsidy Program.

The OIG found that current FEC practices do not ensure that OHR is contacted when an employee received parking privileges for an extended period of time. The OIG reviewed the parking records and the transit records and found during the investigation period, sixteen employees received temporary parking permits during the period of October 1, 2015, through June 30, 2016. Three employees received both parking and transit subsidy for two months or more in violation of the FEC Parking Policy and Directive 54. The OIG found that each individual that requested a parking permit related to a reasonable accommodation received approval from the DPM, and the DPM contacted the administrative office as required. However, in each case the employee never contacted OHR as required by the Parking Policy. FEC's current policy does not require the administrative office or the DPM to contact OHR.

FEC's parking policy prohibits staff from leasing a parking space and receiving Transit benefits. According to parking and transit subsidy records (b) (7)(C) received a temporary parking pass but still received (b) (7)(C) transit subsidy of \$70.00 for two months during the fiscal year 2016 (February 1, 2016 through March 31, 2016). During this time, (b) (7)(C) parked in the parking garage and used (b) (7)(C) transit benefit sporadically for a total of \$13.00 for the two months. Also, (b) (7)(C) received a temporary parking pass for five months, February 1, 2016, through June 30, 2016, and received (b) (7)(C) full transit benefit of \$125.00 per month. During the months of February 1 through June 30, 2016, (b) (7)(C) parked in the parking garage and used (b) (7)(C) transit benefit on a consistent basis, averaging \$66.50 per month.

In addition, according to FEC Parking Permit Memoranda (b) (7)(C) received a temporary parking permit from November 2015 through June 2016. During this time, (b) (7)(C) received a transit subsidy of \$130 in January 2016 and \$136 from February through June 2016. The transit records show that (b) (7)(C) never utilized these benefits in any part of those four months. Lastly, parking garage and transit records revealed that FEC employee (b) (7)(C) received the transit subsidy while paying for monthly parking in the E Street parking garage. (b) (7)(C) began leasing a parking space from LAZ in September 2015, and for the dates of October 1, 2015, through June 23, 2016, (b) (7)(C) received transit benefits in the amount of \$130 per month. The FEC Transit benefit records reveal that (b) (7)(C) did not use his benefits.

The OIG investigation revealed, FEC management is not ensuring that employees who receive temporary parking for an extended time are contacting OHR as required by the FEC Parking Policy. As a result during the months of October 1, 2015, through June 30, 2016, the FEC expended \$3,005 for transit benefits to staff who were parking in the FEC garage.

D. The FEC has no policies to ensure that FEC and its employees are compliant with the IRS qualified parking limit requirement.

The FEC may provide employees with parking benefits, subject to IRS tax rules which cap the parking benefit at \$255.00 per month. The FEC rents parking space from LAZ Parking in the garage under the FEC building. In exchange for renting twenty-five spaces, LAZ gives the FEC four free spaces. The amount of the yearly lease is \$80,172.00, plus a charge of \$3,000 for night closing. The amount results in a cost per space or benefit to the recipient of \$276.45 (\$80,172 divided by 29), or if the night closing fee is included, the amount is \$286.90.

The IRS allows an employer to exclude the value of some de minimis and qualified transportation benefits from an employee's wages. Qualified transportation benefits include qualified parking, which is parking that the employer provides to employees on or near the employer's business premises. The IRS allows employers to exclude the value of transportation benefits from employees' wages up to a maximum dollar limit. If the value of the parking for any month is more than the qualified parking limit, the employer must include in the employee's wages the amount over the limit minus any amount the employee paid for the benefit. The fiscal year 2016 maximum is \$255 per month. Thus, if the value of an employee's qualified parking benefit exceeds \$255 per month for any month in 2016, the agency must include in the employee's wages the amount over the limit for that month minus any amount the employee paid for the benefit.

Employers may not exclude any amount over the maximum amount from the employee's wages as a stand-alone de minimis transportation benefit. For example, if an employer provides an employee with \$260 worth of qualified parking benefits per month in 2016, that employee must have \$5 included in their wages each month because the parking benefit's value was \$5 greater than the limit, and may not independently qualify as a de minimis fringe benefit. Because the maximum qualified parking benefit limit is set on a monthly basis, employees who receive a parking benefit that exceeds the maximum limit for any month must have the amount over the limit included in their wages for that month.

The OIG investigation did not reveal any language in FEC parking policy regarding the IRS requirement. Currently, FEC does not include parking benefits in reporting or withholding from the parking recipient's income. If the amount of the 2016 tax benefit is calculated as to the amount paid by FEC to LAZ, then the value of each parking space is \$286.90, which surpasses the 2016 and 2017 \$255 IRS thresholds. As a result, each of the twelve employees, plus those staff members who received the subsidy for extended period of time, should have had \$31.90 added each month (\$382.00 yearly) to their income for 2016. FEC parking costs and the IRS guidelines amounts for 2016 carried over into 2017.

Conclusion

The OIG investigation revealed that the FEC has not complied with GAO's requirements by conducting a needs assessment of its parking subsidy program. In addition, the OIG found that FEC's parking procedures were not being followed and the Administrative Services office allowed a staff member to use a union permit without permission.

The OIG also found that the OHR is not receiving notice when staff members receive temporary parking privileges for an extended time, which allowed four FEC staff members to receive parking and transit benefits in violation of FEC's Directive 54. As a result, one employee received a benefit of \$2,495.16 and the FEC expended \$3,005.00 in transit benefits for individuals that were not eligible for the benefit.

Lastly, the FEC's current monthly benefit for subsidized parking exceeds the \$255 threshold allowed by IRS and the FEC does not report as wages the monthly fringe benefit of \$31.90 to the FEC employees who receive agency subsidized parking.

Federal Election Commission Office of Inspector General



Fraud Hotline 202-694-1015

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Individuals including FEC and FEC contractor employees are encouraged to alert the OIG to fraud, waste, abuse, and mismanagement of agency programs and operations. Individuals who contact the OIG can remain anonymous. However, persons who report allegations are encouraged to provide their contact information in the event additional questions arise as the OIG evaluates the allegations. Allegations with limited details or merit may be held in abeyance until further specific details are reported or obtained. Pursuant to the Inspector General Act of 1978, as amended, the Inspector General will not disclose the identity of an individual who provides information without the consent of that individual, unless the Inspector General determines that such disclosure is unavoidable during the course of an investigation. To learn more about the OIG, visit our Website at: <http://www.fec.gov/fecig/fecig.shtml>

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463
Office of Inspector General

MEMORANDUM

TO: Lynne A. McFarland
Inspector General

FROM: J. Cameron Thurber
Deputy Inspector General

SUBJECT: INV-13-03 Case Closing

DATE: October 31, 2016

On July 17, 2013, the Federal Election Commission (FEC) Office of Inspector General (OIG) received information alleging that (b) (7)(C) had pre-selected (b) (7)(C) for a permanent (b) (7)(C) without competition, that (b) (7)(C) might not be qualified for the position, and that (b) (7)(C) may have attempted to retroactively change (b) (7)(C) personnel records to make (b) (7)(C) eligible for the position. Following a preliminary inquiry, an investigation was opened August 20, 2013. There were no allegations that (b) (7)(C) knew of these potential violations, and no evidence was uncovered of any wrongdoing by (b) (7)(C) or that (b) (7)(C) had any knowledge of wrongdoing by (b) (7)(C) supervisors or managers concerning (b) (7)(C) personnel actions.

During the investigation, the OIG requested assistance from the Office of Personnel Management's Merit System Accountability and Compliance, Office of Agency Compliance and Evaluation (OPM) due to the need for technical expertise. The OPM reviewed the relevant files, and determined that FEC management may have committed violations of prohibited personnel practices as defined in 5 U.S.C. § 2302(b)(6) and (12), concerning several of (b) (7)(C) personnel actions that occurred both prior to and concurrent with (b) (7)(C) assignments in the (b) (7)(C). A summary of the OPM findings can be found in the case file.

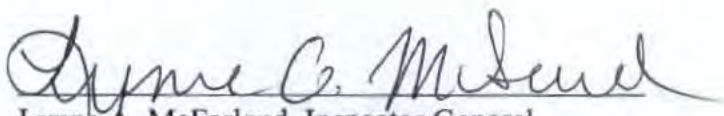
Since the OPM review had found evidence of potential violations of prohibited personnel practices, as a matter of policy it referred its findings to the Office of Special Counsel (OSC) for investigation. The OIG and OSC coordinated their investigations. The OSC took the lead in the investigation of the alleged prohibited personnel practices, notified FEC management of its investigation, and interviewed FEC staff.

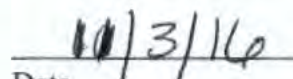
On November 26, 2014, the OSC notified the OIG it had concluded its investigation, and a copy of the report is in the case file. The OSC found evidence of a violation of FEC Personnel Instructions 300.1 through 3 concerning temporary promotions and potential violations of 5 U.S.C. § 2302(b)(12) (violation of merit system principles), as (b) (7)(C) initial temporary promotion to (b) (7)(C) and (b) (7)(C) detail to a higher graded position exceeded the 120-day limit and did not follow competition requirements.” The OSC informed the OIG that it considered these violations to be technical in nature and requested that FEC management be properly trained to prevent future violations; the OSC stated that FEC management preliminarily agreed to take corrective action. About the time of the OSC report, the Deputy General Counsel sent a memorandum to hiring managers advising them of agency policies for appointments, promotions, temporary promotions, and details.

Further, the OSC found no evidence that a violation of 5 U.S.C. § 2302(6) (improper granting of any preference or advantage) concerning (b) (7)(C) selection for or extension of a temporary promotion, detail to a higher graded position, or selection for a (b) (7)(C), occurred. Specifically, the OSC did not find that FEC management intentionally provided (b) (7)(C) with an unauthorized employment preference. Based on the OSC’s findings, the OIG closed its investigation.

This was a joint investigation with another agency (OSC), and the OPM assisted the FEC OIG with a subject matter expert review of the evidence and issues. The OSC report addressed all issues involving FEC programs, operations, and personnel. Therefore, this investigation meets the requirements set forth in section XVI of the FEC OIG Investigative Manual to be closed by memorandum.

Concurrence:


Lynne A. McFarland, Inspector General


Date

**Federal Election Commission
Office of Inspector General**



Report of Investigation

Unauthorized Access of FEC's Network

Case Number: INV 20-01

August 25, 2020

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I. EXECUTIVE SUMMARY

The Department of Homeland Security (DHS) Cybersecurity and Infrastructure Security Agency (CISA) Hunt and Incident Response Team (HIRT)¹ conducted a review of the Federal Election Commission's (FEC) systems and networks in response to a written Federal Network Authorization (FNA) signed March 25, 2019. Specifically, the Office of Chief Information Officer (OCIO) entered into an agreement with HIRT to conduct testing of FEC's systems and networks.

The HIRT initiated its testing of the FEC network security on July 29, 2019. As a result, the *HIRT Engagement Report INC000010237671* dated October 11, 2019 detected, among other things, host network traffic going to a Tor² exit node IP address. The HIRT identified that the host linked to a Mac OSX system, which suggested that an employee was accessing the FEC's internal network using a personal device.

On October 23, 2019, the FEC Office of Inspector General (OIG) received a memorandum addressed to the Commission from Alec Palmer, Staff Director/Chief Information Officer (CIO), which summarized the results of *HIRT Engagement Report INC000010237671*. Subsequently, in part because of a prior, unrelated incident in which another FEC employee had accessed the network using a Tor browser to access inappropriate material online, the OIG was asked to conduct an additional review of the current matter because the employee's potential connection of an unauthorized device to the FEC network posed risk to the organization.

Specifically, the OIG inquired into whether an FEC employee, [REDACTED] an [REDACTED] connected [REDACTED] unsecure personal laptop to the FEC Local Area Network (LAN), in or around August 2019, in violation of FEC Policy Number 58-4.3, "Mobile Computing Security Policy." The OIG opened an investigation into the matter on December 5, 2019.

The results of the OIG investigation revealed that staff members from the OCIO were able to use the IP address provided in the HIRT report to locate the host.³ Each floor within the FEC has a designated IP address and the IP address at issue linked to the (b) (6) specifically the office suite of [REDACTED]. As a result, OCIO was able to identify that [REDACTED] was accessing the FEC LAN with [REDACTED] personal MacBook. Specifically, [REDACTED] testified to investigators that [REDACTED] accessed the FEC LAN with [REDACTED] personal MacBook. [REDACTED] stated that [REDACTED] accessed the network using an adapter [REDACTED] purchased. [REDACTED] denied any use of Tor on [REDACTED] MacBook.

¹ Hereinafter referred to as "HIRT."

² Tor is free and open-source software for enabling anonymous communication. The name is derived from the acronym for the original software project name "The Onion Router." Tor directs Internet traffic through a volunteer overlay network consisting of relays to conceal a user's location and usage from anyone conducting network surveillance or traffic analysis. Unauthorized usage of Tor can introduce avenues for network data to bypass organization security controls.

³ (b) (6)

As a result of the evidence collected and interviews conducted, the OIG investigation concluded that:

- [REDACTED] accessed the FEC LAN with [REDACTED] personal device in violation of Policy Number 58-4.3,
- [REDACTED] did not seek permission in writing from the FEC Chief Information Security Officer (CISO) in violation of Policy Number 58-4.3,
- [REDACTED] personal device did not include a multifactor authentication in violation of Policy Number 58-4.3,
- [REDACTED] personal device did not contain hard drive encryption in violation of Policy Number 58-4.3, and
- The OIG found no additional evidence that suggested [REDACTED] was using Tor while accessing the FEC network.

The OIG investigation identified no evidence that [REDACTED] use of [REDACTED] personal MacBook violated any criminal laws or regulations, nor that [REDACTED] computer was compromised by a third party to access the FEC LAN. The OIG found no additional evidence, other than what was documented in the *HIRT Engagement Report INC00001023767*, that suggested [REDACTED] used Tor while accessing the FEC network. As a result of the foregoing, we determined that [REDACTED] violated requirements pertaining to network access, multifactor authentication, and hard drive encryption memorialized in Policy 58-4.3.

Moreover, in a preliminary report document from the Staff Director/CIO, addressed to the Commissioners dated September 18, 2019, the Staff Director/CIO informed [REDACTED] to cease the use of [REDACTED] personal device and that if a personal device was desired, to use the public Wi-Fi rather than connecting to the LAN. Additionally, in an October 23, 2019, memorandum addressed to the Commissioners, the Staff Director/CIO further advised the Commission that [REDACTED] “was admonished and reminded not to use any personal devices on the internal FEC network and was in violation of the FEC’s IT security policies.” Accordingly, in light of the foregoing, management should take action it deems appropriate.

II. BACKGROUND AND ISSUES

A. **Background and Scope:** On October 23, 2019, the FEC Office of Inspector General (OIG) received a memorandum addressed to the Commission from Alec Palmer, Staff Director/Chief Information Officer (CIO), which summarized the results of *HIRT Engagement Report INC000010237671*. Subsequently, in part because of a prior, unrelated incident in which another FEC employee had accessed the network using a Tor browser to access inappropriate material online, the OIG was asked to conduct an additional review of the current matter because the employee's potential connection of an unauthorized device to the FEC network poses great risk to the organization

According to the complainant, the DHS CISA HIRT conducted a review of FEC's systems and networks on July 19, 2019 and detected an unknown connection during their testing of host network traffic. Specifically, HIRT detected host network traffic going to a Tor exit node IP address, which suggested that an employee was accessing the FEC's internal network using a personal device. The OIG opened an investigation into the matter on December 5, 2019.

The OIG opened an investigation into the matter to address the following:

- (1) Did [REDACTED] access the FEC LAN with a personal device; and if so,
- (2) Did [REDACTED] seek permission from FEC CISO prior to accessing the network as required by Policy 58-4.3;
- (3) Did [REDACTED]'s personal device include a multifactor authentication as required by Policy 58-4.3;
- (4) Did [REDACTED]'s personal device contain hard drive encryption as required by Policy 58-4.3; and
- (5) Did [REDACTED] utilize a Tor browser while accessing the FEC LAN?

B. **Issue.** Whether [REDACTED], [REDACTED], connected [REDACTED] unsecure personal laptop to the FEC LAN in or around August 2019, in violation of FEC Policy Number 58-4.3, "Mobile Computing Security Policy."

III. RELEVANT STATUTES AND POLICIES

A. Federal Election Commission Mobile Computing Security Policy, Policy number 58-4.3
Section 2. Policy, states in pertinent parts:

(d) Privately-owned portable computing devices that are used to process, store, or transmit FEC information are considered government-interest assets, and should be afforded the same anti-theft protection as agency –owned assets for as long they contain FEC information.

...

(k) All laptops that access the FEC Local Area Network (LAN) is [sic] required to use multifactor authentication or MFA.

...

(m) All laptops that access the FEC Local Area Network (LAN) will be required to employ whole hard-drive encryption.

(n) Request for exceptions to any provisions contained in this policy must be submitted in writing to the FEC CISO.

B. Commission Directive 58, “Electronic Records, Software and Computer Usage” provides in pertinent part:

General Policy: ...This, in turn, confers considerable responsibility on end users to ensure that information systems are used appropriately and protected from loss, misuse, or unauthorized access. This includes a responsibility to minimize the FEC vulnerability to inadvertent or malicious system failures, to respect software licensing and copyright laws, and to protect information stored on agency computers.

C. *Rules of Behavior and Acceptable Use Standards For Federal Election Commission Information and Systems Resources* provide in pertinent part: “11.) Do not use personal equipment or software for FEC business without proper approval.”

IV. INVESTIGATION FINDINGS

A. Did [REDACTED] access the FEC LAN with a personal device?

The *HIRT Engagement Report INC000010237671* dated October 11, 2019 detected host network traffic going to a Tor exit node IP address, which suggested an unauthorized device on the FEC LAN. Additionally, the OICO was able to identify the user from the local IP address provided. Further, [REDACTED] testified to investigators that [REDACTED] connected [REDACTED] personal MacBook to the FEC LAN.

[REDACTED] specifically stated to investigators that [REDACTED] used [REDACTED] personal MacBook to conduct work business because it contains features that [REDACTED] FEC laptop lacks. [REDACTED] stated that [REDACTED] could access the FEC wireless network but that option would not allow [REDACTED] to print work documents, which [REDACTED] desired. Therefore, [REDACTED] purchased an adapter so that [REDACTED] could connect to the FEC LAN in efforts to print work-related documents. [REDACTED] stated that [REDACTED] was not aware of Policy Number 58-4.3, "Mobile Computing Security Policy," and added that [REDACTED] was admonished for [REDACTED] actions by [REDACTED] supervisor, [REDACTED].

B. Did [REDACTED] seek permission in writing from FEC CISO prior to accessing the network as required by Policy 58-4.3?

[REDACTED] stated that [REDACTED] sought neither written nor verbal permission from the FEC CISO prior to accessing the FEC network. Further, the CISO stated to investigators that [REDACTED] did not seek permission to use [REDACTED] personal device to access the FEC LAN.

C. Did [REDACTED]'s personal device include a multifactor authentication as required by Policy 58-4.3?

[REDACTED] stated that his device did not contain multifactor authentication.

D. Did [REDACTED]'s personal device contain a hard drive encryption as required by Policy 58-4.3?

[REDACTED] stated that his device did not contain hard drive encryption.

E. Did [REDACTED] utilize a Tor browser while accessing the FEC LAN?

[REDACTED] denied any allegations that [REDACTED] used Tor on [REDACTED] personal device and the OIG found no additional evidence, other than what the HIRT documented in the *HIRT Engagement Report INC0000102376*, to support that allegation.⁴

⁴ OICO staff members would require access to [REDACTED]'s personal device to determine what applications [REDACTED] utilized and because this was not an FEC issued device, the CIO instructed staff members not to retrieve the laptop.

The use of Tor is a significant concern because unauthorized use of Tor can introduce avenues for network data to bypass organization security controls and allow hackers to penetrate into the FEC network. The HIRT testing of the FEC network security was initiated on July 29, 2019 and the results of that testing confirmed one user of Tor on the network, which was eventually linked to [REDACTED].

Moreover, Commission Directive 58, “Electronic Records, Software and Computer Usage” places considerable responsibility to end users to ensure that information systems are used appropriately and protected from loss, misuse, or unauthorized access. Any unauthorized use of Tor would increase the FEC’s vulnerability to inadvertent or malicious system failures.

V. CONCLUSION

The documentation obtained by the OIG supported that ████████ violated FEC's Policy 58-4.3 Mobile Security Policy. ████████ did not seek permission to use ████████ personal MacBook to access the FEC LAN. Further, ████████ device did contain multifactor authentication and hard drive encryption features as required by Policy 58-4.3. Management should also consider whether ████████ actions violated Commission Directive 58 and the *Rules of Behavior and Acceptable Use Standards For Federal Election Commission Information and Systems Resources* (Rules and Behavior Document). New employees are required to read and sign the Rules and Behavior Document prior to accessing the FEC network.

Moreover, the OIG investigation identified no evidence that ████████'s use of ████████ personal MacBook violated any criminal laws or regulations, nor that ████████ computer was compromised by a third party to access the FEC LAN. Other than the information provided in the HIRT report, the OIG found no additional evidence that suggested ████████ was using Tor while accessing the FEC network.

The results of our investigation conclude that management was proactive in addressing this issue. In a document from the Staff Director/CIO, addressed to the Commissioners dated September 18, 2019, the Staff Director/CIO informed ████████ to cease the use of ████████ personal device and that if a personal device is desired, to use the public Wi-Fi rather than connecting to the LAN. Additionally, in a October 23, 2019, memorandum addressed to the Commissioners, the Staff Director/CIO further advised the Commission that ████████ "was admonished and reminded not to use any personal devices on the internal FEC network and was in violation of the FEC's IT security policies."

As a result of our investigation, we determine that ████████ violated Policy 58-4.3 and recommend that management should take corrective action(s) it deems appropriate.

**FEDERAL ELECTION COMMISSION
OFFICE OF INSPECTOR GENERAL**



Report of Investigation

IRS Communications

Case Number INV-13-01

March 3, 2017

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I. Executive Summary

On May 14, 2013, the Treasury Inspector General for Tax Administration (TIGTA) released Audit Report 2013-10-053.¹ The TIGTA report revealed that certain political organizations, primarily Tea Party and conservative organizations, had received more scrutiny than others when applying for tax exempt status with the Internal Revenue Service (IRS). These revelations prompted Congressional inquiries and great news media interest.

On July 31, 2013, The Honorable Candice S. MILLER, Chair of the Committee on House Administration, wrote to The Honorable Ellen WEINTRAUB, then Chair of the Federal Election Commission (FEC), questioning whether FEC employees may have played any role connected with allegations of targeting by the IRS of political groups based on their political beliefs. (MILLER letter). On August 7, 2013, The Honorable Darrell ISSA, then Chair of the Committee on Oversight and Government Reform, wrote to then Chair WEINTRAUB that “documents recently produced to the committee demonstrate that FEC personnel communicated with IRS personnel about tax exempt groups,” together with public comments by a former FEC chair, “raise the prospect of inappropriate coordination between the IRS and the FEC about tax-exempt entities.” (ISSA letter). The ISSA letter mentioned an email between FEC and IRS officials. On September 19, 2013, Chair MILLER and The Honorable Dave CAMP, then Chair of the Committee on Ways and Means, wrote to then Chair WEINTRAUB questioning whether there was an inappropriate sharing of confidential information between the IRS and FEC, and if the communications between the agencies violated FEC procedures. (CAMP letter). The MILLER, ISSA, and CAMP letters (collectively, “committee letters”) all indicated that their respective committees were conducting investigations into the issues raised.

The Office of Inspector General (OIG) began an independent investigation based on numerous media reports concerning the above issues. Chair WEINTRAUB also expressed an interest having the OIG look into these matters.

The OIG investigation sought to determine whether there was any evidence that FEC employees communicated with the IRS for the purpose of targeting tax exempt political entities for political reasons. In addition to the purpose of the FEC-IRS communications, the investigation examined whether the sharing of information on the part of the FEC violated any statute, regulation or policy. Particularly, the Federal Election Campaign Act of 1971, as amended, (FECA) requires a finding of “reason to believe” (RTB),² by an affirmative vote of four commissioners, that a

¹ Available at <https://www.treasury.gov/tigta/auditreports/2013reports/201310053fr.pdf>.

² Despite the possible connotation of the term RTB, it is essentially a finding by the Commission that there is reason to further investigate the matter. In later proceedings, the Commission may find probable cause that a violation has occurred based upon the evidence developed during the investigation.

violation has been, or is about to be, committed before a FEC investigation may be commenced in an enforcement matter. The committee letters and contemporary media reports suggest that the contacts between the FEC and the IRS constituted investigations which had not been voted upon by the Commission.

The OIG investigation included a review of documents produced to congressional committees by the FEC pursuant to their requests concerning communications between the FEC and IRS; a review of relevant statutes, regulations, and FEC policies and procedures; and interviews of witnesses. The OIG investigation found no evidence of communication between FEC employees and the IRS for the purpose of targeting tax exempt political organizations³ for political reasons. Similarly, the investigation found no evidence that any statute, regulation, or FEC policy or procedure was violated by agency personnel. As discussed herein, although certain activities clearly constitute an investigation requiring a finding of RTB by the Commission under the FECA and FEC regulations, the statute and FEC regulations are silent as to the communications at issue. FEC policies and procedures allow, within the confines of FECA and FEC regulations, for some pre-RTB communications with other government agencies concerning pending enforcement matters.

II. Allegations

The committee letters contain two allegations. The primary allegation is that FEC personnel may have coordinated with the IRS in order to target tax exempt political organizations for increased scrutiny or investigation for political, rather than for, or under the guise of, official purposes. Communications between the FEC and the IRS, particularly emails, were allegedly the means by which the agencies' employees may have coordinated to target these entities. The MILLER and ISSA letters, and contemporary news media reports, specifically mention communications between FEC staff and [REDACTED], who at the time was [REDACTED]

[REDACTED] The ISSA letter and some media reports also mention communications between IRS and FEC personnel in FEC matters involving two conservative-leaning organizations, American Future Fund (AFF) and American Issues Project (AIP). The use of official authority to interfere in an election could entail a violation of 18 U.S.C. § 595.

A separate but related allegation is that the communications themselves between FEC and IRS personnel may have been improper, regardless of whether they were made for the purpose of any improper coordination or targeting. As discussed above, before a FEC enforcement investigation is begun, the Commission must vote to find RTB and initiate an investigation. Some of the FEC-IRS communications had reportedly occurred prior to the Commission finding RTB and voting

³ For the purposes of this report, the term "tax exempt" includes organizations and entities that either claimed or were alleged to have tax exempt status, as well as those that either sought or were granted such status by the IRS.

to authorize an investigation in those matters, and questions arose as to whether the communications constituted pre-RTB investigative activity by FEC personnel. The crux of this allegation is that if an FEC employee had conducted a pre-RTB investigation on a matter before the Commission by communicating with the IRS, it would have run afoul of both statute and regulation regardless of the purpose of the communication.

III. Investigation Details

This matter was initiated on August 1, 2013, as a hotline complaint. Following a preliminary inquiry, an investigation was opened on August 9, 2013. The investigation concentrated on enforcement activities of the FEC Office of General Counsel (OGC), as the risk for improper political targeting through the means described in the committee letters rests primarily in that area. Investigative procedures utilized included: interviews; reviews of a large number of emails and other documents; and reviews of statutes, regulations, policies, procedures and manuals.

Many of the communications reviewed were emails between FEC and IRS personnel concerning statutorily mandated coordination between the agencies involving the promulgation of rules, regulations, and forms to ensure they are “mutually consistent.” 52 U.S.C. § 30111(f).⁴ Other communications involved the coordination of training events to provide information to the regulated community or were otherwise related to routine business between the agencies. A fair number of reviewed emails were between family members and friends at the agencies and contained strictly personal content.⁵

Emails between (b) (7)(C) or (b) (7)(D) staff and FEC personnel received a higher level of scrutiny, as [REDACTED] was the [REDACTED] component that had allegedly targeted conservative groups. The subject matter of a large number of emails between [REDACTED] and FEC staff related to conferences involving delegations of both IRS and FEC personnel. Others were of a personal nature between [REDACTED] former FEC colleagues with whom she had a friendly relationship. A limited number of [REDACTED] emails were related to FEC enforcement cases, and were closely examined in relation to whether they constituted pre-RTB investigative work or showed evidence of collusion between FEC and IRS staff in the furtherance of improper targeting.

This section is divided into three main components. First, an overview of the enforcement process is discussed, as an understanding of this process is helpful for context in examining the

⁴ On September 1, 2014, the Office of the Law Revision Counsel reclassified the FECA from Title 2 of the United States Code to Title 52. As a result, the statutory citations changed. The FECA references in this report use the new statutory citations. The substance of the FECA sections cited remains the same as before the reclassification.

⁵ FEC Directive 58 allows for *de minimis* personal use of FEC-issued computers and the FEC email system, so long as it does not impede the fulfillment of FEC work.

issues. Second, the allegations concerning whether the communications with IRS were legal and proper is addressed, as those communications form the basis for and may inform the allegations of improper targeting for political purposes, which are addressed third.

A. Overview of the Initial Enforcement and Investigative Process⁶

The Commission is composed of six individuals appointed by the president and confirmed by the Senate. The FECA mandates that no more than three commissioners can be from one party, and the Commission is often colloquially described as having three Republicans and three Democrats. No Commissioner has more statutory power than another, and the FEC is an independent agency. The Enforcement Division (ED) of the FEC OGC is responsible for FECA enforcement, including investigative activities.

ED cases generally may be initiated in one of four ways: by external, third party complainants; by internal referrals from other FEC components; by referrals from other agencies; and self-referrals (or *sua sponte* referrals), where an individual or entity discovers it has committed a violation and reports it to the FEC. The OGC's Complaints Examination and Legal Administration (CELA) unit⁷ initially receives and processes the complaints and referrals, and is responsible for assigning them to the ED or another agency component, as described below.

When a complaint or external referral is received by the OGC, a copy is sent to the subject of the complaint, or respondent, who may then file a response.⁸ Respondents have at least fifteen days to file a response, and extensions may be granted for good cause. The complaints and responses, including attachments, are circulated to the Commissioners. Referrals generated internally may come from either the Audit Division (AD) or Reports Analysis Division (RAD) based on information developed during the normal course of carrying out the FEC's responsibilities. The criteria and thresholds for AD and RAD referrals are publicly available on the FEC website. Before a referral for enforcement action is made to the OGC, the AD or RAD will contact the potential respondent and allow it a chance to remedy the deficiency. As with externally-

⁶ This section is not intended to be a detailed or exhaustive review, but rather a general overview. A more detailed explanation of the enforcement process may be found on the FEC's public website at: http://www.fec.gov/em/respondent_guide.pdf and <http://www.fec.gov/pages/brochures/complain.shtml>.

⁷ During the time covered by the allegations, CELA was a separate office within OGC, but it has since been incorporated into the ED as Enforcement Team 6. The unit still retains the CELA name and designation within the ED, and its function, processes, and procedures remain the same.

⁸ If a complaint is received that is not in compliance with legal requirements, the complainant is notified that no further action can be taken until the defects are rectified. Some complaints are recommended for dismissal early in the process because they are not appropriate for further consideration. See Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12545 (Mar. 16, 2007), available at http://www.fec.gov/law/cfr/ej_compilation/2007/notice_2007-6.pdf.

generated matters, respondents in internal referrals are notified of the referral, provided with the documentation used for the referral, and allowed to file a response; the referral and response are circulated to the Commissioners.

Cases that meet specified criteria may be referred to either the Alternative Dispute Resolution or Administrative Fines programs instead of to the ED; both programs are described on the FEC's website. Cases that are assigned to the ED are classified as Matters Under Review (MURs) and receive a MUR number. CELA completes the initial MUR file preparation work, sometimes including limited relevant public records checks, prior to assignment of the MUR file.

Once a MUR is assigned to the ED, the AGC or Deputy AGC determines to which team and attorney the matter will be assigned. Each enforcement team has a paralegal to assist in information gathering, and the ED has a limited number of investigators that may be assigned to assist attorneys, as well. The assigned ED attorney will then review the complaint, response, appropriate FEC filings, and, as discussed in more detail later, public and other information. The attorney then drafts a First General Counsel's Report (FGCR). The FGCR contains a factual and legal analysis of the matter, as well as recommendations for action by the Commission. Recommendations may include that the Commission: find RTB and initiate an investigation; find RTB and initiate pre-probable cause conciliation negotiations if there is enough information to proceed without further investigation; find No RTB that a violation has occurred; or dismiss the matter using its prosecutorial discretion.⁹

The FGCR generally goes through a series of drafts and revisions before it is circulated to the Commission as a final document. During this draft phase, the FGCR is reviewed, and edits may be requested, by the assigned attorney's Team Leader (TL)¹⁰ and at least one OGC manager.¹¹ Draft FGCR's are frequently passed back and forth several times between the attorney, TL and one or more managers during this editing phase. Therefore, the final FGCR that is circulated to the Commission is the product of several individuals, each of whom signs the final FGCR.

The final FGCR is circulated to the Commission, and the individual Commissioners may then vote to approve the recommendations or lodge an objection. If any commissioner objects, or if the recommendations do not receive at least four votes for approval, the matter is placed on the agenda for an executive session. During an executive session, the staff attorney presents the

⁹ For further information, *see* Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12545 (Mar. 16, 2007), available at http://www.fec.gov/law/cfr/ej_compilation/2007/notice_2007-6.pdf.

¹⁰ A TL is a first-line attorney supervisor who administratively and operationally directs and evaluates staff level attorneys. A TL's official title is Assistant General Counsel.

¹¹ The management level review may be conducted by the Deputy AGC, the AGC, the General Counsel (GC), or the Deputy GC.

matter and is available, along with the TL and OGC management, to answer questions posed by the Commissioners. The Commissioners then discuss the facts, legal issues, and recommendations, and may vote on the recommendations in the FGCR or introduce their own recommendations for a vote.

If the commissioners vote to find RTB and initiate an investigation, then a formal investigation may be commenced. Although there are other stages in the enforcement process, they take place post-RTB and will not be discussed in detail. The Commission remains involved in the Enforcement process and votes on substantive decisions. The Chair or Vice Chair must approve and sign all requests for investigative compulsory process, as described in the following section. As with the pre-RTB process, ED staff circulate reports and briefs to the Commission containing investigative findings and recommendations, and executive sessions are held in which the Commissioners can question ED staff, discuss the matter with other Commissioners, propose their own recommendations and motions, and vote on the recommendations and motions. All final Enforcement actions are voted on by the Commission. Further information on the enforcement process may be found at: http://www.fec.gov/em/respondent_guide.pdf. Other information, such as policies regarding the disclosure of exculpatory information in reports, probable cause hearings, and a respondent's access to documents, can also be found on the FEC public website.

B. Pre-RTB Enforcement-related Communications Between FEC Staff and the IRS

The question as to whether FEC employees' pre-RTB communications with the IRS violated the FECA turns on whether the communications constituted an investigation requiring Commission approval. In addition to the FECA's explicit language, the Commission may determine whether or not an activity comprises an investigation through regulation. The Commission may also issue directives, policies, and procedures as to what pre-RTB activity is or is not allowed by staff. OGC may also issue its own policies, procedures, and other guidance concerning pre-RTB activity.

1. Legal and Policy Background of Pre-RTB Activities in Enforcement Matters

a. Statutory Provisions and Commission Regulations

As discussed above, the Commission must affirmatively find RTB by a vote of at least four Commissioners before FEC staff may commence an investigation. The FECA does not explicitly define what does or does not constitute an investigation, but section 30107(a) enumerates certain investigative powers of the FEC. These include the power to require sworn responses to written questions (similar to interrogatories in civil actions), the power to issue subpoenas duces tecum (for documents) and for testimony, and to otherwise "conduct investigations and hearings expeditiously; and to report apparent violations to the appropriate

law enforcement authorities.” These techniques, sometimes referred to as formal methods or compulsory process, require authorization by the Commission, and the Chair or Vice Chair must sign the issuing documents. Section 30109(a)(2) states that investigations may include “a field investigation or audit, in accordance with the provisions of this section.” 52 U.S.C. § 30111(b).

Commission regulations found in Part 111, Subpart A (Enforcement regulations) generally mirror the statutory provisions, and offer somewhat more detailed guidance concerning investigations. 11 C.F.R. § 111.10(b) states that “the Commission may utilize the provisions of 11 CFR 111.11 through 111.15” in an investigation, and that an investigation “may include, but is not limited to, field investigations, audits and other methods of information-gathering.”¹² Investigative techniques specified in sections 111.11 through 111.15 include orders to submit answers to written questions under oath, and the issuance of subpoenas requiring either the production of documents or to give sworn testimony in depositions, or both. Legal recourse through the courts may be sought by the FEC if a person or entity fails to respond to compulsory process.

Other than compulsory process and that an investigation may include a field investigation, the FECA and Enforcement regulations are silent as to what techniques or methods constitute an investigation requiring a finding of RTB by at least four Commissioners. More specifically, pre-RTB contacts by FEC staff with other agencies are neither expressly proscribed nor authorized, as neither statute nor regulation address whether such contacts constitute an investigation.¹³

b. Internal OGC Policies and Procedures

A 1997 Enforcement Manual (1997 Manual), in use at the time of the AFF and AIP communications with IRS staff and available on the FEC public website at http://www.fec.gov/pdf/1997_Enforcement_Manual.pdf, contains sections on “Pre-RTB Information Gathering and Research” and a chapter on investigations. The 1997 Manual is an internal OGC document, and there is no indication that it was ever formally submitted for approval or approved by the Commission. The 1997 Manual provides contradictory guidance to ED staff.

¹² Amendments to the Federal Election Campaign Act of 1971; Regulations Transmitted to Congress, published in 45 Fed. Reg. 15000, 15088 (Mar. 7, 1980), states section 111.10 “sets forth a general outline of the procedure for Commission investigations [after a finding of RTB]. Review of reports and statements filed with the Commission *may* constitute an investigation.” (Emphasis added). This section does not appear to have been intended to imply that a review of Commission filings necessarily constitutes an investigation, as such an interpretation would conflict with other sections of Part 111.

¹³ Contacting another Federal executive branch agency for the purpose of gathering information pertinent to a matter does not constitute a public disclosure under Section 30109(a)(12) of the FECA, which prohibits FEC personnel from publicly disclosing a notification or investigation without written consent of the respondent, according to OGC policy interpreting the statute.

Chapter 2 of the 1997 Manual, which covers pre-RTB activities, states that pre-RTB information gathering and research not requiring Commission approval is “limited to information available to the general public, internally generated information, and information provided by respondents.”¹⁴ Later in the pre-RTB chapter, subsection D (Other Law Enforcement Agencies) states:

It may be possible to get the agency to release their [sic] internal reports to us. Our investigators oftentimes may prove to be a natural liaison between the Commission and another agency, particularly if other investigators are involved. Due to the natural disinclination for an agency to release information, for many reasons, including privacy concerns and their own internal case strategy, requests to have information released to the Commission should only be made after consulting with your supervisor. Chap. 2, p. 8.

In other words, Chapter 2 of the 1997 Manual first limits external pre-RTB information gathering to publicly available information, but four pages later it addresses how to get non-public information from other agencies.

An older document, Enforcement Procedure 1989-6, issued by then-AGC LERNER on February 3, 1989, and available at http://www.fec.gov/pdf/Additional_Enforcement_Materials.pdf, states:

Where publicly available information from state election reports or from state or federal agencies is needed in the context of a MUR, you do not have to wait until RTB has been found to seek that information. You should try and obtain the information before RTB and include it in your analysis.

c. Commission Action concerning Pre-RTB Communications

The Commission has the discretion to vote to prohibit pre-RTB communications with other agencies or, alternatively but to the same effect, define them as constituting an investigation by directive or by regulation through the rulemaking process. The Commission has not voted to either prohibit pre-RTB communications or define them as constituting an investigation under the FECA.

The Commission has long had knowledge of pre-RTB contacts with, and information gathering from, other agencies, as evidenced by the FGCR standard cover page form. As early as 1978, the Commission approved a FGCR cover page for internally generated matters with a section for

¹⁴ Sec. III (Pre-RTB Information Gathering and Research), Sub-sec. A (Scope), p. 4. Information contained in the complaint is not mentioned in this sentence, which is likely unintentional.

“Federal Agencies Checked” (FAC section). Directive 6 (April 21, 1978). Externally generated MURs dating back to at least December 11, 1978, also contained a FAC section on FGCR cover pages. *See, e.g.*, MUR 882, FGCR. The FAC section is still on the FGCR cover page used as of the date of this report.

More broadly, the Commission had also been made aware that the OGC was performing general pre-RTB research in the initial MUR processing stage before files were assigned to ED attorneys. On October 15, 2003, a Status of Enforcement memo dated the previous day was circulated to the Commission. On page two of the memo, under Paralegal Responsibilities, it states, concerning CELA and ED paralegal responsibilities:

In particular, shortly after a complaint is received in CELA, a paralegal will be responsible for obtaining relevant public records and news reports, researching publicly available databases, and periodically updating this information. Our goal will be to have all publicly available information in the case file at the time of activation

The GC at the time gave a presentation to the Commission on the file preparation procedures at the October 15, 2003, executive session, according to the minutes.

2. OGC’s Pre-RTB Contacts with the IRS in Enforcement Matters

a. Generally

According to Commission regulations and interviews of OGC personnel, there are several reasons why a tax exempt entity’s IRS filings might be pertinent to a FEC matter and prompt an inquiry to the IRS from OGC staff. Whether or not an entity is a registered under Section 501(c)(4) of the Internal Revenue Code (501 organization) is a factor in determining if it is a qualified nonprofit corporation as defined in 11 C. F. R. § 114.10, and therefore whether or not other Commission regulations apply, especially those concerning independent expenditures and electioneering communications. A 501 organization’s IRS filings also may be useful in determining whether it meets the Commission’s definition of a political committee; for example, the amount the entity spent on election activities may trigger FEC reporting requirements. In some instances, public IRS information was checked in anticipation of questions that might be asked by individual Commissioners during an executive session.

Interviews and emails revealed that OGC contacts with the IRS in enforcement matters consisted of both contacts made by CELA when preparing a MUR file before assignment to ED attorneys and of contacts by ED personnel after a MUR had been assigned. Many of the contacts were made by CELA in the pre-assignment phase. The CELA supervisor stated he routinely asked his

staff to check on the IRS website concerning cases involving tax exempt organizations, primarily for political organizations that had filed with the IRS under Section 527 of the Internal Revenue Code (527 organizations). He and other supervisors have also asked staff to call the tax exempt organization unit (though not LERNER in particular) to see if the IRS could share any publicly available information, as there was often a delay in information getting posted on public websites after an organization received tax exempt status. According to interviews of OGC personnel, often these searches for public IRS information were made to find out if a statement of tax exempt status made in a complaint or response was accurate. The CELA supervisor stated that documentation of these checks was often minimal because they were considered routine public records checks.

ED personnel infrequently made IRS checks regarding public filings of tax exempt entities after a MUR had been activated. According to emails and interviews of ED personnel, these checks generally consisted of calling a publicly available IRS telephone contact number or going to an IRS reading room to obtain publicly available information to confirm information contained in a complaint or response, or to assist with political committee status determination.

b. Specific Matters

The emails between FEC and IRS personnel which appear to have initially caught Congress's attention and given rise to the allegations at issue involve MURs 5988 (American Future Fund) and 6081 (American Issues Project). The first emails between ED personnel discussing contacting the IRS for information occurred in the July 8-9, 2008, timeframe, followed by emails between OGC and IRS staff. In interviews, ED personnel involved stated they wanted to check on the 501 organizations' claims of tax exempt status raised in the complaints and responses, which were relevant to the matters' analyses, and they discussed the best way to do it.¹⁵

The AFF and AIP emails included discussions as to whether contacting the IRS would appear to be or constitute pre-RTB investigative activity. None of the ED personnel interviewed who had taken part in the email discussions stated they believed contacting the IRS constituted pre-RTB investigative activity, but they were concerned about the appearance that it might. There was discussion in the emails about the various methods that could be used to get the desired information. According to information developed during the investigation, public information on 527 organizations was published on the IRS website, but 501 organization public filings were only available by written request or on a private website, Guidestar, and there was usually a delay in the posting of public filings on both the IRS and Guidestar websites.¹⁶ The

¹⁵ 501 status was raised in the AFF response, and in both the AIP complaint and response. These documents are available on the FEC website.

¹⁶ This information was confirmed by TIGTA.

investigation

also revealed there were concerns about having to fill out a written form to request information from the IRS, as the form might become a public record and potentially violate the FECA's confidentiality provisions found in section 30109(a)(12)(A).

A FEC employee who had previously worked for [REDACTED] when [REDACTED] was at the FEC suggested that contacting [REDACTED] directly would be the most expedient way to get information from the IRS. Those involved in the matter stated in interviews, and the emails generally support, that ED personnel were only attempting to gather publicly available information, although contacting LERNER (or similarly situated IRS employees) was not a method available to the public to obtain the information. Telephoning [REDACTED] was apparently approved by the AGC at the time, and the conversation between [REDACTED] and FEC staff was documented. ED personnel who requested the information from [REDACTED] were eventually provided with documents by [REDACTED] staff that, according to ED staff interviews, they understood to be public information.

Based upon an analysis of the legal and policy factors discussed in Section 1, above, and the facts and information discussed in this section, ED personnel did not violate any statute, regulation, policy or procedure by contacting the IRS in order to obtain information related to enforcement matters. Contacts with other agencies to gather information in the pre-RTB stage are not in contravention of statute or regulation, the Enforcement Manual in use at the time of the examined contacts was unclear, and information gathered during the investigation shows that the contacts at issue were in line with accepted practice at that time.

C. Improper Targeting of Tax Exempt Political Entities by FEC Staff through Coordination with the IRS

1. AFF and AIP Matters

The investigation found no evidence that FEC staff improperly targeted AFF or AIP for enforcement action through coordination with IRS personnel based on either entity's political beliefs. The ED personnel who had been in contact directly with LERNER or her subordinates involving the AFF and AIP cases were interviewed, and relevant documents and communications were reviewed. All ED personnel interviewed stated that the IRS was contacted for legitimate, case-related reasons, and not to inappropriately target a respondent. The tax exempt status of both AFF and AIP was raised as an issue in the third-party complaints and the subject entities' responses, and the information sought from the IRS appears to be relevant to the legal analyses in the cases' respective FGCRs, primarily political committee status issues. Those interviewed indicated the FEC was seeking information from the IRS, but the IRS did not appear to be seeking information from the FEC.

2. Other Enforcement Matters

The investigation found no evidence that FEC staff improperly targeted other tax exempt entities for enforcement action through coordination with IRS personnel based on either entity's political beliefs. In addition to a review of emails between FEC and IRS staff, a search of closed MURs that had been opened between January 1, 2008, and August 6, 2013, was conducted to find those for which the FGCR cover sheet indicated that the IRS was a "Federal Agency Checked." The FGCRs of those MURs were reviewed to determine if there was a facially legitimate, case-related reason for the IRS to have been contacted. The reviewed FGCRs contained evidence of case-related reasons for the IRS checks, frequently because tax exempt status was raised as an issue in the complaint or response, or an entity's tax exempt status appeared to be relevant to the legal analysis.

All personnel interviewed indicated that the work environment in OGC was non-partisan and professional. The OGC personnel interviewed who had been in contact with the IRS concerning matters involving tax exempt entities provided case-related reasons for their contacts, and no information was discovered to show any improper purpose for the communications. All interviewees also stated they had never used their official positions to target, support or oppose a political group, and were not aware of any such activity by FEC or IRS employees, other than the allegations reported in the news media; no information was developed that would contradict these statements.

IV. Findings

In pre-RTB communications with the IRS, FEC personnel did not violate the statutory provision that the Commission must find RTB before an investigation may be commenced, and did not violate any regulation, directive or policy concerning pre-RTB activity.

No evidence was developed to indicate the communications between FEC employees and the IRS were made for the purpose of improperly coordinating the targeting of tax exempt political organizations for political reasons.

V. Background

A. Relevant Statutes and Regulations

18 U.S.C. § 595

52 U.S.C. § 30106(c)

52 U.S.C. § 30107(a)
52 U.S.C. § 30109(a)(2)
52 U.S.C. § 30109(a)(12)(A)
52 U.S.C. § 30111(b)
52 U.S.C. § 30111(f)
11 C.F.R. § 111.10
11 C.F.R. § 111.12
11 C.F.R. § 111.13
11 C.F.R. § 111.14
11 C.F.R. § 111.15
11 C.F.R. § 111.21
11 C. F. R. § 114.10

B. Scope of the Investigation

The scope of the investigation was limited to 1) whether FEC personnel had improperly communicated with the IRS in order to target tax exempt political organizations, and 2) whether FEC staff had violated any statute or regulation, or any FEC directive or policy, in communicating with the IRS prior to the Commission finding RTB in a matter. The investigation included: interviews of OGC staff; reviews of voluminous emails and other documents; and reviews of statutes, regulations, policies, procedures and manuals. The time frame of the investigation primarily focused on the period beginning January 1, 2008, through August 2013 in order to coincide with the time frames referred to in the MILLER and ISSA letters.

VI. Privacy Act and Freedom of Information Act Notice

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List of Acronyms

AD	Audit Division of the FEC
AGC	Associate General Counsel (for Enforcement, unless otherwise noted)
CELA	Office of Complaints Examination and Legal Administration (component of the FEC OGC)
ED	Enforcement Division (component of the FEC OGC)
FAC	Federal Agencies Checked section
FEC	Federal Election Commission
FECA	Federal Election Campaign Act of 1971, as amended
FGCR	First General Counsel's Report
GC	General Counsel
IRS	Internal Revenue Service
MUR	Matter Under Review
OGC	Office of General Counsel (of the FEC, unless otherwise noted)
OIG	Office of Inspector General (of the FEC, unless otherwise noted)
RAD	Reports Analysis Division
RTB	Reason to Believe
TIGTA	Treasury Inspector General for Tax Administration
TL	Team Leader (formally titled Assistant General Counsel)

**FEDERAL ELECTION COMMISSION
OFFICE OF INSPECTOR GENERAL**



Report of Investigation
Theft of Employee Funds

Case Number INV-15-03

March 3, 2017

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I. Executive Summary

On July 23, 2015, The Federal Election Commission (FEC) Office of Inspector General (OIG) received a complaint from a current FEC employee, (b) (3) (A), regarding a possible theft of funds from (b) (3) (A) personal checking account, located at SunTrust Bank. (b) (3) (A) reported that an unknown individual was continuously transferring funds from (b) (3) (A) bank accounts without prior consent. (b) (3) (A) stated that (b) (3) (A) alerted SunTrust and requested closure of (b) (3) (A) SunTrust bank account (Account A), and opened a new account, (Account B). (b) (3) (A) informed the (b) (3) (A) the (b) (3) (A) that unapproved transactions continued to occur after the bank account numbers were changed. According to (b) (3) (A) unauthorized transactions also occurred from Account B. This concerned (b) (3) (A) because only the FEC OCFO and Administrative Services Division staff had received the new numbers for Account B. This was done so that FEC direct deposits could continue to be made to Account B as they had to the now closed Account A.

(b) (3) (A) notified SunTrust on July 8, 2015 and closed Account A and opened Account B. Sun Trust reimbursed the funds removed from (b) (3) (A) Account A and placed them in Account B. Although SunTrust Account A was a joint account, (b) (3) (A) acknowledges (b) (3) (A) chose not to make SunTrust Account B one for the sake of protection. (b) (3) (A) delivered (b) (3) (A) new account information to FEC Administrative Services on July 8, 2015, which delivered the documents to OCFO. On July 23, 2015, (b) (3) (A) noticed unauthorized transactions from Account B. (b) (3) (A) alerted SunTrust and the charges were reversed and credited (b) (3) (A) account. The total amount withdrawn from (b) (3) (A) banking Account A was \$1,200 and Account B was \$700. All funds were restored to (b) (3) (A) Account B.

The (b) (3) (A) investigation revealed that seven unauthorized withdrawals were made by three companies: (1) Chime through their subsidiary, Galileo; (2) American Express through their subsidiary, Serve; and (3) PayPal. The (b) (3) (A) investigation found that two individuals were listed as owners of the Chime credit cards used to withdraw money from (b) (3) (A) account. The (b) (3) (A) discovered that (b) (6) (A) were the owners of the card and are not related to (b) (3) (A), nor were they present or past FEC employees and their Chime credit card accounts were closed due to possible fraudulent activity.

The (b) (3) (A) investigation of the PayPal and American Express transactions was inconclusive due to the lack of cooperation by (b) (3) (A) and SunTrust Bank. (b) (3) (A) did not file a police report as instructed and refused to provide additional information. Bob Caruso (Caruso), SunTrust Assistant Vice President Branch Manager, located at the Camp Springs, cooperated with the (b) (3) (A) the (b) (3) (A) but refused to provide additional information after September 27, 2016. The (b) (3) (A) contacted the SunTrust Corporate office on December 12, 2016 and spoke to SunTrust Customer Service Agent, James Burrow (Burrow). Burrow advised that SunTrust conducts their own investigation regarding these matters within 90 days. Burrow explained that SunTrust had investigated this

matter, refunded (b) (3) (A) funds, and closed their investigation. The information the OIG was able to obtain revealed no evidence that a FEC employee was involved in the unauthorized withdrawal of funds from (b) (3) (A) accounts. Evidence obtained revealed that there may have been a withdrawal(s) made by the joint account holder on Account A without (b) (3) (A) knowledge. As such, the OIG found no evidence that (1) a FEC staff person(s) was responsible for unauthorized transactions by Chime, American Express and PayPal; (2) a violation occurred with personal use of government property; and (3) a FEC staff committed aggravated identity theft.

II. Background

On July 23, 2015, the Federal Election Commission (FEC) Office of Inspector General (OIG) received a complaint from a FEC employee (b) (3) (A). The (b) (3) (A) interviewed (b) (3) (A) on July 23, 2015 regarding a possible theft of personal funds from (b) (3) (A) checking account. (b) (3) (A) acknowledged once (b) (3) (A) noticed the activity in (b) (3) (A) account, (b) (3) (A) contacted SunTrust Bank in Camp Springs, Maryland to change (b) (3) (A) routing and checking numbers. However, after changing (b) (3) (A) account and routing numbers with SunTrust, the unauthorized transfers continued. (b) (3) (A) speculated an individual from the FEC Office of Chief Financial Officer (OCFO) or the Administrative Services Division may be involved as those two offices were notified and given the new account numbers by (b) (3) (A) so the direct deposit of funds from the FEC to (b) (3) (A) banking account could continue.

(b) (3) (A) alleged that on July 6, 2015, (b) (3) (A) noticed funds were removed from (b) (3) (A) SunTrust account, Account A, and then replaced. On July 8, 2015, (b) (3) (A) witnessed a negative \$740 account balance and an unauthorized withdraw of \$1,200. (b) (3) (A) SunTrust was notified by (b) (3) (A) and to circumvent future theft, (b) (3) (A) account and routing numbers were changed along with a reimbursement of \$1,200 into (b) (3) (A) new account, SunTrust Account B. The new banking account information was delivered from (b) (3) (A) to Patricia Dunn, Administrative Special Assistant, in Administrative Services, which was then delivered to Anh Vuong, Financial Analyst, in OCFO.

(b) (3) (A) stated that on July 23, 2015 (b) (3) (A) noticed an unauthorized withdrawal of \$700 from (b) (3) (A) newly opened Account B. Upon the discovery, (b) (3) (A) visited a SunTrust branch near Metro Center station in Washington, DC and spoke with Business Consultant, Catherine Pena (Pena), who advised (b) (3) (A) (b) (3) (A) would be reimbursed for the \$700 stolen from Account B, although the transaction was still pending. Pena advised (b) (3) (A) that the withdrawals were removed by two companies, PayPal and Chime. Upon returning to FEC headquarters, with the assistance of the Office of the Chief Information Officer (OCIO), (b) (3) (A) FEC laptop was checked and cleared of any viruses and malicious risks.

At the conclusion of the (b) (3) (A) interview, (b) (3) (A) agreed to provide the contact information of the investigator from SunTrust's Fraud Unit along with associated documents. The (b) (3) (A) informed (b) (3) (A) that the (b) (3) (A) may need to coordinate with SunTrust Bank and possibly the Metropolitan Police Department. (b) (3) (A) acknowledged a family member was associated to SunTrust Bank Account A, but (b) (3) (A) did not inform them of the newly opened account, Account B.

Based on the allegations and information provided my (b) (3) (A) it was determined an (b) (3) (A) investigation would be opened. Interviews were conducted along with subpoena requests to the

three companies that withdrew funds from (b) (3) (A) accounts, and from SunTrust Bank to determine specifically:

1. If an employee employed by the FEC converted property of another FEC employee,;
2. If FEC property was used for personal use to obtain funds from an FEC employee's account, ;
3. If improper use of FEC property occurred; and
4. If an FEC employee committed Aggravated Identity Theft,

A. Relevant Statutes, Regulations and Policies

Officer or Employee of U.S. Converting Property of Another, 18 U.S. Code § 654
Personal Use of Government Property, 28 CFR 45.4
Use of Government Property, 5 CFR § 2635.704
Aggravated Identity Theft, 18 U.S. Code § 1028A

III. Investigation Findings

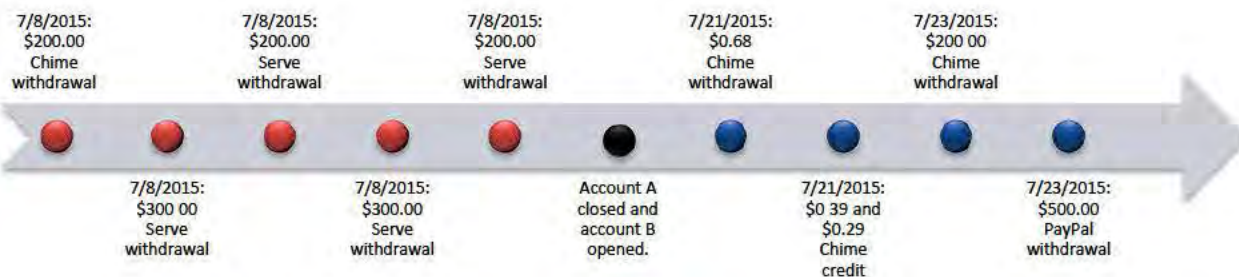
A. SunTrust Overview

On July 6, 2015, (b) (3) first noticed a small amount of money was removed from (b) (3) account, but was soon returned. On July 8, 2015, (b) (3) discovered (b) (3) SunTrust Account A had a negative balance of \$740 following an unauthorized \$1,200 withdrawal f by companies, Chime and Serve. (b) (3) traveled to the bank to dispute the charges and stated SunTrust issued a \$1,200 reimbursement and moved to close SunTrust Account A and issued a new account and routing number, SunTrust Account B.

(b) (3) noticed additional funds were removed from SunTrust Account B and then returned on July 20, 2015. On July 23, 2015, (b) (3) observed a \$700 unauthorized withdrawal from the recently opened SunTrust Account B, which caused overdraft charges. (b) (3) returned to SunTrust Bank, where SunTrust Business Consultant, Catherine Pena (Pena), assured (b) (3) that (b) (3) would be reimbursed for the \$700 and the overdraft charges would be reversed. Pena confirmed in her interview with the OIG on July 23, 2015 that the amounts withdrawn from (b) (3) (A) accounts revealed not only was SunTrust Account A joint account, but it was also unusual for thieves to discover (b) (3) (A) new account and routing number immediately after changing them and that the companies removed the funds from the accounts instead of (b) (3) (A) debit card. Pena informed the OIG that (b) (3) stated the only individuals who knew of the new account were FEC staff.

Pena revealed that the withdrawals from Account B were transferred from two companies, PayPal and Chime. The OIG was notified by Pena that Robert Caruso (Caruso), SunTrust Assistant Vice President Branch Manager, was assisting (b) (3) at the branch in Camp Springs, Maryland and (b) (3) was being assisted by the SunTrust Fraud Unit for the investigation. The OIG was unable to make successful contact with the Fraud Unit Contractor, but did contact Caruso on July 24, 2015.

The image below shows the reported unauthorized SunTrust transaction activities from (b) (3) (A) two banking accounts. The detailed timeframe not only shows the dates of the transactions, but the companies involved with the amounts.



Timeline of Unauthorized Transactions according to (b)(3)(A) – Red circles display SunTrust Account A and blue is SunTrust Account B.

The OIG contacted representatives and subpoenaed records from Chime, PayPal, and American Express to determine who and what methods were used to make the transactions.

B. Chime/Galileo

The OIG investigation revealed that a Chime Visa Debit card was used to withdraw unauthorized funds from (b)(3)(A) SunTrust Accounts A and B. Although Chime is the primary company that appeared on (b)(3)(A) bank records, on August 5, 2015, Chime's General Counsel, Chris Trujillo (Trujillo), advised the OIG that Chime transactions are processed through Galileo Processing (Galileo), a subsidiary of Chime. (b)(3)(A) was advised Chime would speak to (b)(3)(A) regarding the disputed charges; however, (b)(3)(A) declined to speak with a Chime representative.

A subpoena was sent to Galileo on August 26, 2015 for the four Chime accounts associated with (b)(3)(A) SunTrust account: (1) Chime account 1; (2) Chime account 2; (3) Chime account 3; and (4) Chime account 4.

The Galileo subpoena requested: (1) Account holder name(s); (2) Addresses (including mail address, residential addresses, business addresses, and e-mail addressed); (3) the state the account was opened and closed if applicable; (4) all telephone number associated with the accounts; (5) account history or copies of monthly statements and or billing statements including all debits and credits to the account from January 1, 2015 to August 1, 2015; (6) a list of all bank accounts associated with card including bank account holders name, name of bank, and account number associated with card; and (7) a list of all automatic monthly withdrawal accounts associated with card.

On September 15, 2015, Galileo's General Counsel responded via conference call and in writing to the OIG's subpoena. Galileo's General Counsel notified the OIG that the company was able to confirm records for accounts, Chime account 1 and Chime account 2. Trujillo revealed Chime

account 3 was not in their system and appeared to be the customer service number for the Chime Visa Prepaid Card Program. Trujillo also verified Chime account 4 is the test account utilized by the Chime Program for Chime card accounts that desire to use Automated Clearing House (ACH) debit. Trujillo explained that prior to activating the Chime credit card, the company runs test to verify the bank account used. The verification process pulls two small debits (less than a \$1.00) from the bank account, then pushes a credit to the same account for the total amount of the two small debits. After the test transactions are complete, the individual who requested the ACH debit is required to confirm the test deposit amounts that have been made to the external bank account.

The OIG was able to verify that small withdrawal transactions from Chime occurred days prior to a larger withdrawal. (b) (3) (A) SunTrust Account A had \$.53 withdrawal on July 1, 2015, by Chime account 4, but later credited back to the account in two transactions on the same day, \$.17 and \$.36. Once these payments were considered "accepted", Chime withdrew \$200 on July 8, 2015 and transferred funds to Chime account 1. The same process occurred even with (b) (3) (A) SunTrust Account B. Chime withdrew \$.68 on July 21, 2015 prior to returning the funds in two transactions on the same day of \$.29 and \$.39 prior to a July 23, 2015 withdrawal of \$200 from Chime account 2. This action repeated with July 24, 2015 deposits of \$.34 and \$.38.

The Galileo information revealed that Chime account 1 was linked to a (b) (6) residing in Austin, Indiana. The card associated with this account was authorized by Clark for all domestic transactions and allowed international transactions starting June 15, 2014. On July 22, 2015 the account was closed due to unauthorized transfers and attempted fraud. The OIG research revealed that another cardholder, (b) (6) was attached to that account to Chime Account 2. (b) (6) is listed as a resident of Dallas, Georgia. (b) (6) also authorized the card for transactions and international transactions with a start date of July 16, 2015. Galileo suspended account Chime account 2 on July 22, 2016 due to the suspicion of fraud. The account was later closed on July 28, 2015 with a cease of payment. (b) (3) (A) was asked if (b) (7)(C) knew both individuals and (b) (7)(C) responded in the negative.

December 14, 2016, the OIG investigated Chime account holders, (b) (6). The investigation revealed an address listed for (b) (6) is identical to the address in the profile of Chime account 1. OIG traced (b) (6) phone number and discovered it is associated to an individual in California. (b) (6) phone number was also linked to California, but no other information was unearthed regarding (b) (6). The OIG discovered comparisons with (b) (6) profiles such as the Los Angeles, California 323 area codes for telephone numbers and identical phrases and number sequences within their e-mail addresses. The OIG's investigative work on (b) (6) also revealed a potential website to assist individuals in identity theft. However, the OIG investigation did not reveal any correlation between (b) (6) and (b) (3) (A) or any staff in the FEC OCFO or Administrative Services Division.

After review of the information provided by Galileo a.k.a. Chime and the compiled research found on (b) (6), the OIG did not find any evidence of an FEC employee's involvement in the unauthorized SunTrust transactions made under the Chime accounts. The information obtained regarding (b) (6) were not forwarded to local authorities due to (b) (3) (A) refusal to file a police report.

C. PayPal

The OIG investigation revealed an unauthorized payment from (b)(3)(A) Account B to PayPal. SunTrust Account B was opened after unauthorized withdrawals were made from SunTrust Account A. The SunTrust Written Statement of Unauthorized Debit showed an unauthorized PayPal withdrawal in the amount of \$500 on July 23, 2015 from SunTrust Account B. According to (b) (3) (A) the unauthorized PayPal withdrawal was made several days after Account A was closed.

The OIG subpoenaed PayPal on October 5, 2015:

The subpoena sent to PayPal requested the following material: (1) Buyer name(s), address, and telephone number for transactions on July 23, 2015; (2) PayPal Account holder name(s); (3) Addresses (including mailing addresses, residential addresses, business addresses, and e-mail addresses for PayPal account holder and buyer; (4) The date the PayPal account was opened and closed, if applicable; and (5) All telephone numbers associated with the Buyer and PayPal account holder.

The OIG received written notification from the PayPal Global Asset Protection Team (PGAPT) on December 15, 2015 that the subpoena request was submitted and received; however, the requested information yielded no results. PGAPT explained PayPal is only able to search for PayPal accounts using an Email Address, PayPal Account Number, PayPal Transaction ID, or Financial Information. In order to provide additional information to assist in the search for the PayPal account number, a subpoena was issued June 29, 2016 to SunTrust for (b)(3)(A) banking records with (b)(3)(A) consent. The SunTrust subpoenaed results were inconclusive and on September 21, 2016, the OIG requested additional bank records for Accounts A and B, from May 2015 to August 2015, aside from the information provided in response to the June 29, 2016 subpoena. In compliance, on September 22, 2016, (b) (3) (A) SunTrust records verified that \$500 was transferred from a PayPal account on July 23, 2015, but little information was provided.

On September 29, 2016, the OIG contacted PayPal regarding PGAPT's response. PayPal acknowledged PayPal is not authorized to release any detailed information even with (b) (3) (A) written consent, but must speak to (b) (3) (A) directly. However, PayPal informed the OIG that the

PayPal account that made the unauthorized transaction had previous transactions with (b) (3) (A) SunTrust account prior to July 23, 2015, but was now closed. PayPal also verified the amount from the transaction, but disputed the transaction date of July 23, 2015 and verified the transaction date was a few days earlier.

When asked on October 6, 2016 by the OIG of the potential account linkage of SunTrust account B and the PayPal account, (b) (3) (A) responded with no recollection of previous interactions with the PayPal account and that the unauthorized transactions were a long time ago. The OIG notified (b) (3) (A) that if (b) (3) (A) called PayPal, the company would release the requested information. (b) (3) (A) again stated it was a long time since the incident occurred and did not remember in detail nor did (b) (3) (A) agree to take action by contacting PayPal for further information.

The OIG tried to obtain banking tracers that would show the direct path utilized to process funds. According to SunTrust Bank Manager Caruso, the tracers would provide the financial institutions involved along with the individual(s) attached to the account(s). Caruso acknowledged the tracers would identify the users of the PayPal account.

For several months the OIG made several unsuccessful attempts to follow-up with Caruso to obtain the SunTrust tracers for each unauthorized transaction. Caruso ceased all communication with the OIG, with the last communication being September 27, 2016. Without the SunTrust tracers, the OIG was unable to move forward obtaining identifiable information regarding PayPal. In a last attempt, the OIG called SunTrust Bank headquarters on December 12, 2016 and spoke to a Customer Service Agent. The Agent acknowledged SunTrust prefers to address fraud activity within 90 days of the incident. At that time, SunTrust no longer was open to communicating with the OIG without the assistance of (b) (3) (A). (b) (3) (A) was asked to call the SunTrust headquarters. (b) (3) (A) advised the OIG (b) (3) (A) was no longer interested in the matter.

Due to (b) (3) (A) and Sun Trust Bank's refusal to communicate with the OIG and the lack of evidence of a FEC employee's involvement, the OIG ceased researching the PayPal records. The evidence that was obtained by the OIG did not reveal any documentation that a FEC staff person was involved with the unauthorized withdrawals from (b) (3) (A) SunTrust Account B to Pay Pal. Instead, the information obtained evidence that the PayPal account in question had a history of withdrawing monies from (b) (3) (A) account. The information obtained by the OIG was not for forwarded to local authorities because (b) (3) (A) did not file a police report with the local authorities.

D. American Express/Serve

The OIG investigation revealed that withdrawals were made from (b) (3) (A) account by

American Express through its subsidiary, Serve. Serve is utilized through American Express to provide individuals access to a prepaid account using a prepaid debit card. The OIG evaluated (b) (3) (A) SunTrust records which revealed 4 unauthorized Serve transactions:

The following Automated Clearing House (ACH) transactions from Serve: (1) July 8, 2015 for \$300; (2) July 8, 2015 for \$200; (3) July 8, 2015 for \$300; and (4) July 8, 2015 for \$200; which were all withdrawn from SunTrust account A.

On October 5, 2015, the OIG subpoenaed American Express regarding the monetary transactions for the four transfers tied to (b) (3) (A) SunTrust account:

The subpoena to American Express requested: *(1) Account holder name(s); (2) Addresses (including mailing addresses, residential addresses, business addresses, and e-mail addresses); (3) The date the account was opened and closed, if applicable; (4) All telephone numbers associated with the accounts; (5) Account history or copies of monthly statements, including all debts and credits to the account from January 1, 2015 to August 1, 2015; (6) A list of all bank accounts associated with card, including bank account holder's name, name of bank and account number associated with card; (7) A list of all automatic monthly withdrawal accounts associated with card; and (8) Means and source of payment for such service (including any credit card or bank account number) and billing records.*

American Express notified the OIG the subpoena request was received October 12, 2015. The OIG contacted American Express on December 9, 2015 to provide the date of the transactions, the dollar amounts withdrawn, card type, account numbers, and (b) (3) (A) bank account number where the funds were deducted. On December 21, 2015, American Express acknowledged they were unable to comply with the request due to needing the full account number and the full Social Security Number of the account and individual in question.

Sun Trust, Camp Springs, Maryland bank manager Bob Caruso was contacted by the OIG on September 27, 2016 to determine if any other information was listed under the unauthorized transactions in (b) (3) (A) SunTrust records. Caruso notified the OIG that he would be able to create tracers for each transaction. Caruso clarified that a tracer is utilized to locate the destination of the funds, the receiver's information, and the potential merchant company associated. For months, the OIG made several attempts to reach Caruso for the transaction tracers, but as of December 2016, all communication had ceased.

In an effort to find the individual(s) behind the American Express Serve accounts, the OIG contacted SunTrust headquarters on December 12, 2016. Referred earlier in the SunTrust section, SunTrust acknowledged (b) (3) (A) would need to contact SunTrust's Fraud Prevention

and Claims Division to obtain transaction tracers for the accounts. The OIG also attempted to contact (b) (3) (A) to obtain the tracers by Caruso, but (b) (3) (A) was no longer cooperative with the OIG.

Due to no correspondence with (b) (3) (A) nor SunTrust, the OIG was unable to obtain ACH tracers for American Express Serve transactions.

IV. Conclusion

The OIG investigation revealed that withdrawals totaling \$1,900 were made from (b) (3) (A) SunTrust Accounts A and B. (b) (3) (A) was refunded all funds withdrawn and paid no additional penalties. The OIG investigation revealed that the Chime accounts used to withdraw funds from (b) (3) (A) SunTrust Account A and B listed to two individuals, (b) (6) (b) (6). Withdrawals were made from Account B using Serve (American Express) and PayPal.

With ceased cooperation by (b) (3) (A) and SunTrust Bank, the OIG was unable to retrieve additional information from American Express (Serve) and PayPal. As a result, the OIG was unable to obtain sufficient evidence to make a conclusive determination as to whether any payments made to American Express or PayPal were unauthorized and that: (1) FEC staff were responsible for unauthorized transactions by American Express and PayPal; (2) a violation occurred with personal use of government property; and (3) FEC staff committed aggravated identity theft.

Due to (b)(3)(A) refusal to assist to the OIG and the failure of (b) (3) (A) to file a police report; the OIG ceased the investigation and did not forward any findings to local authorities. However, the documentation obtained by the OIG did not reveal evidence that any of the withdrawals were made with the assistance of an FEC employee as alleged by (b) (3) (A).

A. Scope of the Investigation

The investigation was limited to whether or not FEC staff were responsible for the illicit funds transferred from an FEC employee's banking accounts. The OIG limited their attention towards determining if identity theft, personal use of government property, or if federal employees converting property were criminal factors.

ATTACHMENTS

	Description
1	Written Statements of Unauthorized Debit

Case Number: 2353388 ACH ✓

Client Name: (b) (7)(C)

Account Number: (b) (7)(C)

Client Address: (b) (7)(C)

Name of Company Debiting the Account: PAYPAL TRANSFER (b) (7)(C)

Amount of Debit	Date of Debit	Amount of Debit	Date of Debit	Amount of Debit	Date of Debit
\$500.00	7/23/2015				

Note: List multiple debits only if from the same company debiting your account.

I (the undersigned) hereby certify that (i) I have reviewed the circumstances of the above electronic (ACH) debit(s) to my account, (ii) each debit listed above was not authorized, and (iii) the following, to the best of my ability to identify, is the reason for that conclusion: (check one reason only)

- ☒ I did not authorize the party listed above to debit my account.
- ☐ I revoked the authorization I had given to the party to debit my account before the debit was initiated.
Date I revoked the authorization: _____
- ☐ My account was debited before the date I authorized.
Date I authorized: _____
- ☐ My account was debited for an amount different than I authorized.
Amount I authorized: _____
- ☐ My check was improperly processed electronically as notice was not given.
- ☐ Both my check and electronic debit posted to my account.
- ☐ I made a stop payment request on my check.
- ☐ Other (please explain) _____

I am an authorized signer on the account identified above. I further certify that each debit that I am stating is unauthorized was not originated with fraudulent intent by me or any person acting in concert with me. I certify that the information

(b) (7)(C)

✖ 7/24/15
Date (mm/dd/yyyy)

For Internal Bank Use Only:

Bank Representative Name

Cost Center

Phone Number

316342 (1/13)
SunTrust Corporate Forms



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

Office of Inspector General

MEMORANDUM OF FINDING

Case #: 16-05	Prepared By: Carla Smith
Case Title: Commission Travel	
Date of Report: 7/5/2017	
Subject: Closing of Case Referral to Audit	

Summary:

On February 22, 2016, the Federal Election Commission's (FEC) Office of Inspector General (OIG) received a request to meet with (b) (3) (A)

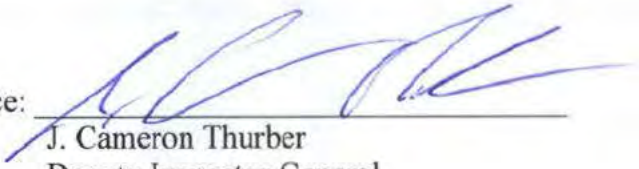
(b) (3) (A) On February 25, 2016, the OIG met with (b) (3) (A) (b) (3) (A) alleged (b) (6), (b) (7) (C) improperly handles position by (1) taking excessive Leave without Pay; (2) submitting incorrect budget data for office each month; (3) moving agency money for Commissioners and the (b) (6), (b) (7) (C) and (4) creating fraudulent files with (b) (6), (b) (7) (C) to comply with a FOIA request for the Commissioners' travel.

(b) (3) (A) alleges Commissioner (b) (6), (b) (7) (C) pays for own travel and does not notify the Ethics office or the CFO of travel arrangements. Other Commissioners were alleged to hand in receipts late or send refund requests without receipts. (b) (3) (A) also alleges (b) (6), (b) (7) (C) and (b) (6), (b) (7) (C) interfere with contracts and submit contracts right before the contract's expiration date so they may automatically be renewed without time for competition.

The OIG requested records and assistance from the FEC's Chief Financial Officer and the Office of General Counsel Office (Deputy Agency Ethics Official). It was determined that there were no criminal or civil violations regarding the FEC Commissioners travel. However, there may be systemic administrative failures regarding the traveling procedures for the Commissioners and their staff. During an OIG staff meeting on April 18, 2017, it was decided that the review of the subject would be better suited as an audit. On April 18, 2017, the Senior Auditors were forwarded the travel file and its documents. Therefore, this investigation meets the requirements set forth in section XVI of the FEC OIG Investigative Manual to be closed by memorandum.

RESTRICTED INFORMATION: This report is confidential and may contain information that is prohibited from disclosure by the Privacy Act, 5 USC 552a. Therefore, this report is furnished solely on an official need-to-know basis and must not be released or disseminated to any other party without prior written consent of the Inspector General of the Federal Election Commission or designee. Unauthorized release may result in civil liability and/or compromise ongoing federal investigations.

Concurrence:



J. Cameron Thurber
Deputy Inspector General

9/29/17
Date

**FEDERAL ELECTION COMMISSION
OFFICE OF INSPECTOR GENERAL**



Report of Investigation

INV-17-04

Alleged Violation of Ethical Standards by Commissioner Ellen Weintraub

December 21, 2017

RESTRICTED INFORMATION: This report is the property of the Office of Inspector General, and is for **OFFICIAL USE ONLY**. This report is confidential and may contain information that is prohibited from disclosure by the Privacy Act, 5 U.S.C. §552a. Therefore, this report is furnished solely on an official need-to-know basis and must not be reproduced, disseminated or disclosed without prior written consent of the Inspector General of the Federal Election Commission, or designee. All copies of the report have been uniquely numbered, and should be appropriately controlled and maintained. Unauthorized release may result in civil liability and/or compromise ongoing federal investigations.

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I. Executive Summary

On February 15, 2017, the Federal Election Commission's (FEC) Office of Inspector General (OIG) was contacted by Scott McDaniels. McDaniels alleged FEC Commissioner Ellen Weintraub may have violated ethics regulations by using FEC official letterhead to issue a letter to President Donald Trump regarding his claims of voter fraud. The potential violation was brought to the complainant's attention after reading an article in the Washington Free Bacon about Commissioner Weintraub's letter to the President. McDaniels confirmed the OIG could use his name in the investigation.

The OIG investigation revealed that on February 10, 2017, Commissioner Weintraub issued a statement on FEC letterhead stating:

As a Commissioner on the [FEC], I am acutely aware that our democracy rests on the faith of the American People in the integrity of their elections. . . . I therefore call upon President Trump to immediately share his evidence with the public and with the appropriate law-enforcement authorities so that his allegations may be investigated promptly and thoroughly.

The following days, Weintraub appeared on several news outlets (CNN & NPR) discussing her request.

On February 22, 2017, Commissioner Weintraub's office delivered to the OIG's office a second statement dated February 21, 2017, from Commissioner Weintraub. The statement was on FEC letterhead and requested President Donald Trump issue information to the public regarding the voter fraud that he alleged occurred during the November 2017 elections. The statement also mentioned the allegations are of great concern to Commissioner Weintraub, and the issue presented falls within the jurisdiction of the FEC since no expenses related to the allegations have been accounted for on any campaign financial filings.

On February 24, 2017, the OIG received a letter from the Cause of Action Institute (Cause of Action) dated February 21, 2017, requesting the OIG open an investigation regarding Commissioner Weintraub's actions. Cause of Action alleged Commissioner Weintraub violated ethics violation 5 C.F.R. Part 2635. Cause of Action alleged that as a FEC Commissioner, Commissioner Weintraub has authority only over campaign finance and not over voting or election fraud. Therefore, her request on FEC letterhead was a violation of 5 C.F.R. Part 2635.

On February 28, 2017, the OIG opened an investigation to determine if Commissioner Weintraub violated any federal ethic rules or FEC policies. The OIG reviewed ethics regulations found in 5 C.F.R. Part 2635, FEC regulation 11 C.F.R. Part 7, and FEC policies and procedures.

The OIG interviewed Commission Chair Steven Walther, Deputy Ethics Counsel Larry Calvert, and Commissioner Weintraub.

A review of FEC policies or procedures resulted in finding no policies or procedures that directly addressed Commissioner Weintraub's conduct. According to Calvert, he consulted with Commissioner Weintraub regarding her actions and advised her there were no regulations or FEC policies that prohibited her actions. The OIG also interviewed Chair Walther, who stated Commissioner Weintraub did not consult with the full Commission before writing the memo. Chair Walther stated there were no policies that prohibit a Commissioner from using the FEC letterhead to express private opinions. Chair Walther did state that normally FEC does not request information usually information is sent to the Commission. Walther stated the Commissioners had not discussed the issue during a session or privately with Commissioner Weintraub and there were no plans to do so.

When the OIG interviewed Commissioner Weintraub, she stated she did not believe this matter would become a big deal. She stated she was addressing President Trump's claim that individuals were bused to another state to vote fraudulently. According to Commissioner Weintraub, the memo was not addressed to the White House and did not request the information be sent to FEC, but instead requested that information be provided to the public. She stated she felt that she had to make a statement because the President's claims undermined voting independence. According to Commissioner Weintraub, she had the authority to write the memo both as a citizen and as a Commissioner, which is why she clarified her positions with the second memo. According to Weintraub, if individuals were bused from other areas to vote, then campaign funds were used, and that would be an issue for the FEC.

The OIG reviewed the FEC regulations and 5 C.F.R. Part 2635, which outlines the principals of ethical standards that apply to all officers and employees of the executive branch. 5 C.F.R. § 2635.106 states "any violation of C.F.R. Part 2635 standards may be cause of appropriate action, it is the responsibility of the employing agency to initiate appropriate disciplinary or corrective action in individual cases." The OIG conducted interviews, reviewed statements made by Commissioner Weintraub and President Donald Trump, transcripts from interviews conducted by and social media posts by Commissioner Weintraub, and previous conduct by current and former Commissioners.

5 C.F.R. Part 2635 prohibits misuse of public office for private gain (5 C.F.R § 2635.702), government property (5 C.F.R. § 2635.704), and time (5 C.F.R. § 2635.705). The OIG found no evidence that Commissioner Weintraub obtained a private gain from issuing her statement. The OIG found that: Commissioners have been given the latitude to speak and make statements on all aspects of elections, and not just campaign finance issues; the allegations by President Trump if true, would have involved possible campaign finance issues under the FEC's jurisdiction; and there is no current rule prohibiting a Commissioner from using FEC letterhead to publish a

public statement. As a result, the OIG found no evidence of Commissioner Weintraub or her staff misusing time in violation of 5. C.F.R. § 2635.705. The OIG acknowledges, pursuant to 5 C.F.R. Part 2635, the FEC Commission still has authority to determine whether any action is warranted in response to Commissioner Weintraub's actions.

II. Background

On February 10 and 21, 2017, Commissioner Ellen Weintraub issued a statement requesting President Trump provide evidence to his claims that individuals were bused to another state to vote fraudulently. On February 15, 2017, the FEC OIG was contacted by Scott McDaniels. McDaniels alleged Commissioner Weintraub potentially violated ethics regulations by using FEC official letterhead to issue a letter to President Trump regarding his claims of voter fraud. The potential violation was brought to the complainant's attention after reading an article in the Washington Free Bacon about Commissioner Weintraub's letter to the President. McDaniels waived confidentiality and confirmed the OIG could use his name in the investigation.

On February 24, 2017, the OIG received a letter from the Cause of Action Institute dated February 21, 2017, requesting that the OIG open an investigation regarding Commissioner Weintraub's actions. Cause of Action alleged Commissioner Weintraub violated ethics regulations. Cause of Action alleged that as a Commissioner, Commissioner Weintraub has authority only over campaign finance and not over voting or election fraud. Therefore, her request on FEC letterhead was a violation of 5 C.F.R. Part 2635.

On February 28, 2017, the OIG opened an investigation regarding Commissioner Weintraub actions to determine if there was any evidence that Commissioner Weintraub's actions violated any ethical standard of conduct pursuant to 5 C.F.R Part 2635 or FEC policies.

A. Relevant Statutes and Policies

Office of Government Ethics Regulation 5 C.F.R. Part 2635
Federal Election Regulation 11 C.F.R. Part 7

B. Scope of Investigation

The investigation was limited to determining whether or not there is evidence to support that allegation, that Commissioner Weintraub violated ethics regulations when she requested President Donald Trump provide information to the public regarding his allegations of voter fraud.

III. Investigation Findings

The Office of Government Ethics regulation 5 C.F.R. Part 2635, Standards of Ethical Conduct for Employees of the Executive Branch, applies to this matter. FEC Standard of Conduct regulation 11 C.F.R. §7.1 provides that members and employees of the Commission are subject to 5 C.F.R. Part 2635. The OIG review of applicable ethics rules revealed that as an employee of the Federal government, Commissioner Weintraub has the responsibility to place loyalty to the Constitution, laws and ethical principles above private gain and ensure every citizen can have complete confidence in the integrity of the Federal government, 5 C.F.R. § 2635.101(a). The regulation further states that agencies can have supplemental guidelines, and it is the responsibility of the employee's agency to provide appropriate disciplinary action. 5 C.F.R. §§ 2635.105 and 2635.106(b).

Commissioner Weintraub's role is to enforce Federal campaign finance laws that regulate contributions and expenditures made to influence Federal elections. There are no standards listed in either 5 C.F.R. Part 2635 or 11 C.F.R. Part 7 that provide guidance as to statements under circumstances found in this matter. However, 5 C.F.R. § 2635.101(b)(14) states Federal employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part. Whether particular circumstances create an appearance that they are violating the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.

The applicable action for violation of 5 C.F.R. Part 2635 by a Commissioner is not documented in FEC ethics regulations. 11 C.F.R. § 7.5 of the FEC ethics regulation only states that violation by employees may be cause for appropriate corrective, disciplinary, or adverse action in addition to any penalty prescribed by law. Thus, the OIG refers to the C.F.R. Part 2635 which is applicable to Commissioners and employees of the agency. C.F.R. § 2635.106 states that any violation of C.F.R. Part 2635 standards may be cause of appropriate action...it is the responsibility of the employing agency to initiate appropriate disciplinary or corrective action in individual cases. The OIG investigated whether there was evidence that Commissioner Weintraub misused her position by issuing the memos to the President on February 10, 2017 and February 21, 2017. The OIG reviewed the applicable federal ethical standards for misuse of government position outlined in 5 C.F.R. Part 2635. Specifically, misuse of public office for private gain (5 C.F.R. § 2635.702), misuse of government property (5 C.F.R. § 2635.704), and misuse of time (5 C.F.R. § 2635.705).

a. Use of public office for private gain (5 C.F.R. § 2635.702)

5 C.F.R. § 2635.702 states that an employee shall not use his public office for his private gain, for the endorsement of any product, service or enterprise or for the private gain of friends,

relatives or persons whom the employee is affiliated in a nongovernmental capacity. Private gain would include employment or monetary gain for the Commissioner, her staff, relatives or others afflicted with her.

The February 10 and February 21, 2017, statements drafted by Commissioner Weintraub asked the President to provide the evidence to the public, not to the FEC or to her office.

Commissioner Weintraub issued the same request when she appeared on the CNN and NPR networks. According to Commissioner Weintraub, she did not issue the statement to have the President respond directly to her but issue the evidence to the public. The OIG found no evidence that Commissioner Weintraub nor her staff received any private gain other than notoriety or additional Twitter followers from her request. The OIG asked Commissioner Weintraub and Tom Moore, her Executive Assistant, if they or their relatives had received any benefits from her appearing on either CNN or NPR, or writing the statements to President Trump. The Commissioner was not paid to appear on any of the networks. The OIG found no evidence that Commissioner Weintraub, her staff, or their relatives received any private gain from her request.

b. Use of government property (5 C.F.R. § 2635.704) and time by an employee or subordinate for authorized purposes (5 C.F.R. § 2635.705 (a)).

5 C.F.R. § 2635.704 states that employees have the duty to protect and conserve Government property, and shall not use such property or allow it to be used for other than authorized purposes. Government property term used in the regulation includes government supplies. Pursuant to 5 C.F.R. § 2635.705(a), an employee shall use official time in an honest effort to perform official duties. In addition, an employee shall not encourage, direct, coerce, or request a subordinate to use of official time to perform activities other than those required in the performance of official duties or authorized in accordance with law or regulation.

The Commission's duties include overseeing the public disclosure of funds raised and spent to influence Federal elections, restrictions on contributions and expenditures made to influence Federal elections, and the public financing of Presidential campaigns. The OIG conducted interviews and obtained information to determine if there was a nexus between Commissioner Weintraub's statements and her duties as a FEC Commissioner, and if the use of FEC letterhead to draft her memo and letter to the President was allowable.

Commissioners or employees seeking advice and guidance on matters covered by 11 C.F.R. Part 7 or 5 C.F.R. Part 2635 may consult with the FEC's Designated Agency Ethics Official (DAEO). 11 C.F.R. Part 7 states that the FEC General Counsel or designee is the FEC DAEO. Interviews conducted by the OIG revealed that Commissioner Weintraub contacted the General Counsel's office regarding her statement. The OIG interviewed FEC alternate DAEO Larry Calvert.

Calvert advised the OIG that Commissioner Weintraub had contacted him regarding after issuing the first statement, but could not remember the exact date, and stated the meeting was in person. Calvert advised there were no notes taken.

Calvert stated he advised Weintraub that there were no ethics regulations or FEC policies that prohibited her from issuing her statement. According to Calvert, it is the Commission's responsibility to issue guidelines for the Commissioners, and there are none regarding use of FEC letterhead. The OIG asked Calvert if Commissioner Weintraub's use of FEC letterhead, considering the circumstances in this matter, was in violation of any ethics rules. Calvert reiterated that it would be up to the Commissioners to draft such a rule regarding permissible activities. Calvert gave the example of the Commissioners traveling to foreign countries to observe elections. He stated that there were no regulations or policy regarding foreign travel, however, the Commission had voted on the matter and approved foreign travel for Commissioners.

The OIG also interviewed FEC Chair Steven Walther on April 14, 2017. As Chair, Commissioner Walther is the head of the Commission during calendar year 2017 and was Vice Chair during calendar year 2016. He stated that there is no rule regarding the use of FEC letterhead. According to the Chair, Commissioners do use letterhead to respond to matters outside their day to day duties as Commissioners, such as when they are asked to attend conferences or speaking engagements. However, FEC Commissioners do not normally request information, including from the President. The Chair stated that Commissioner Weintraub did not consult with him or the full Commission prior to issuing the memo, and he found about the memo and letter when they were issued. The Chair informed the OIG that the remaining Commissioners had not discussed the issue with Commissioner Weintraub. The OIG was informed the issue was not on any of the upcoming session agendas. The Chair stated voting violations are a Department of Justice issue. The Chair stated that if there was voter fraud, it's not clear that the FEC would look into the matter, but there could be an issue regarding the funds used to rent the buses.

On October 25, 2017, the OIG interviewed Commissioner Weintraub. She stated she had the right, in her role as Commissioner, to draft the statement to the President. Commissioner Weintraub stated she never thought her statement would be such a big deal. It was drafted by her assistant, Tom Moore, and it was just a response to President Trump's allegation. She stated she would never comment on a candidate's statement or allegation, but he was the President so she felt she could make a statement. Commissioner Weintraub advised, due to her past work experience which include being an ethics lawyer, she is very careful when she make statements. Commissioner Weintraub stated that she feels as a Commissioner, she has the right to speak on any matters that question the validity of the election process and our democracy.

Commissioner Weintraub advised that she did not speak out to acquire personal gain. She spoke out because there she believes in the democratic process and will not stand by and let someone diminish the reputation of the democracy. She felt that President Trump's statement undermined the voting process. She feels it is well within her authority to speak on all voting matters to reassure the public that the voting process is not tainted. Commissioner Weintraub stated she believes she has this authority, regardless of it, she has the power to adjudicate the matter. Commissioner Weintraub stated that she is not limited to the Federal Election Campaign Act regarding her ability to speak on different matters. She speaks as a Commissioner on women's issues and voting rights in general and finds the controversy and the notion she cannot ask for evidence absurd. Commissioner Weintraub proclaimed, this is not an Election Assistance Commission (EAC) or Department of Justice issue because they do not run elections. According to Commissioner Weintraub, the FEC has more authority and rule making power than the EAC. Commissioner Weintraub advised, because of the FEC reputation, she and other Commissioners have been asked to observe foreign elections and speak on democracy.

Also, Commissioner Weintraub claimed that her statements were public statements not letters to the President directly. Commissioner Weintraub reiterated that she did not ask for the President to send the documents to her, but asked him to share them with the public. Thus, she was not asking the documents to be sent to the FEC for review. Weintraub stated she is sure the President, and his lawyers, did not think she was asking for the information on behalf of the Commission thus they would have responded. Commissioner Weintraub referred to the fact the statements clearly stated in bold letters this is a statement from Commissioner Weintraub. Weintraub went on to say the fact that the White House did not respond to the request is evident they did not view it as a request from the Commission.

When asked what authority she the Commission has over the matter, Commissioner Weintraub responded that if the statement by the President was true, then the money used to bus individuals to another state would be a campaign finance issue. Therefore, FEC would have authority to look into the issue. Commissioner Weintraub stated her authority to look into the issue is not the point, because as a Commissioner and public figure, she had the authority to speak on the matter.

As a government employee, Commissioner Weintraub is tasked with ensuring the public the integrity of the government and as a FEC Commissioner she is to ensure campaign finance laws are administered. The OIG investigation disclosed that Commissioners have been allowed to express their opinions and make statements in the past to reporters and at conferences, and author articles on a variety of election topics (voting trends, women's rights, foreign elections and political agendas), without being disciplined or found to violate 5 C.F.R. Part 2635 standards.

The OIG found FEC Commissioners' public statements have been both verbal and written, and usually not on FEC letterhead. For example, Commissioner Lee Goodman and Former Commissioner Ann Ravel have both made appearances at public forums, talk shows, and wrote

op-ed pieces discussing election law in general, and they voiced Democratic and Republican views during their tenure as FEC Commissioners.¹ The OIG investigation also revealed Commissioner Weintraub and Chair Steven Walther have both visited other counties to observe elections and speak on democracy.

In this instance, evidence revealed there was a nexus between Commissioner Weintraub's statement and her FEC duties. If President Trump's scenario of bused individuals is correct, then the funds used to bus the individuals could be a possible violation of campaign finance laws, thus an issue under the purview of the FEC. In his interview, the Chair stated that if the allegations were true, the FEC may look into the matter. The OIG reviewed current and past opinions issued by the FEC to determine if the Commission had issued opinions regarding use of campaign finance and for other than normal campaign expenses. The OIG found that as recently as this year, the Commission has issued opinions regarding the use of campaign funds, as evidenced by FEC opinions AO-2017-07 (issued July 10, 2017) and AO-2016-25 (issued January 25, 2017).

In addition, the OIG investigation disclosed that Commissioner Weintraub's use of FEC letterhead was not in violation of 5 C.F.R. § 2635.704 (misuse of government property). The statements issued by Commission Weintraub cited in bold letters at the top of each document that the statements were from Commissioner Weintraub and not the full Commission. Calvert and the Commission Chair Walther both verified that there are no current FEC policies or regulations that prohibit use of the FEC letterhead for personal statement. As such, the OIG found no evidence that Commissioner Weintraub violated 5 C.F.R. § 2635.704 (use of government property or of 5 C.F.R. § 2635.705 (a) (misuse of time).

Lee Goodman appearance at Georgetown University (Election law in the United States and the conservative case for it) 10/18/17 and, Ann Ravel Op-ed piece for Us News & Work Report "Debate for Democracy) 9/16/2016.

Conclusion

The OIG found no evidence that Commissioner Weintraub violated ethical standards outlined in 5 C.F.R Part 2635 or 11 C.F.R. Part 7. It is noted per 5 C.F.R Part 2635, the Commissioners, collectively as the agency head, still have authority to determine if any action is warranted.

Federal Election Commission Office of Inspector General



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Together we can make a difference.



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

Office of Inspector General

MEMORANDUM

TO: Lynne A. McFarland
Inspector General

FROM: J. Cameron Thurber
Deputy Inspector General *JCT*

SUBJECT: INV-12-01 Case Closing

DATE: February 8, 2017

On July 12, 2012, Alec PALMER, Staff Director and CIO, notified Inspector General Lynne MCFARLAND that (b) (3) (A) (b) (3) (A) may have bypassed proper contracting procedures involving a (b) (3) (A) contract with (b) (3) (A). Specifically, it was alleged that (b) (3) (A) had given a Statement of Work (SOW) for a proposed contract to a prospective bidder before the contract was put out for bid. An investigation was opened on July 12, 2012, to determine whether there had been any violations of section 14.211(a) of the Federal Acquisition Regulation (FAR), which requires all source selection information be released to prospective bidders at the same time, as well as sections 3.104-3(a)(1), 3.104-4(a) and (b) of the FAR, and 5 C.F.R. § 2635.703. Whether a potential criminal or civil violation of 41 U.S.C. § 2102(a)(1) was also considered.

The investigation included interviews of relevant witnesses and reviews of records, including the SOW and related documents. During the investigation, the OIG requested assistance from an attorney with the General Services Administration (GSA) OIG who had extensive contract law experience. The GSA OIG attorney reviewed the issues and documents, and determined that no violation of the FAR or of statute had taken place.

It was determined that there were no criminal, civil, or administrative violations regarding the release of the SOW to the prospective bidder. Therefore, this investigation meets the requirements set forth in section XVI of the FEC OIG Investigative Manual to be closed by memorandum.

Concurrence:

Lynne A. McFarland
Lynne A. McFarland, Inspector General

2/9/17
Date

FEDERAL ELECTION COMMISSION

Office of the Inspector General



Report of Investigation

Allegations of Bias Against Federal Election Commission Personnel Reviewing 58th Presidential Inaugural Committee Reports

Case Number: I21INV00037

July 29, 2021

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I. EXECUTIVE SUMMARY

The Federal Election Commission (FEC) Office of Inspector General (OIG) initiated this investigation based on allegations reported in the media in October 2020 concerning the FEC's Reports Analysis Division (RAD). That report suggested that RAD may have failed to exercise adequate oversight of the 58th Presidential Inaugural Committee (the Inaugural Committee) due to an alleged personal relationship between the (b) (7)(C), (b) (3) (A) and a former FEC Commissioner who was associated with the 2016 Trump campaign and related entities.¹

The media report further alleged that the Inaugural Committee's reports filed with the FEC contained numerous errors concerning donations. It further questioned expenditures by the Inaugural Committee, including alleged fraudulent and excessive spending at Trump properties. In addition, it questioned the Commission's decision to dismiss a May 2, 2017 complaint that alleged the Inaugural Committee violated federal law and agency regulations by filing a disclosure report that did not include required information and that contained erroneous donor addresses. The report suggested that personal and political biases on the part of the ASD may have improperly influenced the Commission's decision to dismiss the complaint, which the Inspector General determined warranted further inquiry.

Accordingly, the OIG initiated this investigation and sought answers to the following questions:

- **Did personal or political biases on the part of (b) (7)(C), (b) (3) (A) undermine the impartiality of its oversight of the 58th Inaugural Committee's FEC filings or the Commission's dismissal of the 2017 complaint against the Inaugural Committee?**
- **What criteria did RAD use to determine that there were no apparent serious violations on the Inaugural Committee's report in light of allegations to the contrary filed in the 2017 complaint and raised in media reports?**

In order to answer the foregoing questions, the OIG reviewed relevant statutes, regulations, and FEC policies; obtained and reviewed relevant agency records; and interviewed FEC personnel that included attorneys from the Office of General Counsel (OGC) and RAD staff. Our investigation reached the following findings.

First, the relevant legal standards provide for limited FEC oversight of presidential inaugural committees. Specifically, 36 U.S.C. § 510 provides for virtually no oversight of inaugural committee expenditures and places essentially no restrictions on expenditures. Accordingly, the OIG found there were no opportunities for the (b) (7)(C) or other RAD staff to improperly influence agency reviews or outcomes concerning Inaugural Committee expenditures.

¹ <https://www.propublica.org/article/top-fec-officials-undisclosed-ties-to-trump-raise-concerns-over-agency-neutrality>

The OIG considered developing recommendations to address the risks posed by the lack of FEC oversight of presidential inaugural committee expenditures given the allegations of fraud and conflicts of interest reported in multiple media outlets. However, the lack of statutory authority for FEC review of inaugural committee expenditures prevents the OIG from recommending additional oversight absent Congressional action to amend 36 U.S.C. § 510 and related standards.

Second, the investigation found that the (b) (7)(C) and other RAD personnel acted consistent with relevant law and policy concerning review of the Inaugural Committee's reports. The evidenced obtained by the OIG established that RAD personnel adhered to FEC practice that delegates review of filings to staff-level career analysts. Senior RAD personnel were not directly involved in the review or analysis of the Inaugural Committee's reports. As such, there were no opportunities for senior RAD personnel to act improperly without personally intervening in the review and analysis of the relevant reports, which by all accounts did not occur here.

Although this investigation found no instances in which RAD officials acted improperly, we nonetheless believe it is important to address the ethical principle that federal employees should avoid even the appearance of impropriety. Ethical principles promulgated by the Office of Government Ethics encourage (and in some cases require) federal employees to seek guidance and potentially recuse themselves to avoid unethical situations, in fact or appearance. Although the facts of this case did not trigger any such requirements, the FEC's unique mission raises heightened concerns that allegations of personal or political bias against senior personnel could undermine the public's confidence in the agency. Accordingly, we developed a recommendation that the Commission evaluate the effectiveness of current agency policies on ethical behavior and update them, as may be appropriate.

Third, this investigation found that FEC policy regarding the oversight of presidential inaugural committees provides insufficient guidance concerning the identification of potential violations. Standard 21 of the RAD Review and Referral Procedures governs the review and analysis of inaugural committee filings. Unlike most other standards in the RAD Procedures, Standard 21 is very short (i.e., less than one page) and lacks clarity in several respects:

- Standard 21 confers subjective discretion to the ASD to identify apparent "serious violations" by inaugural committees that may warrant the issuance of a Request for Additional Information (RAFI). However, it neither defines "serious violations" nor provides standards by which the ASD should exercise that discretion. That ill-defined and subjective standard creates a reasonable likelihood of inconsistent results and arbitrary or capricious application (in fact or appearance).
- Standard 21 provides for assessment of no audits points, no referrals to OGC for potential enforcement actions, and no referrals to alternative dispute resolution (ADR). That differs from standards concerning reviews of political committee filings (authorized and unauthorized), which may be assessed audit points and referred to OGC or for ADR. This in turn undermines the potential for audits and enforcement actions involving inaugural committees and could reasonably result in the lack of accountability for violations by inaugural committees.

- Standard 21 effectively limits RAD’s oversight of inaugural committee reports to the identification of “mathematical discrepancies,” essentially, a nominal computational review to ascertain whether the committee’s reported totals are internally consistent.
- Accordingly, we recommend that the Commission update Standard 21 to include specific criteria for a “serious violation” and provide measurable standards concerning the review of inaugural committee reports.

Fourth, this investigation found that RAD’s existing process for review of inaugural committee reports is antiquated and lacks adequate internal controls. Unlike reviews of political committee reports (which are submitted and reviewed electronically), inaugural committee reports are completed on paper and manually reviewed by a RAD analyst. Those manual submission and review processes are inefficient and creates substantial risk of human error, given the voluminous data involved.

In addition, RAD personnel testified that inaugural committee reports are generally not subject to quality control reviews, as those quality control reviews are accomplished via the same electronic program used for political committee reports (but not for inaugural committee reports). Accordingly, the risk of error is further heightened by the lack of internal quality control reviews of inaugural committee reports. As such, the OIG recommends that the Commission update the inaugural committee review process to include quality control reviews.

Lastly, the OIG found that the FEC’s current practice concerning donors to all committees (inauguration and political) with foreign addresses poses significant national security risks, particularly in light of recent high-profile reports of foreign influence in U.S. elections. Federal law prohibits inaugural committees (as well as other political committees) from accepting donations from foreign nationals. RAD identifies potential foreign national donations based on the reported addresses of donors. However, RAD personnel testified that the division generally defers to a committee’s self-certification that it verified the U.S. citizenship of donors with foreign addresses.

This investigation found the current practice of relying on a committee’s conclusory “verification” is not memorialized in any RAD policy. In addition, committees may not be familiar with regulations concerning citizenship verification and the relevant FEC forms provide neither instructions nor direct reference to the regulations concerning foreign donations. Accordingly, the OIG recommends that RAD memorialize a policy concerning the identification of potential foreign donations and that the Commission consider updating relevant forms and instructions to ensure filers are aware of verification requirements imposed by federal regulation.

We further recommend that RAD’s policy include specific thresholds that will trigger the issuance of RFAs for donations with foreign addresses, notwithstanding purported “verification” by the relevant committees (political and inaugural). We recommend that RFAs should require the relevant committees to produce the bases for their citizenship verifications (e.g., copies of current and valid U.S. passport papers for U.S. citizens, as provided in 11 C.F.R. § 110.20) when donations associated with foreign addresses exceed a specific threshold. We

also recommend that RAD's policy include appropriate referrals when U.S. citizenship cannot be verified.

Based on the foregoing findings, the OIG recommends the following actions for the Commission to consider in efforts to reinforce the impartiality (in fact and appearance) of FEC personnel, to enhance the oversight of inaugural committees, and to better address potential foreign donations to political and inaugural committees:

1. Evaluate the effectiveness of current agency policies on ethical behavior and update them, as may be appropriate, to ensure FEC personnel are proactive in addressing situations that could violate ethical standards or otherwise adversely impact the reputation of the agency.
2. Update Standard 21 to include the criteria for a serious violation and provide measurable standards concerning the review of inaugural committee reports.
3. Update the inaugural committee review process to include electronic review and potential quality control reviews.
4. RAD memorialize a policy concerning the identification of potential foreign donations and that the Commission consider updating relevant forms and instructions to ensure filers are aware of verification requirements imposed by federal regulation.
5. RAD's policy should include specific thresholds that trigger the issuance of RFAs for donations with foreign addresses, notwithstanding purported "verification" by the relevant committees (political and inaugural). We recommend that those RFAs should require relevant committees to produce the bases for their citizenship verifications (e.g., copies of current and valid U.S. passport papers for U.S. citizens, as provided in 11 C.F.R. § 110.20) when donations associated with foreign addresses exceed a specific threshold. The policy should also provide for appropriate referrals when citizenship cannot be verified.

II. BACKGROUND AND ALLEGATIONS

A media report in late 2020 alleged that (b) (7)(C), the (b) (7)(C) of the Federal Election Commission's (FEC or Commission) Reports Analysis Division (RAD), may have failed to exercise adequate oversight of the 58th Presidential Inaugural Committee (the Inaugural Committee) due to a personal relationship with a former FEC Commissioner.²

Specifically, the media report raised questions about the (b) (7)(C) and (b) (7)(C) alleged prior personal interactions with former President Donald Trump's 2016 campaign attorney (and subsequently, White House Counsel), Mr. Donald McGahn, and suggested their relationship may have undermined RAD's oversight of the Inaugural Committee.³ The (b) (7)(C) is responsible for supervising the RAD division that reviews committee compliance with federal election reporting requirements and routinely examines reports filed by political and inaugural committees.

Media reports also alleged that the Inaugural Committee engaged in numerous improper expenditures, such as lavish and fraudulent spending on Trump properties. For example, reports alleged that the Inaugural Committee spent over \$1 million at the Trump International Hotel in Washington, DC in 2017.⁴

In addition, the foregoing media report raised questions about the FEC's dismissal of a May 2, 2017 complaint that alleged the Inaugural Committee violated the Federal Election Campaign Act of 1971 (FECA) and agency regulations by filing a disclosure report that did not include required information and contained erroneous donor addresses.⁵

The Inaugural Committee filed an amended report on June 29, 2017, which it asserted had resolved all the reporting issues identified in the complaint. On March 14, 2018, the Commission closed the 2017 complaint after the FEC Office of General Counsel (OGC) recommended as much.⁶

² <https://www.propublica.org/article/top-fec-officials-undisclosed-ties-to-trump-raise-concerns-over-agency-neutrality>

³ Mr. McGahn served as FEC Commissioner from July 2008 to September 2013. He was elected Chairman on July 10, 2008 and served in that capacity until December 31, 2008.

⁴ See, e.g., <https://www.nbcnews.com/politics/trump-impeachment-inquiry/d-c-attorney-general-charges-trump-inaugural-committee-enriched-family-n1120361>

⁵ See First General Counsel's Report, MUR #7244. <https://www.fec.gov/data/legal/matter-under-review/7244/>

⁶ On April 26, 2017, a separate complaint was filed with the FEC relating to the Inaugural Committee. According to the complaint, CITGO Petroleum Corporation, a domestic subsidiary of a Venezuelan state-owned company, donated \$500,000 to the Inaugural Committee on December 22, 2016. The complaint alleged that foreign nationals were involved in the decision to make the donation and that CITGO thus violated the prohibition against foreign donations. The complaint further alleged that the Inaugural Committee knowingly accepted that alleged foreign donation. OGC advised the Commission that CITGO had violated prohibitions against foreign donations. However, the Commission split in a 3-3 vote on enforcement and the complaint was dismissed. See First General Counsel's Report, MUR #7243: <https://www.fec.gov/data/legal/matter-under-review/7243/>

The FEC OIG initiated this investigation on April 2, 2021, based on the foregoing media reports and sought answers to the following questions:

Did personal or political biases on the part of senior RAD personnel undermine the impartiality of its oversight of the 58th Inaugural Committee's FEC filings or the Commission's dismissal of the 2017 complaint against the Inaugural Committee?

What criteria did RAD use to determine that there were no apparent serious violations on the Inaugural Committee's report in light of allegations to the contrary filed in the 2017 complaint and raised in media reports?

III. FINDINGS

In the course of this investigation, the OIG reviewed relevant agency records and interviewed FEC personnel, including attorneys from the OGC and RAD staff. This investigation reached the following findings.

1. The FEC's authority to review inaugural committee reports is limited to reports of donations received and does not include inaugural committee expenditures. Accordingly, there was no potential for impropriety at the FEC concerning reviews of inaugural committee spending.

As an initial matter, notwithstanding media reports and allegations that the Inaugural Committee engaged in improper spending, there are no federal laws or regulations within the FEC's purview concerning disbursements by inaugural committees.⁷ Political committees are generally required to file reports of both their receipts and disbursements with the FEC. *See* 2 U.S.C. § 434 and 11 C.F.R. § 102.9. However, unlike those political committees, inaugural committees are required to report only donations received and not their expenditures.

Disclosure of Federal Campaign Funds 2 U.S.C. § 434

Reporting requirements

- (a) Receipts and disbursements by treasurers of political committees; filing requirements
 - (1) Each treasurer of a political committee shall file reports of receipts and disbursements in accordance with the provisions of this subsection. The treasurer shall sign each such report.
 - ...

Disclosure of and Prohibition on Certain Donations 36 U.S.C. § 510

(1) IN GENERAL.—

Not later than the date that is 90 days after the date of the Presidential inaugural ceremony, the committee shall file a report with the Federal Election Commission disclosing any donation of money or anything of value made to the committee in an aggregate amount equal to or greater than \$200.

(2) CONTENTS OF REPORT.—A report filed under paragraph (1) shall contain—

- (A) the amount of the donation;
- (B) the date the donation is received; and
- (C) the name and address of the person making the donation.

(c) **Limitation.—**The committee shall not accept any donation from a foreign national (as defined in section 319(b) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441e(b))).

⁷ With a limited exception for refunds (i.e., disbursements) to donors. *See* 36 U.S.C. § 510.

Reporting requirements for inaugural committees are codified in 36 U.S.C. § 510, which requires reports of donations that aggregate \$200 or more. 11 C.F.R. § 104.21 provides detailed requirements concerning reports of donations. The donations are reported on FEC Form 13 and must be submitted to the FEC no later than the 90th day following the date on which the presidential inaugural ceremony is held. Based on current law, the FEC's oversight of inaugural committees is limited to reports of donations and refunds to donors reported on Form 13. As such, despite media reports that alleged fraudulent and unethical spending by the 58th Inaugural Committee on Trump properties, the FEC lacked oversight authority to review such expenditures or to further inquire into allegations concerning spending.

The OIG considered developing recommendations to address the risks posed by the lack of FEC oversight by the FEC of presidential inaugural committee expenditures given the serious allegations reported in multiple media outlets. However, the lack of statutory authority for FEC review of such expenditures prevents the OIG from recommending additional oversight.

2. The preponderance of the evidence established that the (b) (7)(C) and other RAD personnel acted consistent with relevant law and policy.

5 C.F.R. Part 2635 establishes the “Standards of Ethical Conduct for Employees of the Executive Branch.” 5 C.F.R. § 2635.101(b)(8) provides that “Federal employees shall act impartially and not give preferential treatment to any private organization or individual.” The (b) (7)(C) is responsible for supervising the division that reviews committee compliance with federal election reporting requirements and routinely examines reports filed by political and inaugural committees. Standard 21 of the 2015-2016 RAD Review and Referral Procedures delegates discretion to the (b) (7)(C) to issue Requests for Additional Information (RAFI) to inaugural committees if RAD's review of the relevant reports identifies apparent “serious violations.”

Office of Government Ethics Regulation 5 C.F.R. Part 2635

§ 2635.101 Basic obligation of public service.

...

(8) Employees shall act impartially and not give preferential treatment to any private organization or individual.

...

(14) Employees shall endeavor to avoid any actions creating the appearance that they are violating the law, or the ethical standards set forth in this part. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.

§ 2635.107 Ethics advice.

...

(b) Employees who have questions about the application of this part or any supplemental agency regulations to particular situations should seek advice from an agency ethics official.

The OIG interviewed the former senior RAD analyst who was assigned to review the Inaugural Committee's report. According to the senior analyst, (b) (7)(C) review was consistent with similar reviews and that neither the (b) (7)(C) nor anyone else directed (b) (7)(C) to take a particular action or reach a specific conclusion regarding the Inaugural Committee's report. The senior analyst further testified that (b) (7)(C) had no interaction whatsoever with the (b) (7)(C) regarding the review, which was typical of (b) (7)(C) work as an analyst with multiple levels of supervision between (b) (7)(C) and the (b) (7)(C).

The OIG corroborated (b) (7)(C) testimony by reviewing relevant contemporaneous emails. Specifically, a branch chief sent an email to the (b) (7)(C) on September 21, 2017, in which the branch chief informed the (b) (7)(C) that the same senior analyst had verified there were no serious violations in the report and that the branch chief had conveyed that verification to OGC.



Source: OIG review of FEC email records

The senior analyst further testified that if (b) (7)(C) had identified a potential serious violation in the Inaugural Committee's report, (b) (7)(C) would have raised it to (b) (7)(C) supervisor's attention for potential review by the ASD to determine whether to issue the Inaugural Committee an RFAI. (b) (7)(C) testified that (b) (7)(C) identified no potential serious violations in the Inaugural Committee's report that warranted further attention.

The OIG independently reviewed the Inaugural Committee's reports. The OIG verified the corrections to the reporting errors alleged in the 2017 complaint by cross referencing those alleged errors with the original report to identify them and subsequently reviewing the corrections made in the amended report.

In doing so, the OIG identified a specific donor with a foreign address and raised that donation (in the amount of \$25,000) to the senior analyst as a potential serious violation.⁸ When asked about that donation, the analyst stated that she did not elevate it to her supervisor because

⁸ As previously noted, 36 U.S.C. § 510 prohibits donations to inaugural committees by foreign nationals.

the Inaugural Committee's report indicated it had verified the donor's U.S. citizenship and it is RAD's practice to take such "verifications" at face value.⁹

The OIG also interviewed the branch chief who oversaw review of the Inaugural Committee's report. The branch chief testified that he or the assistant branch chief assigned the reports to RAD analysts for review and that the [REDACTED] had no role in assigning the reports. The branch chief also testified that he observed no interaction or correspondence (aside from the aforesaid September 21, 2017 email) between the [REDACTED] and RAD staff about potential serious violations on the Inaugural Committee's report.

The branch chief also stated there was nothing unusual with RAD's review of the report and that it was consistent with past reviews. In a separate interview, the OGC attorney who drafted an OGC opinion regarding the 2017 complaint testified that he similarly recalled nothing improper or unusual regarding RAD's work on the matter and further stated that he had no reason to question the integrity of the RAD staff in that matter or otherwise.

Additionally, the OIG interviewed the FEC's designated ethics officials regarding whether they had any concerns related to the allegations against the [REDACTED]. They testified that in 2017 they had no concerns about the [REDACTED] overseeing the branch that reviewed the Inaugural Committee's report because there was no basis to believe she was conflicted. However, they developed concerns in 2020 after becoming aware of allegations reported by the media referenced in this report.

The Designated Agency Ethics Official (DAEO) testified she had a discussion with the Deputy Ethics Official on whether the [REDACTED] sought ethics advice and the Deputy Ethics Official informed her that the [REDACTED] had not done so. In addition, the Alternate DAEO testified he had a concern that some of the [REDACTED] emails identified in the media reports struck him as outside of the institutional norm for communication between FEC staff and Commissioners.

Nonetheless, the DAEO further testified she had a discussion with the Alternate DAEO and both agreed that the details in the October 2020 media report were not sufficient to require recusal by the [REDACTED]. However, both testified that they believed the [REDACTED] should have considered seeking advice given the potential appearance of impropriety.

The OIG also interviewed the Deputy Staff Director for Compliance, who served as the [REDACTED] direct supervisor. She testified she had no concerns about the [REDACTED] conduct. She further testified that in her opinion there were no biases with her managers because they were aware of the importance of following policy and conducting themselves in an unbiased and non-partisan manner. She stated that, as a result, she did not have any discussions with the [REDACTED] on seeking ethics advice.

⁹ The OIG has concerns about this practice, as well as concerns about the lack of more specific guidance in Standard 21, which are discussed in subsequent sections of this report.

The OIG interviewed the (b) (7)(C), who testified that a RAD analyst reviewed the Inaugural Committee's reports without (b) (7)(C) direct involvement. (b) (7)(C) further stated that no RAD personnel approached (b) (7)(C) during the review of the Inaugural Committee's report to raise issues relating to the filing. The (b) (7)(C) also told the OIG (b) (7)(C) did not contemporaneously engage with the Commission or RAD personnel to discuss the report. The OIG reviewed emails relating to the Inaugural Committee and identified no evidence that undermined the (b) (7)(C) testimony.

The OIG further asked the (b) (7)(C) if (b) (7)(C) had sought advice from the agency's Ethics Official on whether to recuse (b) (7)(C) on matters related to the Inaugural Committee, as provided by 5 C.F.R. § 2635.107(b), which states that employees who have questions about situations should seek advice from an agency's ethics official. The (b) (7)(C) stated that (b) (7)(C) did not consider recusing (b) (7)(C) or seeking ethics advice because (b) (7)(C) had no reason to think (b) (7)(C) should have done so. Additionally, (b) (7)(C) stated no FEC management or officials at the time suggested (b) (7)(C) should recuse (b) (7)(C).

Although the investigation found no instances where the (b) (7)(C) impartiality was affected, it is important to nonetheless address the ethical principle in 5 C.F.R. § 2635.101(b)(14). That standard provides that federal employees shall endeavor to avoid any actions creating the appearance that they are violating the law, or the ethical standards set forth in those regulations.

The October 2020 media report featured a social media post of the (b) (7)(C) photographed at President Trump's 2017 inauguration with several people, one whom was holding a "Make America Great Again" banner. This created a situation where appearance could be a concern, given that the post depicted an FEC senior official attending an event celebrating the outcome of a partisan election. However, the OIG recognizes that the inauguration was an official event that was open to the public and that the (b) (7)(C) attendance was not specifically prohibited.

The OIG also recognizes the concern that the appearance could create a perception of favoring one political party over another, given the (b) (7)(C) senior position at the FEC.¹⁰ As a result, the OIG believes the perception created by the (b) (7)(C) appearance should have caused her supervisor or OGC to reiterate the importance of 5 C.F.R. § 2635.101(b)(14), if only to ensure that the employee did not engage in future conduct that went too far. Importantly, neither the (b) (7)(C) nor (b) (7)(C) supervisor are attorneys or experts in federal ethics rules and, therefore, should seek advice from the agency's experts in questionable situations. Accordingly, the OIG recommends that the Commission evaluate the effectiveness of current agency policies on ethical behavior and update them, as may be appropriate, to ensure FEC personnel are proactive in addressing situations that could violate ethical standards or otherwise adversely impact the reputation of the agency.

¹⁰ The fact that a FEC senior official attended the 2017 Inauguration and having (b) (7)(C) photo taken that featured a Trump banner did not violate the Hatch Act. The (b) (7)(C) was off duty when (b) (7)(C) apparently attended the inauguration. In addition, the Office of Special Counsel has opined that "post-Election Day activities showing support for or opposition to a presidential candidate will not affect the result of the election for that office," and, therefore, do not violate the Hatch Act. See, e.g.: <https://osc.gov/Documents/Hatch%20Act/Advisory%20Opinions/Federal/The%20Hatch%20Act%20and%20Activities%20after%20Election%20Day.pdf>

3. FEC policy regarding the oversight of presidential inaugural committees provides insufficient guidance concerning the identification of potential violations.

The 2017 complaint to the FEC alleged the Inaugural Committee filed a disclosure report that did not include required information and contained erroneous donor addresses. OGC reviewed the matter and recommended dismissing the complaint based on the Inaugural Committee's amendment to its original report to correct addresses of certain donors and the Commission's treatment of analogous errors by past inaugural committees.

In reviewing the Inaugural Committee's reports, RAD relied on its review and referral procedures manual, which is updated every election cycle.¹¹ The 2015-2016 manual was comprised of 30 standards; Standard 21 applied to inaugural committees. Unlike most others, Standard 21 is short (less than one page), essentially confers unlimited discretion to the [REDACTED] to issue RFAs for "serious violations" (other than nominal mathematical discrepancies), and provides neither for the assignment of audit points, nor for enforcement or ADR referrals.

2015-2016 RAD Review and Referral Procedures

Standard 21: Host and Inaugural Committee Reporting Problems

(This Standard does not apply to Title 52 Authorized or Title 26 Authorized Committees)

Notices Sent/Applying this Standard:

I

An RFAI will be sent if a host or inaugural committee's report discloses mathematical discrepancies. In this regard, Standard 6 will be followed.

An RFAI may be sent at the discretion of the Assistant Staff Director if there appears to be serious violations on a host or inaugural committee's report.

Assessment of Audit Points:

No audit points will be assessed under this Standard.

Referral to ADRO:

There will be no referrals made to ADRO under this Standard.

Referral to OGC:

There will be no referrals made to OGC under this Standard.

¹¹ Review of prior versions of Standard 21 confirmed that it has remained unchanged over prior election cycles.

The brevity of this standard presents significant risks. The subjective discretion conferred on the ASD may create the potential for arbitrary and capricious results (in fact or appearance). The OIG questioned a RAD branch chief about this concern and the branch chief agreed that the discretion conferred on the (b) (7)(C) posed such risks. The branch chief further stated that the public disclosure of committee reports should deter misconduct but ultimately agreed that Standard 21 lacked clarity and warranted revision to aid RAD analysts in its application.

The OIG also interviewed several OGC attorneys who worked on related matters or were otherwise experienced with the agency policies or ethical standards. One attorney told the OIG he was not aware of any guidance for the (b) (7)(C) in exercising (b) (7)(C) discretion under Standard 21. Further, the same attorney agreed that in hindsight, the lack of guidance creates risk. Two other attorneys stated it was RAD policy and they were not familiar enough with the policy to provide adequate responses.

In contrast, Standard 5, which applied to other committees outside of inaugural committees, offered specific guidance on violations. It laid out procedures for analysts to follow when violations are found in their review of the financial reports. This standard also required the issuance of RFAs when a violation exceeded a specific threshold. The RAD branch chief opined that certain thresholds could be taken from Standard 5 and adapted into Standard 21. In addition, the branch chief stated he was not in favor of giving one person discretion over a decision that could have serious ramifications and that standard 21 could be improved.

Similarly, the (b) (7)(C) testified that if she were faced with a potential serious violation on an inaugural committee report, she would reference the thresholds outlined under Standard 5 to help her determine what constitutes a serious violation under standard 21. The (b) (7)(C) further opined that Standard 21 could use more clarification. Accordingly, the OIG recommends that the Commission update Standard 21 to include criteria for a serious violation and provide measurable standards concerning the review of inaugural committee reports.

4. RAD's existing process for review of inaugural committee reports is inefficient and lacks adequate internal controls.

Unlike reviews of political committee reports (which are submitted and reviewed electronically), inaugural committee reports are completed on paper (i.e., PDF) and are manually reviewed by a RAD analyst. The senior RAD analyst testified that she manually reviewed the relevant files because inaugural committees do not file electronically in the same manner as political committees. She further testified that the electronic system used to review political committee reports incorporates numerous automated processes that aid analysts in identifying questionable transactions that warrant further scrutiny.

The branch chief corroborated this account. The branch chief further testified that he could not recall any quality control reviews of RAD analysts' work on inaugural committee reports because the filings are infrequent and are not contained within the electronic system from which samples are identified for quality control review.

Interviews with FEC staff revealed that the current inaugural committee submission and review process is inefficient and poses risk of human error. The current RAD process requires a single analyst to manually review a voluminous number of transactions with minimal to no oversight or other quality control checks. Accordingly, the OIG recommends that the Commission update the inaugural committee review process to include electronic review and potential quality control reviews .

5. The current practice of relying on an inaugural committee's self-certification concerning donations with foreign addresses poses a national security risk and provides insufficient oversight of possible illegal foreign donations.

Inaugural committees are prohibited from accepting donations from foreign nationals by 36 U.S.C. § 510. In addition, 11 C.F.R. § 110.20(j) further provides that a foreign national shall not, directly or indirectly, donate to an inaugural committee, and that no personal shall knowingly accept a donation to an inaugural committee from a foreign national.

RAD personnel told the OIG that the division historically relied on the committee's self-certification on FEC Form 13 that U.S. citizenship was verified. The OIG identified a \$25,000 donation on the Inaugural Committee's report by a donor with a foreign address. The report indicated "US citizenship verified" with no reference to the method of verification.

Full Name (Last, First, Middle Initial) or Full Organization Name C. RODRIGUEZ, FRANK, A., ,		Date Donation Received 12 / 22 / 2016
US CITIZENSHIP VERIFIED		Amount of This Donation 25000.00
Mailing Address 47 ORCHARD TOWER		Donor's Aggregate Donations To Date 25000.00
City SINGAPORE		Transaction ID : 1068
State ZZ	Zip Code 99999	
SUBTOTAL of Donations This Page (optional) ▶		25153.00
TOTAL (optional) ▶		

FEC Schedule 13-A (Form 13) 10/2004
FESAN013

Source: 58th Inaugural Committee Filing

The OIG questioned both the senior campaign analyst who worked on the Inaugural Committee report and the RAD branch chief about that \$25,000 donation, given that it provided a foreign address (i.e., in Singapore). The senior analyst stated the donation would not raise a red flag because of the text that indicated U.S. citizenship had been verified. According to the senior analyst, that statement would be sufficient to satisfy RAD's requirement because RAD relied on the conclusory statement of the filer. The branch chief similarly told the OIG that he would have accepted that text as sufficient. The branch chief further stated RAD generally takes at face value a committee's asserted verification of a donor's citizenship.

11 C.F.R. § 110.20 provides the appropriate process for a committee to verify U.S. citizenship. Under (a)7 of the regulation, a person shall be deemed to have conducted a reasonable inquiry if he or she seeks and obtains copies of current and valid U.S. passport papers for U.S. citizens. There is no indication that the Inaugural Committee followed that process in determining that the donor's U.S. citizenship was "verified" as asserted in its report. In addition, Form 13 provides neither instructions concerning the verification of donor citizenship nor reference to the applicable regulation.

In addition, this investigation did not identify any written policy concerning RAD's existing practice of relying on committees for verification. The practice of relying on committees to verify U.S. citizenship and without a clear policy to ensure proper verification poses a risk of foreign influences in elections and a national security risk. Accordingly, the OIG recommends that RAD memorialize its policy and that the Commission consider updating relevant forms and instructions to ensure filers are aware of verification requirements imposed by federal regulation.

We further recommend that RAD's policy include specific thresholds that will trigger the issuance of RFAs for donations with foreign addresses, notwithstanding purported "verification" by the relevant committees (political and inaugural). We recommend that those RFAs require the relevant committees to produce the bases for their citizenship verifications (e.g., copies of current and valid U.S. passport papers for U.S. citizens, as provided in 11 C.F.R. § 110.20) when donations associated with foreign addresses exceed a specific threshold. The policy should also provide for appropriate referrals when citizenship cannot be verified.

IV. RECOMMENDATIONS

Based on the foregoing findings, the OIG recommends the following actions for the Commission to consider in efforts to reinforce the impartiality (in fact and appearance) of senior managers, to enhance the oversight of inaugural committees, and to better address potential foreign donations to political and inaugural committees.

1. Evaluate the effectiveness of current agency policies on ethical behavior and update them, as may be appropriate, to ensure FEC personnel are proactive in addressing situations that could violate ethical standards or otherwise adversely impact the reputation of the agency.
2. Update Standard 21 to include the criteria for a serious violation and provide measurable standards concerning the review of inaugural committee reports.
3. Update the inaugural committee review process to include electronic review and potential quality control reviews.
4. RAD memorialize a policy concerning the identification of potential foreign donations and that the Commission consider updating relevant forms and instructions to ensure filers are aware of verification requirements imposed by federal regulation.
5. RAD's policy should include specific thresholds that trigger the issuance of RFAs for donations with foreign addresses, notwithstanding purported "verification" by the relevant committees (political and inaugural). We recommend that those RFAs should require relevant committees to produce the bases for their citizenship verifications (e.g., copies of current and valid U.S. passport papers for U.S. citizens, as provided in 11 C.F.R. § 110.20) when donations associated with foreign addresses exceed a specific threshold. The policy should also provide for appropriate referrals when citizenship cannot be verified.



Federal Election Commission
Office of the Inspector General

MEMORANDUM

TO: The Commission

FROM: Christopher Skinner
Inspector General

SUBJECT: Report of Investigation I21INV00063: HSPD-12 Personal Identity Verification (PIV) Card Incident

DATE: November 10, 2021

ENCLOSURE: (1) Report of Investigation I21INV00063

This memorandum transmits FEC OIG Report of Investigation I21INV00063 concerning an incident in early June 2021 that involved a potential information systems breach associated with agency-provided employee identification cards. We initiated this investigation on June 3, 2021, at the request of the Office of the Staff Director.

Our investigation found that the incident was limited to the FEC in which 17 new agency employees were affected and that there was no apparent disclosure of personally identifiable information. We also found that the FEC did not memorialized a change in the contract with the vendor, Wideopint, to offer PIV card services offsite. As a result, we developed five recommendations for the Commission to consider in efforts to prevent a similar incident from occurring and to reduce the risk of the agency being billed for services that were not memorialized in a contract and/or contract modification. The OIG will report and track the status of these recommendations similar to any audit or special review:

1. Review all current agency systems that require PIV card login and verify the fields that are used for authentication with third-party providers.
2. Verify with the PIV card issuer that all fields used for authentication in agency systems are unique after any upgrade to the software associated with issuing PIV cards.
3. Include the Chief Information Security Officer or other technically qualified IT

personnel in the procurement process to determine how the third-party providers grant FEC employees' access to their systems and determine how these systems may affect FEC operations.

4. Ensure there is a formal process to memorialize the actions taken by the FEC or its contractors when there is a change from the statement of work.
5. Evaluate the services Widepoint is currently providing for the PIV cards and issue a modification to the task order detailing the change in the worksite location.

Detailed findings can be found in the enclosed report, a summary of which will be posted on the FEC OIG webpage in accordance with *OIG Policy 500.1, Issuance and Publication of OIG Investigative Reports*.

Should you have any questions regarding this report and its conclusions, please contact Mr. Dennis Phillips at 202-694-1015 or via email at dphillips@fec.gov. Thank you.

cc: Alec Palmer, Staff Director/Chief Information Officer
Lisa Stevenson, Acting General Counsel

FEDERAL ELECTION COMMISSION
Office of the Inspector General



Report of Investigation
HSPD-12 Personal Identity Verification (PIV) Card Incident
Case Number: I21INV00063

November 10, 2021

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I. EXECUTIVE SUMMARY

The Federal Election Commission (FEC) Office of the Inspector General (OIG) initiated this investigation on June 3, 2021, at the request of the Office of the Staff Director concerning a security incident that occurred in early June 2021. That incident involved a potential information systems breach associated with agency-provided employee identification cards.

By way of background, on September 25, 2018, the FEC Procurement Office contracted with Widepoint Cybersecurity Solutions Corporation (Widepoint) to provide support services concerning the issuance of Personal Identity Verification (PIV) cards onsite at the FEC office located in Washington, D.C. Due to office closures related to the COVID-19 pandemic, the FEC held discussions with the vendor and ultimately decided in mid-May 2020 for Widepoint to issue the PIV cards offsite at the vendor's location in Fairfax, Virginia. The FEC directed current employees with expiring PIV cards and new employees who needed new cards to obtain them at Widepoint's office in Fairfax or to work with the Office of Chief Information Officer (OCIO) for a workaround to access the agency's network.

Subsequently, on June 1, 2021, an FEC OIG employee logged into the agency's performance management system (USA Performance) with a PIV card and discovered they were logged into the system under the credentials of another FEC employee rather than their own. The OIG employee notified the OCIO on the same day about the matter.

On June 2, 2021, the OCIO notified Widepoint about the incident. Widepoint confirmed that 17 new agency employees' PIV cards were affected by the same issue. On June 3, the FEC Staff Director, who also serves as the agency's Chief Information Officer, convened the Breach Notification and Response Team to respond to the incident and requested the OIG investigate. Widepoint deployed a software update on June 16th and informed the OCIO that it could send the 17 affected employees to Widepoint's office to receive new cards.

Timeline of Events Pertaining to the PIV Card Incident



Source: OIG

Accordingly, the OIG initiated this investigation and sought answers to the following questions:

What were the proximate and root causes of the PIV card incident?

What, if any, steps could the FEC and/or the vendor have taken to prevent this incident?

Did the PIV card incident result in a Privacy Act violation or other unauthorized disclosure of sensitive information?

In order to answer the foregoing questions, the OIG reviewed relevant guidance and policies, and interviewed staff from the Office of Chief Financial Officer, the OCIO, the Office of Management and Administration, the Office of the Staff Director, and representatives from Widepoint. The OIG investigation reached the following findings.

First, the OIG found that the FEC OCIO and Widepoint did not communicate to ensure the identifier for the Federal Agency Smartcard Number (FASC-N) was unique. The FEC only discovered that the issued FASC-N identifier was not unique for the agency's performance system after it was discovered an FEC employee was able to log into another FEC employee's performance portal. In accordance with the executed contract, Widepoint provides a support service to the FEC by conducting periodic updates to the vendor software, MyID, which is used for issuing PIV cards. According to Widepoint, during testing in the latter part of 2017, Widepoint became aware of a workflow change in MyID that was not going to be included in future releases by the vendor.

As a result, Widepoint had to modify the front end of the workflow to allow the registrar to add the applicant's information into MyID. In addition, the modified workflow did not assign a unique number to the FASC-N subset (referred to as the FASC-N Identifier); instead, it assigned a constant number because Widepoint was unaware the FEC was using that particular subset. The OCIO staff was not aware of the workflow change made by Widepoint. Furthermore, the OCIO staff did not provide any guidance to Widepoint on how the FASC-N Identifier was to be populated.

It was only after the June 1, 2021 incident that the FEC discovered the FASC-N Identifiers for the affected users were not unique. The FEC initially discovered it after contacting the Office of Personnel Management (OPM) about an agency user who was able to log into USA Performance under the credentials of another employee. OPM informed the FEC that the two users had the same personal identifier used for PIV authentication. The OIG interviewed an analyst with the Office of the Staff Director who told the OIG they contacted the OPM representative to obtain more information about the unique identifier. Widepoint took action to resolve the FASC-N Identifier issue by including another step to the front end of the PIV card workflow so the software would add a unique number to the subset of the FASC-N. Widepoint deployed the change on June 16, 2021, after successful testing.

The OIG inquired into whether this incident may have resulted in a Privacy Act violation or other unauthorized disclosure of sensitive information either to the FEC or other federal agencies. The preponderance of the evidence established that the incident was limited to a small number of employees within the FEC and that there was no apparent disclosure of personally identifiable information. Moreover, the OIG inquired with Widepoint whether it provides PIV card services to other federal agencies. According to its senior executive, from 2020 to the time of the PIV card incident, the FEC was the only federal agency to which Widepoint provided PIV card services.

The FEC was able to confirm with Widepoint that only 17 employees were affected by the incident. The OIG corroborated this by reviewing the list Widepoint provided to the FEC and identifying the 17 employees with the same FASC-N Identifier. Additionally, the OIG further narrowed the list down to 12 employees who had access to USA Performance because the other five employees are bargaining unit employees, who do not use USA Performance for performance management.

The OIG inquired with agency staff on whether other systems with personally identifiable information could have been affected by the incident. The OIG identified two other systems managed by OPM that are used by the FEC: USA Staffing and the electronic Official Personnel Folder (eOPF).

- USA Staffing – The analyst with the Office of the Staff Director told the OIG that OPM was able to verify with the analyst that the affected users were new FEC employees who only have access to their own onboarding information. Furthermore, agency managers do not have administrative access to USA Staffing, and the three agency staff who have administrative access were not affected by the incident.
- eOPF – The OIG concluded that the preponderance of the evidence established there was a low likelihood eOPF could have been affected by the incident. First, the incident was limited to a small number of employees within the FEC. Second, the OIG verified that eOPF employs a variety of security safeguards. For example, users can only access the system through the FEC's virtual private network. Also, users have to set up a user ID and password before they can register their PIV cards for logging into the system. Lastly, the OIG asked the Chief Information Security Officer (CISO) if they had any concerns that the same FASC-N Identifier could be used for authentication in eOPF. The CISO opined that it may not be possible because the system may have additional identifiers to associate with a person's record.

Given the lack of guidance the FEC OCIO provided to Widepoint regarding the coding of the FASC-N Identifier, and that the FEC became aware that the FASC-N Identifier used for USA Performance authentication was not unique only after contacting OPM, the OIG concluded the FEC did not have a process to verify with the PIV card issuer and third-party providers (e.g., OPM) that identifiers use for authentication are unique.

Accordingly, the OIG recommends the following actions for the Commission to consider:

1. Review all current agency systems that require PIV card login and verify the fields that are used for authentication with third-party providers.
2. Verify with the PIV card issuer that all fields used for authentication in agency systems are unique after any upgrade to the software associated with issuing PIV cards.
3. Include the Chief Information Security Officer or other technically qualified IT personnel in the procurement process to determine how the third-party providers grant FEC employees' access to their systems and determine how these systems may affect FEC operations.

Secondly, the OIG found that the FEC did not memorialize the change in the Widepoint task order (also referred to herein as the contract) for the vendor to offer PIV card services offsite. The Federal Acquisition Regulations (FAR) sets forth the rules regarding government procurement. FAR 43.000 prescribes policies and procedures for preparing and processing contract modifications. Specifically, 43.104 specifies when a notification is required to a change in the contract so the government can evaluate the changes. The FAR also requires, under 43.301, that any contract modification or changes shall be documented in Standard Form 30.

The original task order provided that FEC personnel would issue PIV cards onsite at the FEC office. Subsequently, the FEC discussed alternative options with Widepoint once the FEC issued the evacuation order and required mandatory telework due to the COVID-19 pandemic. As a result, Widepoint offered that it could directly issue the PIV cards to employees at its location in Fairfax, Virginia. Additionally, FEC employees who did not want to travel to Widepoint could alternatively work with the FEC's Information Technology staff as a means to establish another method that did not require a PIV card to access the FEC's network. The FEC determined sometime in mid-May 2020 to implement the foregoing options; however, the decision was not formally memorialized in an amended task order or other record.

Additionally, based on the testimony of procurement personnel, the FEC did not memorialize a modification because the procurement office believed the change in service did not require a contract modification. As such, the FEC did not draft a modification for the service because agency contracting personnel believed the service was within the scope of the contract and Widepoint was offering it at no additional cost.

The OIG believes following the requirements in FAR 43.104 may have caused the FEC to identify additional impacts and risks of allowing Widepoint to offer this service offsite. Additionally, the absence of a written modification (Standard Form 30) could present a potential risk to the agency if the contractor determined in the future to bill the agency for additional services not provided in the contract (e.g., hours expended to issue PIV cards). Without memorializing the changes agreed upon by the agency and the contractor, the FEC faces potential liability for additional and uncertain charges.

Accordingly, the OIG further recommends the Commission:

4. Ensure there is a formal process to memorialize the actions taken by the FEC or its contractors when there is a change from the statement of work.
5. Evaluate the services Widepoint is currently providing for the PIV cards and issue a modification to the task order detailing the change in the worksite location.

II. BACKGROUND AND ALLEGATIONS

On June 1, 2021, a Federal Election Commission (FEC) Office of Inspector General (OIG) employee logged into the agency's performance system (USA Performance) with a Homeland Security Presidential Directive-12 (HSPD) Personal Identity Verification (PIV) card and discovered they were logged into the system under the credentials of another employee rather than their own.¹ The employee contacted the Office of Chief Information Officer (OCIO) on the same day to notified them about the issue. On June 2, 2021, the OCIO notified the vendor who issued the PIV cards, Widepoint Cybersecurity Solutions Corporation (Widepoint), about the incident. The vendor confirmed that 17 new agency employees' PIV cards were affected by the same issue.

On June 3, 2021, the FEC Staff Director, who also serves as the agency's Chief Information Officer, convened the Breach Notification and Response Team to respond to the incident and requested the OIG investigate the incident.² Widepoint deployed an update to the software it uses for issuing PIV cards on June 16, 2021, and informed the FEC it could send the 17 affected employees to Widepoint's office to receive new cards.

The FEC Procurement Office contracts with Widepoint to provide support services for issuing the PIV cards onsite at the FEC office in Washington, DC. The Procurement Office awarded the most current task order on September

Summary of FEC Contract with Widepoint for PIV Card Services

The FEC issues the PIV smart card to employees onsite using trained FEC personnel. The FEC contracts with Widepoint to provide software certification, training, and annual maintenance support services for the agency's HSPD-12 Badge Program. The current period of performance was from September 25, 2018 through September 24, 2019, with four option years. The contract is currently in option year two.

The contract requires Widepoint to provide complete turn-key services and products for PIV card identification, certification, enrollment, registration, activation, finalization, and issuance, to FEC employees and contractors. The support Widepoint offers includes upgrading the software and providing equipment such as printers, biometric and card readers, and cameras.

¹ The FEC uses the USA Performance system, operated by the U.S Office of Personnel Management, for its performance rating cycle. USA Performance assists federal agencies in implementing their Senior Executive Service (SES) and Non-SES performance management programs and systems. USA Performance enables agencies to automate their performance appraisal process throughout the entire performance rating cycle. The agency employee who accessed the profile of another employee did not contain Personally Identifiable Information.

² According to the FEC's *Policy and Plan for Responding to Breaches of Personally Identifiable Information*, the Breach Team consists of the Staff Director or Deputy Staff Director, Deputy Chief Information Officer, Inspector General (IG) or Deputy IG, General Counsel (GC) or Deputy GC, Deputy General Counsel – Administration, and the Information Systems Security Officer.

25, 2018, with four option years. Due to office closures related to the COVID-19 pandemic, the FEC held discussions with the vendor and ultimately decided in mid-May 2020 for Widepoint to issue the PIV cards offsite at the vendor's location in Fairfax, Virginia.³ The FEC directed current employees with expiring PIV cards and new employees who needed new cards to obtain them at Widepoint's office in Fairfax or to work with the OCIO for a workaround to access the agency's network.

Timeline of Events Pertaining to the PIV Card Incident



Source: OIG

The FEC OIG initiated an investigation on June 3, 2021, at the request of the Office of the Staff Director and sought answers to the following questions:

What were the proximate and root causes of the PIV card incident?

What, if any, steps could the FEC and/or the vendor have taken to prevent this incident?

Did the PIV card incident result in a Privacy Act violation or other unauthorized disclosure of sensitive information?

³ The FEC is under a fourth mandatory evacuation order that expires on November 11, 2021. During the evacuation order, agency employees are operating at maximum telework.

III. RELEVANT STANDARDS

The OIG identified two standards from the National Institute of Standards and Technology (NIST) and one from the Office of Management and Budget (OMB) regarding setting up agency PIV cards in accordance with HSPD-12.⁴ NIST developed two publications to assist federal agencies in this effort. Federal Information Processing Standard Publication 201 (FIPS 201), *Personal Identity Verification of Federal Employees and Contractors*, was developed to establish standards for identity credentials. Furthermore, NIST Special Publication 800-73-4 (SP 800-73-4) contains technical specifications to interface with the PIV card to retrieve and use the identity credentials. FIPS 201 specifies the identifiers that are to be included in the PIV card.

4.2.1 Cardholder Unique Identifier (CHUID)

The PIV Card shall include the CHUID as defined in [SP 800-73]. The CHUID includes the Federal Agency Smart Credential Number (FASC-N) and the Global Unique Identification Number (GUID), which uniquely identify each card as described in [SP 800-73]. The value of the GUID data element shall be a 16-byte binary representation of a valid Universally Unique Identifier (UUID) [RFC4122]. The CHUID shall also include an expiration date data element in machine-readable format that specifies when the card expires. The expiration date format and encoding rules are as specified in [SP 800-73].

OMB provides further guidance to executive departments and agencies on identity, credential, and access management (ICAM) in Memorandum 19-17 (M-19-17), which was issued on May 21, 2019. M-19-17 sets out a uniform policy for the Federal Government to ensure secure and efficient operation by enhancing how it conducts identity proofing, establishes enterprise digital identities, and adopts sound processes for authentication and access control. Section IV sets the foundation for agencies to adopt the ICAM deployment by harmonizing their enterprise-wide approach to governance, architecture, and acquisition. Section IV.2 requires agencies to align their technological enterprise with the Federal Identity, Credential, and Access Management (FICAM) Architecture.

2. Each agency shall define and maintain a single comprehensive ICAM policy, process, and technology solution roadmap, consistent with agency authorities and operational mission needs. These items should encompass the agency's entire enterprise, align with the Government-wide Federal Identity, Credential, and Access Management (FICAM) Architecture and CDM requirements, incorporate applicable Federal policies, standards, playbooks, and guidelines, and include roles and responsibilities for all users.¹⁶

⁴ Homeland Security Presidential Directive-12 (HSPD-12), signed by President George W. Bush on August 27, 2004, sets the policy for a common identification standard to be adopted by federal agencies governing the interoperable use of identity credentials to allow physical and logical access to federally controlled facilities and information systems. <https://www.dhs.gov/homeland-security-presidential-directive-12>

The OIG interviewed the FEC's Chief Information Security Officer (CISO) about the agency's awareness of the standards governing PIV card identifiers. The CISO testified they were not aware of the specific NIST standard governing PIV card identifiers and they were also not familiar with the FICAM.

The OIG further asked the FEC's Office of General Counsel (OGC) to opine on whether the guidance provided by NIST and OMB are applicable to the agency. OGC stated that the FEC's status in the Executive branch does not mean that all Executive branch guidance applies to the agency. Specifically, OGC opined that any directives which implement NIST Special Publication do not apply to the FEC because "NIST's organic statute employs the Paperwork Reduction Act's definition of "agency," which specifically excludes the FEC from its definition."⁵ However, OGC further opined that FIPS 201 applies to the FEC for the following reasons:

...while its implementing guidance, FIPS 201-2, is issued by NIST it does not rely on NIST's definition of "agency." Rather, it notes that the guidance is "applicable to identification issued by Federal departments and agencies." Because the FEC falls under the broader definition of "agency" in HSPD-12 and FIPS 201-2, the directives implemented under these directives apply to the Agency.⁶

Additionally, the Federal Acquisition Regulations (FAR) sets forth the rules regarding government procurement. FAR 43.000 prescribes policies and procedures for preparing and processing contract modifications. Specifically, 43.104 specifies when a notification is needed to a change in the contract so the government can evaluate the changes. The FAR also requires, under 43.301, that any contract modification or changes shall be documented in Standard Form 30.

⁵ Section 3502 of the Paperwork Reduction Act of 1980, Pub. L. No. 96-511, 94 Stat. 2812, 44 U.S.C. §§ 3501–3521 (PRA), specifies that "the term 'agency' means any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the Executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency, but does not include . . . [the] Federal Election Commission."

⁶ Memorandum from Acting General Counsel, Lisa J. Stevenson to Inspector General, Christopher Skinner. (Dated September 8, 2021). *Applicability of PIV Card Related Guidance to the Federal Election Commission*.

IV. FINDINGS

In the course of this investigation, the OIG reviewed relevant guidance and policies, and interviewed staff from the Office of the Chief Financial Officer, OCIO, the Office of Management and Administration, the Office of the Staff Director, and representatives from Widepoint. The investigation reached the following findings:

1. The FEC OCIO and the PIV card issuer (Widepoint) did not communicate to ensure the identifier for FASC-N was unique and the FEC only discovered the identifier was not unique for access to USA Performance after contacting OPM. This resulted in identical identifiers for 17 agency employees.

Widepoint provides to the FEC, among other things, periodic updates to the vendor software, MyID, which is used for issuing PIV cards. According to a Widepoint senior executive, in the past, the software updates were tested and deployed from the Widepoint office in Fairfax, Virginia. Once the software was tested successfully, Widepoint installed the updates at the FEC office and trained agency employees with using the new version of the software.

According to a Widepoint technical representative, during testing of a new version of myID in the latter part of 2017, Widepoint became aware of a workflow modification in MyID that was not going to be included in future releases by the vendor. The representative testified that the workflow modification affected a function used to collect an applicant's basic information during registration. As a result, Widepoint had to modify the front end of the workflow to allow the registrar to add the applicant's information into MyID.⁷

The representative further testified the modification to MyID involved the creation of a web form through an application programming interface that collected the applicant information. In addition, the modified workflow did not assign a unique number to the subset of the Federal Agency Smartcard Number (referred to as the FASC-N Identifier); instead, it assigned a constant number because Widepoint was unaware the FEC was using that particular subset. When the OIG asked the Deputy CIO if they were aware of the workflow change made by Widepoint, the Deputy CIO stated they had no knowledge of it. The Deputy CIO further stated the FEC did not provide any guidance to Widepoint on how that subset was to be populated.

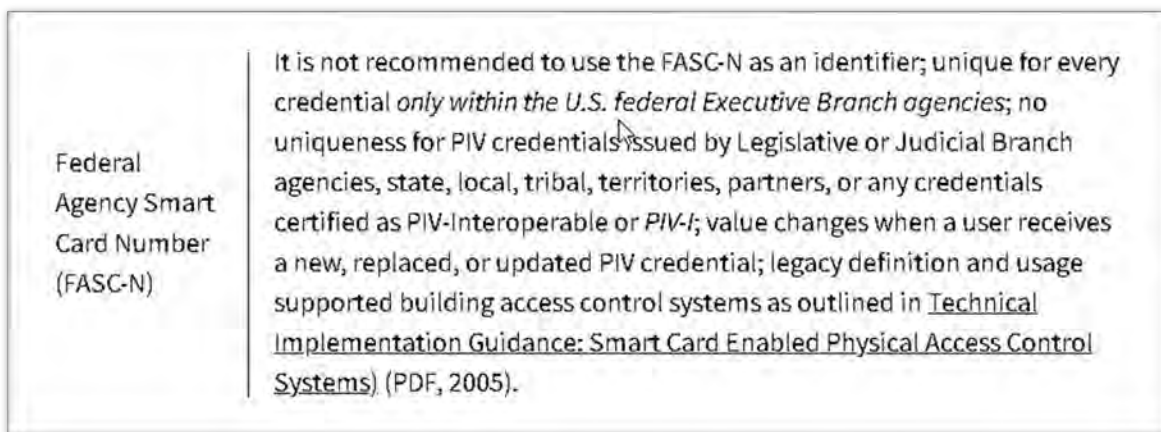
Widepoint installed the modified workflow software (referred to as version 10) at the FEC location in early February 2020. The OIG found that, as a result of the software upgrade, the FASC-N Identifier did not contain a unique number for the 17 affected agency employees. Specifically, the MyID software generated the number "0000000002" in the FASC-N Identifier for all 17 users. Furthermore, that identifier was linked to a USA Performance operated by a

⁷ The front end of the workflow involves collecting an applicant's basic information (name, email, employment status, and background investigation status) and adding it to MyID.

third-party provider that used the identifier for authentication. As a result, an agency employee was logged into USA Performance under the credentials of another employee.

A Widepoint senior executive testified that a Widepoint representative had to be physically present at the FEC office in order to perform the client software upgrade on the agency laptops used for issuing PIV cards. The technical representative confirmed the software assigned a constant number to the FASC-N Identifier rather than a unique number after the upgrade was installed; prior to the upgrade, the previous version automatically generated an incremental number to the subset. The same representative testified that Widepoint was never aware that the previous version assigned an incremental number because the FEC never communicated to Widepoint that the agency was using that particular FASC-N subset as an identifier. The senior executive opined that it was by luck the previous version assigned an incremental number to the FASC-N Identifier, which made it unique.

The OIG interviewed the Deputy CIO of Operations regarding the use of the FASC-N as an identifier. According to the Deputy CIO, the FASC-N is an available identifier that could be used for PIV card authentication and must be unique within the Executive branch; however, the FICAM does not recommend using it. The Deputy CIO's rationale was based on the FICAM Playbook for Personal Identity Verification.⁸ The FICAM PIV Guides assist agencies in implementing common PIV configurations by outlining identifiers available in the PIV Authentication certificate and design considerations for implementations. The following is pertinent guidance from the playbook on the FASC-N Identifier:



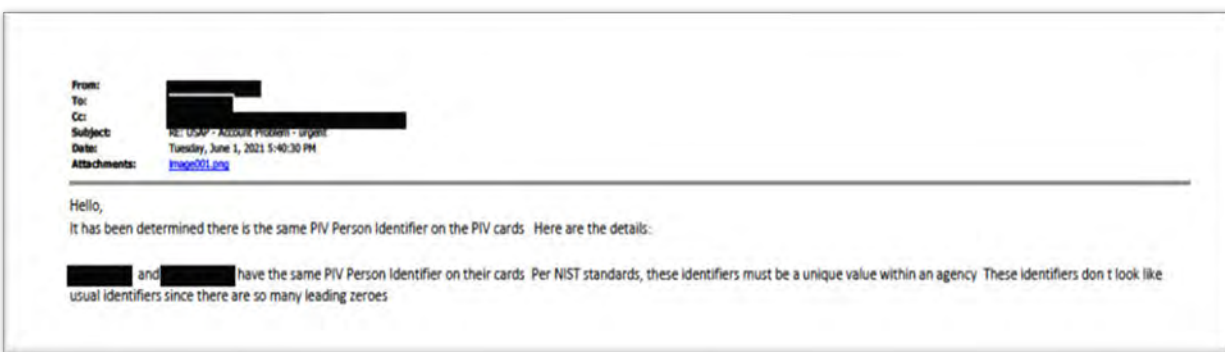
Source: FICAM Playbook

The Deputy CIO further stated it is up to the discretion of third-party providers to use the FASC-N or another identifier for authentication; therefore, the OCIO generally does not validate the identifiers use by third-party providers. However, in this case, the OCIO was aware the FASC-N Identifier had continuously been populated with a number. It was not until the June 1, 2021 incident that the OCIO became aware the identifier was not a unique number. The Deputy

⁸ The FICAM Playbooks are a series of guides developed by the U.S General Services Administration and the Federal CIO Council to help federal agencies implement best practices in securing and protecting federal information systems. <https://www.idmanagement.gov/>

CIO further testified that the OCIO did not provide Widepoint with any guidance on how the identifier was to be populated. Additionally, the Deputy CIO opined if the FASC-N Identifier were to be unique, then it was the responsibility of the issuer to ensure the identifier was unique.

It was only after the June 2021 incident that the FEC discovered the FASC-N Identifiers for the affected users were not unique. The FEC initially discovered it after contacting OPM about an agency user who logged into USA Performance under the credentials of another employee. OPM informed the FEC that the two users had the same personal identifier used for PIV authentication. The OIG interviewed an analyst with the Office of the Staff Director who stated to the OIG that they contacted the OPM representative to obtain additional information about the unique identifier. The OIG corroborated this statement by reviewing an email from the OPM representative to the Office of the Staff Director on June 1, 2021, informing them that OPM had determined it was the same personal identifier on the PIV cards for the two users. In the email, OPM provided the numerical value of the identifiers and they were identical.



Source: OIG

The OIG inquired into whether this incident may have resulted in a Privacy Act violation or other unauthorized disclosure of sensitive information either to the FEC or other federal agencies.⁹ The preponderance of the evidence established that the incident was limited to a

⁹ The Privacy Act of 1974 is a federal law that governs the collection and use of records maintain in a system of records. A system of records is any grouping of information about an individual under the control of a federal

small number of employees within the FEC and that there was no apparent disclosure of personally identifiable information. Moreover, the OIG inquired with Widepoint whether it provides PIV card services to other federal agencies. According to its senior executive, from 2020 to the time of the PIV card incident, the FEC was the only federal agency to which Widepoint provided PIV card services.

The FEC was able to confirm with Widepoint that only 17 employees were affected by the incident. The Deputy CIO testified they asked Widepoint for a list of all FEC users with PIV cards that have unique identifiers, and the Deputy CIO was able to verify there were 17 employees with the number “2” in the FASC-N Identifier. The OIG corroborated this by reviewing the list and identifying the 17 employees with the same number. The OIG was able to further narrow the list down to 12 employees who had access to USA Performance because the other five employees were bargaining unit employees, which do not use USA Performance for performance management.

The OIG inquired with agency staff on whether other systems with personally identifiable information could have been affected by the incident. The OIG identified two other systems managed by OPM that are used by the FEC: USA Staffing and the electronic Official Personnel Folder (eOPF).

- USA Staffing – The analyst with the Office of the Staff Director told the OIG that OPM was able to verify with the analyst that the affected users were new FEC employees who only have access to their own onboarding information. Furthermore, agency managers do not have administrative access to USA Staffing, and the three agency staff who have administrative access were not affected by the incident.
- eOPF – The OIG concluded that the preponderance of the evidence established there was a low likelihood eOPF could have been affected by the incident. First, the incident was limited to a small number of employees within the FEC. Second, the OIG verified eOPF employs a variety of security safeguards. For example, users can only access the system through the FEC’s virtual private network. Also, users have to set up a user ID and password before they can register their PIV card for logging into the system. Lastly, the OIG asked the CISO if they had any concerns that the same FASC-N Identifier could be used for authentication in eOPF. The CISO opined that it may not be possible because the system may have additional identifiers to associate with a person’s record.

The OIG asked Widepoint how the issue was resolved and the technical representative told the OIG that Widepoint made a system change request so that the software would add an incrementing number to the identifier during the front end of MyID registration. Widepoint deployed the change, after successful testing, as version 11 on June 16, 2021. The representative stated Widepoint took this action because the FEC wanted to continue to use the FASC-N

agency from which information is retrievable by personal identifiers, such as name, social security number, or other identifying number or symbol. Office of Special Counsel, <https://osc.gov/Pages/Privacy-Act.aspx>

Identifier for authentication. The OIG corroborated the representative's statement by reviewing the change control document that Widepoint provided to the OIG.

The lack of guidance the FEC provided to Widepoint regarding the coding of the FASC-N Identifier, and that the FEC only became aware the FASC-N Identifier used for USA Performance authentication was not unique after contacting OPM, the OIG concluded the FEC did not have a process to verify with the PIV card issuer and third-party vendors that identifiers use for authentication are unique. Accordingly, the OIG recommends the following actions for the Commission to consider:

1. Review all current agency systems that require PIV card login and verify the fields that are used for authentication with third-party providers.
2. Verify with the PIV card issuer that all fields used for authentication in agency systems are unique after any upgrade to the software associated with issuing PIV cards.
3. Include the Chief Information Security Officer or other technically qualified IT personnel in the procurement process to determine how the third-party providers grant FEC employees' access to their systems and determine how these systems may affect FEC operations.

The OIG also found the following when reviewing the Widepoint contract.

2. The FEC did not memorialize the change in the Widepoint contract for the vendor to offer PIV card services offsite.

On March 12, 2020, OPM issued a memorandum to federal agencies encouraging agencies to maximize telework due to the COVID-19 pandemic.¹⁰ The FEC operated under an evacuation order at that time and as a result, the agency had to evaluate functions that were necessary to agency operations. The agency created a COVID-19 working group to discuss the functions necessary to keep the agency operating. The working group discussed, among other things, the topic of renewing employee PIV cards during a pandemic.

The OIG interviewed the Assistant Staff Director (ASD) for Management and Administration to obtain information on the discussions related to the PIV cards. The ASD testified that they requested the Contracting Officer Representative (COR) for the Widepoint contract to contact Widepoint to seek available options on issuing PIV cards while the FEC was operating under an evacuation order. As a result, Widepoint offered to directly issue the PIV cards to FEC employees at its location in Fairfax, Virginia. Additionally, agency employees who did not want to travel to Widepoint could alternatively work with the FEC's Information Technology staff as a means to establish another method that did not require a PIV card to access

¹⁰ Office of Management and Budget M-20-13. (March 12, 2020). *Updated Guidance on Telework Flexibilities in Response to Coronavirus*. <https://www.whitehouse.gov/wp-content/uploads/2020/03/M-20-13.pdf>

the FEC's network. The ASD further testified the agency determined in mid-May 2020 to implement both actions. The ASD also testified the decision was not formally memorialized in any policy or other record.

Additionally, the FEC did not memorialize a modification to the Widepoint contract because the procurement office believed the change in service did not require a contract modification. As such, the FEC did not draft a modification for the service because agency contracting personnel believed the service was within the scope of the contract and Widepoint was offering it at no additional cost. The OIG reviewed the Widepoint contract to determine if it allowed for any deviations from the statement of work and identified the pertinent contract clause below:

d. Alternate work location - Upon approval by the COR, the contractor may perform part of the review at an alternate contractor location. Any request for this action must be approved by the COR and notice provided to the Contracting Officer and noted in the agreement prior to award or via modification if changed after award.

Source: Widepoint contract

The OIG interviewed the agency's Procurement Director to obtain their expert opinion on the contract statement of work. The OIG asked the Procurement Director if changing the work location for issuing staff PIV cards from FEC to Widepoint would require a modification to the contract. The Procurement Director responded that a modification would have to be drafted indicating an alternate location if no such language existed in the contract.

The OIG showed the Procurement Director the clause above referencing an alternate work location and asked for their interpretation. The Procurement Director responded the language in the clause was acceptable for Widepoint to provide services offsite. The Procurement Director further stated that approval by the COR could be verbal as long as it was stated in the contract that there was an alternate location. That interpretation appears to be at odds with the plain language of the clause, which on its face requires that even if the COR approves an alternate location after the award, a modification would be required.

The FAR sets forth the rules regarding government procurement functions.¹¹ FAR 43.000 prescribes policies and procedures for preparing and processing contract modifications. Specifically, 43.104 specifies that a contractor should notify the government in writing when he/she considers that the Government has effected or may effect a change in the contract that has not been identified in writing and signed by the contracting officer:

¹¹ The OIG consulted with the General Services Administration (GSA) for their opinion on the FAR requirement for contract modifications. Once the OIG receives the opinion, we will issue a supplement to this report if necessary.

43.104 Notification of contract changes.

(a) When a contractor considers that the Government has effected or may effect a change in the contract that has not been identified as such in writing and signed by the contracting officer, it is necessary that the contractor notify the Government in writing as soon as possible. This will permit the Government to evaluate the alleged change and-

- (1) Confirm that it is a change, direct the mode of further performance, and plan for its funding;
- (2) Countermand the alleged change; or
- (3) Notify the contractor that no change is considered to have occurred.

Source: FAR

Moreover, FAR 43.301 requires that any contract modifications or changes shall be documented using Standard Form 30:

43.301 Use of forms.

(a) (1) The Standard Form 30 (SF 30), Amendment of Solicitation/Modification of Contract, shall (except for the options stated in 43.301(a)(2) or actions processed under part 15) be used for-

- (i) Any amendment to a solicitation;
- (ii) Change orders issued under the Changes clause of the contract;
- (iii) Any other unilateral contract modification issued under a contract clause authorizing such modification without the consent of the contractor;
- (iv) Administrative changes such as the correction of typographical mistakes, changes in the paying office, and changes in accounting and appropriation data;
- (v) Supplemental agreements (see 43.103); and
- (vi) Removal, reinstatement, or addition of funds to a contract.

Source: FAR

In retrospect, had the FEC memorialized a modification to the task order, it may have caused the FEC to identify additional impacts and risks of allowing Widepoint to offer this service offsite. Additionally, the absence of a written modification creates potential risk to the agency—for example, the contractor may determine to bill the agency for services that are not memorialized in the contract at a future date. Here, failure to memorialize changes to a task order could result in the vendor billing the FEC for additional costs incurred as a result of changes in both personnel and worksite (i.e., Widepoint personnel are now performing work at Widepoint's offices; whereas the task order provided that FEC personnel would do so at the FEC's offices).

The OIG determined that the change in worksite location should have triggered a contract modification based on the current contract clause and aforementioned FAR requirements. Accordingly, the OIG recommends that the Commission:

4. Ensure there is a formal process to memorialize the actions taken by the FEC or its contractors when there is a change from the statement of work.
5. Evaluate the services Widepoint is currently providing for the PIV cards and issue a modification to the task order detailing the change in the worksite location.

V. RECOMMENDATIONS

Based on the foregoing findings, the OIG recommends the following actions for the Commission to consider in efforts to prevent a similar incident from occurring and to reduce the risk of being billed for services that were not memorialized in a contract and/or contract modification. The OIG will report and track the status of these recommendations similar to any audit or special review.

1. Review all current agency systems that require PIV card login and verify the fields that are used for authentication with third-party providers.
2. Verify with the PIV card issuer that all fields used for authentication in agency systems are unique after any upgrade to the software associated with issuing PIV cards.
3. Include the Chief Information Security Officer or other technically qualified IT personnel in the procurement process to determine how the third-party providers grant FEC employees' access to their systems and determine how these systems may affect FEC operations.
4. Ensure there is a formal process to memorialize the actions taken by the FEC or its contractors when there is a change from the statement of work.
5. Evaluate the services Widepoint is currently providing for the PIV cards and issue a modification to the task order detailing the change in the worksite location.

**FEDERAL ELECTION COMMISSION
OFFICE OF INSPECTOR GENERAL**



Report of Investigation

Gift Card Misuse

Case Number INV-16-04

February 20, 2018

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I. Executive Summary

The Federal Election Commission (FEC) Office of Inspector General (OIG) received an informal complaint in February 2016 from a FEC employee regarding possible misuse of government funds and violations of Internal Revenue Service (IRS) guidelines. The complainant alleged FEC was misusing agency funds with the purchase and distribution of \$50 Visa gift cards. It was alleged that recipients of the Visa gift cards may not be reporting the awarded Visa gift cards as income, as required by IRS guidelines, due to the lack of information from FEC management. In addition, the complainant alleged the purchasing of Visa gift cards may be a violation of U.S. Government Accountability Office (GAO) guidelines.

On March 17, 2016, the OIG interviewed the Office of Chief Financial Officer's (OCFO) former Acting CFO, Judy Berning (Berning), to determine the FEC's policies and procedures regarding the purchase and distribution of Visa gift cards allotted for each fiscal year (FY). During Berning's interview, she acknowledged FEC obligates \$25,000 each FY to purchase 500 Citibank Visa gift cards in increments of \$50 for on-the-spot awards, which are set to expire at the end of the FY on September 30th. Berning advised that the Visa gift cards are not purchased the same FY they are distributed. Instead, the \$25,000 to purchase the Visa gift cards is taken out of the previous FY funds. Once the Visa gift cards are purchased and received, they are distributed to division leaders for the Office of the Staff Director (OSD) and Office of Chief Information Officer (OCIO),¹ Office of General Counsel (OGC), OCFO, and OIG the beginning of the FY. Other than a required signature from a representative from each division, no other action is required by the division leaders to receive the Visa gift cards.

The Visa gift card amount given to each division was established through a formula that was created in 2008 and is based on the percentage of staff in each division. During the interview Berning stated, once a year the Office of Human Resources (OHR) sends a tax implication letter that states Visa gift cards are taxable income and employees are responsible for reporting them on their taxes. Berning further acknowledged that the OCFO provides no instructions regarding the disbursement of Visa gift cards and conducts no oversight once the Visa gift cards are given to the division leaders. Berning also stated that she does not know if all the Visa gift cards are distributed by the end of the FY. A review of cost associated with the purchase of Visa gift cards revealed that during FY 2011 and 2012, the OCFO spent \$19,276.40 for 350 Visa gift cards in increments of \$50 (\$17,500 total), a \$4.95 processing fee per card (\$1,732.50 total), and a \$43.90 shipping fee. In both FY 2014 and 2015, the OCFO spent \$26,996.95 for 500 Visa gift cards in increments of \$50 (\$25,000 total), a \$3.95 processing fee per card (\$1,975 total), and a \$21.95 shipping fee. The total amount drawn from the appropriation for FEC staff salaries and bonuses

¹ Alec Palmer is the Staff Director and the Chief Information Officer and manages all offices under the OSD and OCIO.

is calculated at \$92,546.70.

The OIG initially reviewed data regarding the purchase and distribution of Visa gift cards distributed in FY 2016 that were purchased with FY 2015 funds. The data revealed there was no FEC agency-wide policy for the Employee Awards and Recognition Program specifying how the cards should be distributed and overseen. The data showed that merchant gift cards purchased with Visa gift cards from previous years were being held and distributed by FEC managers. Based off this information, the OIG opened an investigation and requested additional gift card spending information for FYs 2012, 2014, and 2015, and Visa gift card documentation from each office.² The review of all records revealed discrepancies in how each office recorded and distributed Visa gift cards. The OIG found minimal internal controls for oversight of the Visa gift cards, unclear directions on the conversion of Visa gift cards to merchant cards, minimal tax implication guidance, and lack of FEC-wide policies.

Following these discoveries, the OIG requested interviews with managers in charge of safeguarding and issuing Visa gift cards. At the conclusion of the interviews, the OIG recognized each division differed in their nomination practice and Visa gift card delivery, and there was confusion on which office is responsible for notifying FEC staff of tax implications and how often. The OIG investigation also revealed Visa gift cards were sometimes converted into merchant gift cards. FEC staff received incorrect tax guidance from the OCFO and Staff Director's offices regarding the conversion of merchant gift cards and tax responsibility. According to an email obtained by the OIG, Berning and then Staff Director's Assistant, Dayna Brown (Brown), advised managers that merchant gift cards were not taxable and Visa gift cards could be converted to merchant gift cards. However, the Internal Revenue Code, Section 132, states that a gift certificate that is redeemable for general merchandise or has a cash equivalent value is not a de minimis benefit and is taxable.

When the OIG discussed the conversion of Visa gift cards with current Acting CFO Gilbert Ford³ (Ford) he stated the conversion of Visa gift cards is not allowed and he was not aware of any Visa gift card conversions. Ford explained Visa gift cards should not be converted and the FEC is not reimbursed for expired Visa gift cards, which could be considered a waste of agency funds. The OIG investigation revealed FEC management divisions received no communications from the OCFO regarding conversion of the Visa gift cards to merchant gift cards or compliance with applicable law. After the OIG interview, Ford sent a memo to staff explaining that Visa gift cards should not be converted.

² Due to Government sequestration in 2013, there were not enough FY 2013 funds to purchase cards to distribute in FY 2014.

³ Commissioner Chair Matthew Petersen released a memo September 14, 2016, selecting Gilbert Ford as Acting CFO.

On August 30, 2016, the OIG interviewed the Staff Director/Chief Information Officer, Alec Palmer (Palmer), and his two assistants, Brown and Marilyn Jones. At the meeting, Palmer provided the OIG a draft copy of the new Standard Operating Procedures (SOP) that outlined measures for Visa gift card circulation and accounting of Visa gift card distribution for OSD components. The affected offices include: the Office of Management and Administration, Office of Compliance, Office of Communication, and the OCIO. The OIG was advised on October 6, 2016, that the SOP was finalized. At the time of drafting this report, the OGC and OCFO had not required their staff to follow the guidelines set forth in the SOP nor had they created their own guidelines, despite Ford having issued a memorandum on October 6, 2016, that suggests all divisions should develop and adhere to similar procedures outlined in the OSD SOP.

On February 28, 2017, the OIG requested an opinion from the GAO regarding FEC's practice of purchasing Visa gift cards as on-the-spot awards with appropriated money from the previous year and the conversion of Visa gift cards to merchant gift cards. At the time of this report, GAO had not issued an opinion, but on September 6, 2017, Acting General Counsel, Lisa Stevenson (Stevenson), sent a letter to the GAO acknowledging that the FEC's current practice of using one year funds from the prior year to distribute in the following FY did not adhere to the bona fide needs rule. Stevenson also stated that Acting CFO Ford is taking steps to address the issue of the FEC's failure to award Visa gift cards prior to their September 30th expiration date and has advised staff that Visa gift cards cannot be exchanged or re-gifted. At the time of the issuance of this report, the FEC did not have plans to purchase cards with FY 2018 funds to distribute in FY 2018. The OIG was advised by Deputy General Counsel, Gregory Baker, and Ford that FY 2017 funds were not used to purchase gift cards for distribution in FY 2018.

The OIG found no criminal violations regarding the distribution and use of Visa gift cards. However, the OIG found the following issues during its review of the purchasing, distribution, and oversight of the Visa gift cards:

- The FEC practice of purchasing Visa gift cards in one FY to distribute in the following FY violated Federal appropriation law, 31 U.S.C. § 1502(a), due to the FEC's failure to establish a bona fide need in the fiscal year of purchase;
- The FEC practice of converting Visa gift cards to merchant gift cards to award them in the future violated Federal appropriation law, 31 U.S.C § 1552, and IRS Fringe Benefits Guidelines;
- The OCFO conducted no oversight of Visa gift card distribution;
- The OCFO and HR provided incorrect guidance regarding the reporting of merchant gift cards as income per IRS Guidelines;
- The newly enacted SOP does not address all of the Visa gift card distribution issues and is not an agency-wide document.

II. Background

In February 2016, the Federal Election Commission (FEC) Office of Inspector General (OIG) received an informal inquiry regarding the potential misuse of government funds to purchase merchant gift cards. The complainant also questioned the possible instance of an Internal Revenue Services (IRS) tax code violation due to the lack of FEC employees reporting the Visa gift cards as additional income within their employee wages.

Due to the nature of the complaint, the concentration of this report is on-the-spot awards, a subcategory of informal awards. The FEC Employee Award Recognition Program specifies that on-the-spot awards are categorized as informal awards which can range from a cash value of \$100 to \$250 maximum per occurrence. In previous years, on-the-spot awards were distributed in the form of FEC memorabilia; i.e. mugs, blankets, shirts, caps, umbrellas, etc. However, this practice of memorabilia awards ceased in fiscal year (FY) 2012. FEC on-the-spot awards primarily took on the form of Visa gift cards.

After requesting and reviewing each division's FY 2015 Visa gift card records, the OIG requested additional FY 2012 and FY 2013 records. Upon review, it was decided an OIG investigation would be opened. Interviews were conducted to determine if IRS requirements were followed and FEC policies were followed. Specifically:

1. If the FEC practice of purchasing Visa gift cards with fiscal funds from the previous year of distribution was allowable;
2. If the FEC provided correct and sufficient instructions regarding reporting Visa gift card awards as income per IRS guidelines;
3. If IRS requirements were followed regarding the conversion of Visa gift cards to merchant gift cards;
4. If FEC funds were wasted due to the lack of FEC-wide policies regarding distribution and oversight of Visa gift cards;
5. If Federal appropriation law, 31 U.S. Code § 1552(a), was violated due to the conversion of Visa gift cards to merchant gift cards that were used in the following FY; and
6. If the lack of oversight of Visa gift cards resulted in the theft of cards.

A. Relevant Statutes, Regulations and Policies

Appropriation Law, 31 U.S. Code § 1502(a) and 552(a)

Internal Revenue Regulations, 5 CFR § 451.104(a) and 5 CFR § 451.106(a)

Internal Revenue Code, 26 U.S. Code §102 (c) and § 132
Internal Revenue Fringe Benefits Guidelines, 2014 edition
Theft of government funds, 18 U.S. Code § 641
Federal Election Commission Employee Award and Recognition Program
Labor Management Agreement, 2013 Edition

III. Investigative Findings

A. The FEC's failure to establish a bona fide need as required by 31 U.S.C. § 1502(a) prior to purchasing Visa gift cards resulted in FEC misappropriating a total of \$92,546.70 from the one year salaries and expenses appropriations in FYs 2011, 2012, 2014 and 2015.

On March 17, 2016, the Federal Election Commission (FEC) Office of Inspector General (OIG) conducted an interview with former Acting Chief Financial Officer (CFO), Judy Berning (Berning), to discuss the purchase and distribution of Visa gift cards within the OCFO. During the interview, Berning could not recall when the agency first began the practice of purchasing Visa gift cards. She advised that each fiscal year (FY), the FEC purchased \$25,000 for 500 Citibank Visa gift cards in increments of \$50, designed to expire each FY on September 30th and to be distributed the following FY. The OIG investigation found this practice was used to ***purchase*** Visa gift cards in FY 2011, 2012, 2014 and 2015, for ***distribution*** in FYs 2012, 2013, 2015, and 2016.⁴ A review of costs associated with the purchase of the Visa gift cards revealed that during FY 2011 and 2012, the OCFO spent \$19,276.40 for 350 Visa gift cards in increments of \$50 (\$17,500), a \$4.95 processing fee per card (\$1,732.50), and a \$43.90 shipping fee. In FY 2014 and 2015, the OCFO spent \$26,996.95 for 500 Visa gift cards in increments of \$50 (\$25,000), a \$3.95 processing fee per card (\$1,975), and a \$21.95 shipping fee. The funds for the Visa gift cards were withdrawn from the FEC one year salaries and expenses appropriations. The total amount drawn from the appropriations for FEC staff salaries and bonuses is calculated at \$92,546.70.⁵

FY Distributed	FY Purchased	Cards	Card Amount	Processing Fee	Shipping Fee	Total
2012	2011	350	\$17,500	\$1,732.50	\$43.90	\$ 19,276.40
2013	2012	350	\$17,500	\$1,732.50	\$43.90	\$ 19,276.40
2015	2014	500	\$25,000	\$1,975	\$21.95	\$ 26,996.95
2016	2015	500	\$25,000	\$1,975	\$21.95	\$ 26,996.95
					Grand Total	\$ 92,546.70

The OIG found that the first issuance of Visa gift cards derived from on-the-spot awards, created in 2008 by six FEC professionals on the Employee Recognition Task Force (ERTF). The ERTF established the Employee Award and Recognition Program (EARP), accompanied by a manual disclosing procedures and recommendations. The purpose of the award and recognition program was to: 1) create a positive working environment; 2) boost morale; 3) enhance employee

⁴ FY 2016 funds were used to purchase \$25,000 worth of \$50.00 gift cards to distribute in FY 2017. These amounts are not included in this report.

⁵ Although outside the purview of this report, a total of \$27,009.95 in FY 2016 funds were used to purchase FY 2017 Visa gift cards for distribution, which brings the total amount of \$119,556.65 for FY 2011, 2012, 2014, 2015, and 2016.

performance while increasing productivity; and 4) to make employees feel appreciated. The roles and responsibilities of FEC managers is vital to convey strong messages to employees that exceptional work performance is recognized and valued. The EARP highlights management is responsible for timely employee nominations for employee recognition and managing detailed records of all nominated employees and awards, the latter of which is not a unified practice within the agency. The EARP also states a system should be implemented to measure objectivity, consistency, and fairness.

On February 28, 2017, the OIG requested an opinion from the Government Accountability Office (GAO) regarding the FEC's practice of purchasing Visa gift cards as on-the-spot awards with appropriation money from the previous year of distribution. On July 24, 2017, the GAO contacted Deputy General Counsel for Administration, Gregory Baker (Baker), via email and attached a letter to Acting General Counsel, Lisa Stevenson (Stevenson), requesting a legal opinion as to whether FEC's Visa gift card program comply with the bona fide needs rule which derived from 31 U.S.C. § 1502(a). The bona fide needs rule requires that an appropriation is available for obligation only to fulfill a legitimate need arising during the period of availability of the appropriation. The GAO further stated that an appropriation for a given FY typically is not available for the needs of a future FY. GAO asked the FEC to confirm that the FEC obligated \$25,000 from its one year salaries and expenses appropriation in FY 2012, 2014, 2015, and 2016.

Prior to OGC responding to GAO, the FEC Finance Committee met on July 26, 2017. Baker, Stevenson, Ford, and Commissioners Steven Walther (then-Chair), Caroline Hunter (then-Vice-Chair), and Commissioner Ellen Weintraub were in attendance. During the meeting, Baker did not advise the Committee that GAO had requested information regarding the on-the-spot awards. However, Baker requested \$527,000 for staff salaries and bonuses, which included \$25,000 for on-the-spot bonuses for FY 2018. Baker's advised the OIG on September 28, 2017, that the Finance Committee had been notified that the on the spot bonuses would not be purchased in 2017 and would not be purchased until further notice. However, the Finance Committee Meetings notes for August 22, 2017 and September 6, 2017, sent by Acting CFO Ford to the Finance Committee, did not mention the subject of purchasing Visa gift cards for FY 2018 with FY 2017 funds.

On September 6, 2017, Stevenson sent a response letter to GAO stating the FEC OGC has concluded that the Agency's use of funds from one FY to purchase Visa gift cards awarded in the following FY did not comport with the bona fide needs rule. OGC included an admission that the FEC obligated \$25,000 from its one year salaries and expense appropriations in FYs 2012, 2014, 2015 and 2016 to purchase Visa gift cards that were issued as awards during subsequent FYs. OGC further states they informed Ford the current practice does not comply with the bona fide needs rule. OGC stated that the purchase of any Visa gift cards to be used as awards in FY 2018 and any future years need to be made using FEC's budget for that FY.

On September 25, 2017, the OIG conducted a follow-up interview with Ford. Ford explained he researched whether purchasing FY 2018 Visa gift cards with FY 2017 funding was in compliance, but even after his research, remained unsure if this action was permissible. Ford acknowledged he notified Baker of his findings. Ford stated Baker informed Ford to wait on purchasing FY 2018 Visa gift cards with FY 2017 funding prior to OGC's meeting with GAO, which Baker confirmed to the OIG in a September 28, 2017 meeting. Ford participated in a teleconference with Baker and Kate Higginbotham (Higginbotham), Assistant General Counsel, but was unsure of the date. During the teleconference, Baker and Higginbotham revealed that OGC and GAO agreed it was not favorable to continue the FEC process of issuing Visa gift cards that were purchased from the subsequent FY. As a result from the teleconference, Ford did not order the FY 2018 Visa gift cards with FY 2017 funding.

Ford explained to the OIG that he was still waiting to view the agency's budget for FY 2018 to determine if funds would be available for on-the-spot award Visa gift cards. With a potential small window allotted for awarding Visa gift cards to employees, Ford thought it may not be prudent to fund the Visa gift cards. When asked what would replace the Visa gift cards if in FY 2018 if they are not purchased, Ford mentioned he was unsure if anything would replace them. However, Ford revealed \$25,000 of FY 2017 funding, which was set aside to purchase FY 2018 Visa gift cards, was never deducted from the awards pool for on-the-spot awards, but instead used for the entire awards pool, which was used for bonuses.

B. The FEC's practice of converting Visa gift cards to merchant gift cards to be used in future fiscal years was in violation of Federal appropriation law, 31 U.S.C. §1552 (a), and IRS Guidelines.

The OIG investigation revealed that some supervisors held possession of undistributed converted merchant gift cards that were purchased with Visa gift cards from previous FYs. The OIG learned from GAO that this process is in violation of the Federal appropriation law, 31 U.S. Code § 1552. The statute reads, *after the period of availability for obligation of a fixed appropriation account ends, the account shall be closed and any remaining balance in the account shall be canceled and thereafter shall not be available for obligation or expenditure for any purpose. Collections authorized or required to be gifted to an appropriation account, but not received before closing of the account under subsection or shall be deposited in the Treasury as miscellaneous receipts.* Therefore, converting Visa gift cards to use in future FYs is not allowable since the funds should have ceased being available when the FY ended.

On March 17, 2016, the OIG interviewed former CFO Judy Berning (Berning) and current Acting CFO Gilbert Ford (Ford) on August 30, 2016 and September 2, 2016. Ford stated he considers the OCFO as the "guardian of the cards" and it is the responsibility of the OCFO to see that the Visa gift cards are managed, which is currently not practiced. When questioned about

unused/expired Visa gift cards, Berning and Ford replied no expired Visa gift cards were reported to the OCFO, nor were there any previous accounting of Visa gift cards prior to the purchase of new Visa gift cards. Ford stated he was never informed of unused Visa gift cards, but was asked by supervisors for additional ones. Ford informed the OIG he would like to know from offices if the allotted quantity of Visa gift cards is sufficient or if adjustments need to be addressed.

Deputy General Counsel of Administration, Gregory Baker (Baker), said he allowed the expired Visa gift cards to be replaced by awarding the employee with a replacement Visa gift card from the upcoming FY. The OIG was unable to find whether or not reissuing a Visa gift card to an employee due to expiration was acceptable; however, Ford acknowledged awarded funds were previously accounted for within the current FY and are now wasted due to inactivity prior to expiration. The OIG found that during the FY 2015, FEC managers realized several Visa gift cards were near expiration and had not been awarded. This led to supervisors purchasing merchant gift cards with Visa gift cards to avoid the card's expiration. Visa gift cards were replaced with merchant gift cards that had no expiration date. As a result, many supervisors allowed merchant gift cards to reside in their possession and carry their value into the next FY.

The OIG discovered supervisors purchased merchant gift cards from COSI, Starbucks, Peet's Coffee, and others with Visa gift cards. Managers explained this action was done to avoid Visa gift card expiration, avoid tax responsibility, and increase the number of on-the-spot award gift cards. The OIG found that Chief Compliance Officer, Pat Orrock (Orrock), converted 45 Visa gift cards in FY 2015 towards Starbucks, COSI, Au Bon Pain, and Peet's merchant gift cards to ensure they did not expire. Orrock also possessed merchant gift cards from FY 2012, 2013, and 2016. Orrock explained purchase amounts were generally \$10, but some were \$25. Orrock acknowledged Visa gift cards were converted in FY 2015 because the Office of Compliance had an excess of Visa gift cards that were to expire soon. Kevin Salley (Salley), Director of the Office of Equal Employment Opportunity, acknowledged his employees had maybe a month to use the Visa gift cards prior to expiration, so they were converted to allow extra time for employees to have full value in FY 2012 and 2013. During his interview with the OIG, Salley stated he was told merchant gift cards were not taxable like Visa gift cards by email, so he purposely converted his Visa gift cards to merchant gift cards.

When the OIG interviewed Ford regarding the issue of card conversion, Ford stated he was unaware that managers were converting Visa gift cards. Ford advised that the cards should not be converted to merchant gift cards, because once the card expires, even if unused funds remain on the card, the FEC is not reimbursed and the funds are not carried over, leading to a waste of funds, thus their tax implication is mute. He further stated that although the practice is not permissible because it was not authorized by the OCFO, he was unsure whether it was illegal.

To combat card conversion and the loss of FEC funds, Staff Director, Alec Palmer (Palmer), and

Ford separately provided guidance to FEC employees on the matter. Palmer's finalized Standard Operating Procedures (SOP) speaks to the ban of Visa gift card conversions and card expiration. The OSD SOP is binding only to the divisions which Palmer oversees. OGC and the OIG are separate divisions, which are not required to follow the OSD SOP. At the time of this report, Ford decided the OCFO would either follow the OSD SOP or draft an OCFO Visa gift card policy of their own.

To encourage regulated Visa gift card guidance to division heads, on October 6, 2016, Ford issued a FY 2017 Visa gift card distribution memo advising, *If VISA Gift cards cannot be issued, or firm plans for issuance by the designated program office by September 1st the cards should be returned to the OCFO for FEC redistribution.* This new policy will allow the OCFO to monitor whether or not the quantity of Visa gift cards allotted to each office works. To adhere to Ford's policy, the OSD's finalized SOP states all offices must issue their Visa gift cards, but if unable, *must return any unissued Visa gift cards to OCFO so that they may be redistributed to other division/offices* and managers who do not follow this rule *are subject to having oversight of their Visa gift cards revoked for the subsequent fiscal year.*

Ford's FY 2017 Visa gift card distribution memo advises that Visa gift cards should not be exchanged for other gift cards, i.e. merchant specific gift cards like Starbucks or COSI, under any circumstances, setting an agency-wide policy. This new policy will allow the OCFO to monitor the quantity of Visa gift cards allotted and distributed by each office. While Ford's memo addresses Visa gift card conversions, it does not cover existing converted merchant gift cards. Ford stated that he has sent a reminder to FEC managers regarding the expiration of cards and to return any Visa gift cards that were not being used. On September 28, 2017, during the OIG and Ford's latest conversation, Ford indicated he did not receive returned Visa gift cards.

C. FEC management was provided inaccurate and sporadic information regarding the tax implication of Visa and merchant gift cards from the OSD and the OCFO; the advice provided did not adhere to IRS Guidelines.

The OIG also inquired as to who is responsible for sending staff tax notifications and the frequency of the notifications. The OIG found that accurate and frequent informative tax notices were not provided to FEC staff. On March 17, 2016, former CFO, Judy Berning (Berning), informed the OIG that each year the OHR sends a notice to all employees that on-the-spot Visa gift cards are to be reported as income on the individual's tax returns. The responsibility of reporting the on-the-spot awards as additional income is the individual's because Berning stated that it would be too much of a hassle for the OCFO to include the award amounts as wages for each employee. The OIG asked how employees are informed of the tax liability if they are hired after the tax implication letters are dispersed to staff. Berning did not know. The OIG asked if it was possible that staff received notices when they received their Visa gift card. After the March 17, 2016, interview with the OIG, on March 24, 2016, Berning sent a memorandum via email to

the heads of OIG, OSD, and OGC advising that division leaders instruct their managers to give the revised tax implication letter to FEC employees when they receive their Visa gift card.

A review of all tax implication letters received revealed within the last 6 years, the former Director of Human Resources (DHR) sent three tax implication memos, Berning sent one in 2016 after the OIG interviewed her regarding the matter, and the Acting CFO sent one in 2017. Since Visa gift cards were not purchased with FY 2013 funds, Visa gift cards were not distributed in FY 2014, and a tax implication letter was not necessary:

Dates of Tax Implication Letters 2011-2017
• November 17, 2011, by Judy McLaughlin, former DHR
• October 9, 2012, by Judy McLaughlin, former DHR
• December 22, 2014, by Roger Cotton, former DHR
• March 24, 2016, by Judy Berning, former Acting CFO
• March 9, 2017, by Gilbert Ford, Acting CFO

The OIG found tax implication letters sent to FEC staff from the OCFO incorrectly stated merchant gift cards are not cash equivalent. On March 25, 2016, Director of the Office of Equal Employment Opportunity, Kevin Salley (Salley), sent Special Assistant to the Staff Director, Dayna Brown (Brown), and Berning an email asking if the conversion of Visa gift cards were permissible and whether there were any tax implications. Brown stated converted merchant gift cards are not considered cash equivalent since they can only be redeemed at specific business/vendors. Berning sent an email to both Salley and Brown confirming the absence of tax implications for merchant gift cards by quoting the tax implication letter, *Gift cards specific to a business, such as Starbucks, are not considered cash equivalent since they can only be redeemed at that specific business/vendor.*”

Upon researching the issue, the OIG found that the Internal Revenue Code (IRC) §102 (c)(1) provides that employee gifts, specifically any amount transferred to the employees for the benefit of the employee, may not be excluded from gross income. IRC Part 132 provide exceptions to the rule if the gift is considered a fringe benefit. IRC Part 132 provides a list of services or property that would be deemed de minimis due to the fact the value of which is so small as to make accounting of it unreasonably or administratively impracticable and thus not taxable. Cash is never considered di minimis and gift certificates are deemed cash equivalent. Gift certificates are deemed a cash equivalent and are never excluded from income when *gift certificates are redeemable for general merchandise or have a cash equivalent value are not de minimis benefits and are taxable. A certificate that allows an employee to receive a specific item of personal property that is minimal in value, provided infrequently, and is administratively impractical to account for, may be excludable as a de minimis benefit.* Since the gift cards are for a specific dollar amount, there is no difficulty in accounting for the monetary value of the gift and the merchant gift cards purchased were not for a specific item but for various items at the merchant establishment.

Also the Internal Revenue Fringe Benefit Guide, 2014 edition, advises:

*Except for the three situations noted below, prizes or awards given to employees are taxable. Regardless of the cost of an award or its [Fair Market Value], the following awards are **always** taxable as wages to an employee:*

- ☐ *Cash or cash equivalent awards, such as savings bonds or gift certificates*
- ☐ *Recognition awards, cash or non-cash, for job performance, unless they are qualifying de minimis fringe benefits*
- ☐ *Non-cash prizes (unless de minimis) won by employees from random drawings at employer sponsored events*
- ☐ *Awards for performance, such as outstanding customer service, employee of the month, or highest productivity*
- ☐ *Achievement awards, cash or non-cash, that do not meet specific qualified plan award rules, discussed below*
- ☐ *Awards for length of service or safety achievement that do not meet specific requirements, discussed below Reg. §1.274-2(c)(4); §1.274-2(c)(5)*

Acting CFO Ford advised in his October 6, 2016 Visa gift card distribution memo that the OCFO will send out the annual “Notice of Tax Implications on Gift Cards” and that Visa gift cards should not be converted to merchant gift cards.

D. FEC has partially addressed the issue of no agency-wide policies or guidance for FEC managers regarding issuing and oversight of Visa gift cards.

On March 17, 2016, the OIG interviewed former CFO Judy Berning (Berning). Berning stated that once Visa gift cards are distributed to the FEC division heads, the circulation and recordkeeping of the Visa gift cards are not tracked due to a non-existent FEC policies regarding the allocation, distribution, and oversight of Visa gift cards. Quoting the Labor Management Agreement (LMA), Berning mentioned the Agreement speaks to the awarding of a gift card, but does not discuss the application of the award. The OIG discovered that the LMA’s only policy regarding the Visa gift cards is for the employer to document the award in Employee Official Personnel Folder (EOPF).

Prior to Visa gift card distribution by the OCFO, the CFO calculates the quantity of Visa gift cards each division will receive based on the total percentage of permanent employees on board in the Staffing Report. According to the 2013 Informal Awards (“On the Spot Award”) Distribution memo⁶ distributed by former DHR Judy McLaughlin on October 9, 2012, the number of each division’s permanent employee total was divided by the total number of permanent employees. Each division’s percentage is multiplied by \$17,500 (total amount of Visa gift cards excluding fees) and divided by 100. That number provides the cash breakdown for each division, which is then divided by \$50 (price of one Visa gift card). The remaining

⁶ 2013 Informal Awards (“On the Spot Award”) Distribution memo included in the Tax Implication Letters.

balance is the number of Visa gift cards allocated per division.

Division	Number of permanent employees as of 9/24/2012	Percentage of total permanent employees	On-the-spot cash award (debit cards)	# of cards allocated per division
OGC	107	32%	\$5,600	112
OCFO	13	4%	\$700	14
OIG	6	2%	\$350	7
OSD	206	62%	\$10,850	217
TOTAL	332	100%	\$17,500	350

Berning noted the Union infrequently requests reports outlining how many Visa gift cards were given to Union employees, but the Staff Director's (SD) office is responsible for that information, not the OCFO. Union President, Ana Pena-Wallace, confirmed that many requests were made several times to the Staff and Deputy Staff Director, but the Union has never been given the requested data. The OIG found that once Visa gift cards are activated by the OCFO and quantities are computed for each division, the Visa gift cards are dispersed to division leaders; within divisions, some of the Visa gift cards are assigned to lower level managers.

Upon receiving the Visa gift cards, each division leader or manager must sign for the Visa gift cards, confirming receipt. In most cases, representatives (i.e., Deputies, Special Assistants, etc.) sign for the release and safekeeping of Visa gift cards from the OCFO until awarded to the intended nominee. Within each division, process and procedures for Visa gift card distribution varies, highlighting a concern regarding distribution and record keeping of the Visa gift cards. The OIG interviewed and discussed the policies and procedures used by each division.

The OIG found that once Visa gift cards are dispensed between divisions, division leaders and managers vary in their practices of oversight accountability and traceability. In OGC, Special Assistant to the General Counsel, Sari Pickerall, manually counts her division's Visa gift cards prior to constructing a spreadsheet to record the status of each card. Deputy Assistant Staff Director of Disclosure, Eileen Leamon, explained she inserts the Visa gift card number, name of nominee, and the reason for the nomination in a spreadsheet and monitors it for her records. Prior to the SD's finalized SOP, Shawn Woodhead Werth, former Commissioner Secretary, informed the OIG she had no formal recording or distribution procedures. Along with the variance in the preparation for distribution practices within each office, the OIG also discovered nomination procedures of FEC employees were diverse for each office.

The OIG discovered that along with various nomination practices among offices, supervisors award Visa gift cards to employees outside of their immediate office/division. Assistant SD, Greg Scott (Scott), stated he awarded an individual outside of his direct office for assisting with a project, although Scott was unclear of the date. In FY 2015, Chief Compliance Officer, Pat Orrock, awarded Visa gift cards to individuals from OGC and OHR. When asked on the CFO's

position on Visa gift cards awarded to employees outside of their own division, Acting CFO Ford admitted there is nothing that speaks against this practice nor is it clarified in the SD's SOP.

Offices such as the Office of the Commission Secretary have no formal distribution or accountability processes requires recording card numbers and dates. Others, like Administrative Manager, India Robinson (Robinson), incorporated her own process by giving the employee a copy of the nomination form along with the Visa gift card at the time of the award. Robinson requires the employee to sign the nomination form upon receipt of the on-the-spot award.

When asked by the OIG if any audits or end of the FY record keeping was involved for accountability purposes, many managers stated not until the OSD SOP was released. After the OIG initiated its review, the OSD issued the SOP that outlined the measures for Visa gift card circulation and accounting. On August 30, 2016, the OIG interviewed the Staff Director/Chief Information Officer, Alec Palmer (Palmer), and his two then-assistants, Dayna Brown and Marilyn Jones. At the meeting, Palmer provided the OIG a draft copy of the new SOP that outlined measures for Visa gift card circulation and accounting of Visa gift card distribution for only the offices the SD has control over.

The finalized SOP requests all management representatives of the Visa gift card programs to not only count all Visa gift cards received and monitor them, but also outlines a standard to award the Visa gift cards. The SOP requires each office within OSD and OCIO to maintain a spreadsheet per FY with Visa gift card numbers, recipient names, employee's division/office, total value, number of card(s) issued, date of issuance, description of accomplishment, whether a tax implication memo was provided, and the on-the-spot award nomination form was completed. At the end of the year, offices must submit their spreadsheets to the OSD for two internal audits (May 1st and November 1st) to ensure awards are awarded in a fair and diverse manner.

The OIG was advised on October 6, 2016 that the SOP was finalized, however, this policy is not an agency-wide policy. At the time of drafting this report, OGC and OCFO had not required their staff to follow the guidelines set forth in the SOP or created their own guidelines. The OIG was also advised that Ford had issued a memorandum on October 6, 2016 that suggests all divisions should develop and adhere to similar procedures outlined in the OSD SOP.

IV. Conclusion

The OIG investigation resulted in FEC's OGC admitting to the GAO that the FEC had not established a bona-fide need to purchase Visa gift cards as required by Federal appropriation law, 31 U.S.C. § 1502(a), and incorrectly purchased them with prior years funds. As a result, FEC misappropriated funds for a total of \$92,546.70 from the one year salaries and expenses appropriations in FYs 2011, 2012, 2014 and 2015. In addition, the FEC's practice of converting gift cards to merchant gift cards violated 31 U.S.C. §1552(a). The OIG was advised that the FEC did not use FY 2017 funds to purchase Visa gift cards for FY 2018, and the OIG has not received any information as to when or if Visa gift cards will be purchased in the future.

In addition, after the OIG began its investigation, the Staff Director's Office instituted a SOP for Visa gift cards. The OIG found that the document does not address all Visa gift card distribution issues. The SOP also does not speak to awarding and distributing Visa gift cards to employees outside of the nominator's office, nor does the SOP discuss how supervisors should handle previously converted merchant gift cards from previous years. The SOP is only intended for individuals who fall under the OSD or the OCIO, although the Acting CFO has shown interest in adopting the policy for OCFO employees. The OGC did not advise the OIG of any plans to adopt procedures for the Visa gift cards.

It should be noted that prior to the issuance of this report, the Acting CFO provided guidance to staff and managers regarding Visa gift cards and instituted oversight procedures regarding the allocation of Visa gift cards. The Acting CFO is also sending quarterly requests to managers for the number of Visa Cards distributed and the total undistributed amount at the end of the FY. Also, staff and managers are currently being advised of correct tax reporting requirements of individuals who are awarded Visa gift cards. Employees are now given tax information when they receive the card along with notice sent to all staff yearly. Lastly, staff was advised that Visa gift cards should not be converted to merchant gift cards if they are not going to be disbursed to staff within a fiscal year. However, the FEC has not advised the OIG what it plans to do with the merchant gift cards that have been purchased by the Staff Director's office and staff.

Federal Election Commission Office of Inspector General



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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

Office of Inspector General

MEMORANDUM OF FINDING

Case #: 16-05	Prepared By: Carla Smith
Case Title: Commission Travel	
Date of Report: 7/5/2017	
Subject: Closing of Case Referral to Audit	

Summary:

On February 22, 2016, the Federal Election Commission's (FEC) Office of Inspector General (OIG) received a request to meet with (b) (3) (A), (b) (3) (A)

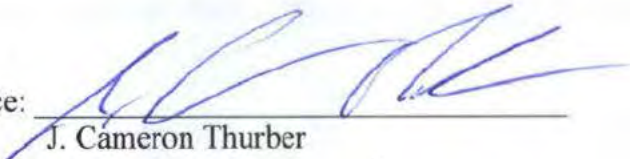
On February 25, 2016, the OIG met with (b) (3) (A), (b) (3) (A) alleged (b) (7)(C) (b) (7)(C) improperly handles her position by (1) taking excessive Leave without Pay; (2) submitting incorrect budget data for (b) (7)(C) office each month; (3) moving agency money for Commissioners and the (b) (7)(C) and (4) creating fraudulent files with (b) (7)(C) to comply with a FOIA request for the Commissioners' travel.

(b) (3) (A) alleges Commissioner Goodman pays for his own travel and does not notify the Ethics office or the CFO of his travel arrangements. Other Commissioners were alleged to hand in receipts late or send refund requests without receipts. (b) (3) (A) also alleges (b) (7)(C), interfere with contracts and submit contracts right before the contract's expiration date so they may automatically be renewed without time for competition.

The OIG requested records and assistance from the FEC's Chief Financial Officer and the Office of General Counsel Office (Deputy Agency Ethics Official). It was determined that there were no criminal or civil violations regarding the FEC Commissioners travel. However, there may be systemic administrative failures regarding the traveling procedures for the Commissioners and their staff. During an OIG staff meeting on April 18, 2017, it was decided that the review of the subject would be better suited as an audit. On April 18, 2017, the Senior Auditors were forwarded the travel file and its documents. Therefore, this investigation meets the requirements set forth in section XVI of the FEC OIG Investigative Manual to be closed by memorandum.

RESTRICTED INFORMATION: This report is confidential and may contain information that is prohibited from disclosure by the Privacy Act, 5 USC 552a. Therefore, this report is furnished solely on an official need-to-know basis and must not be released or disseminated to any other party without prior written consent of the Inspector General of the Federal Election Commission or designee. Unauthorized release may result in civil liability and/or compromise ongoing federal investigations.

Concurrence:



J. Cameron Thurber
Deputy Inspector General

9/29/17
Date

**FEDERAL ELECTION COMMISSION
OFFICE OF INSPECTOR GENERAL**



Report of Investigation

Transit Benefit Review

Case Number INV 16-06

March 3, 2017

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I. Executive Summary

The Federal Election Commission (FEC) Office of Inspector General (OIG) initiated an investigation of the FEC's Employee Transit Benefits Program (the Program) in response to the receipt of information indicating that former FEC employees who had separated from the agency were still receiving transit benefits. While investigating whether former employees were still in fact receiving and/or using transit benefits after separation, the OIG expanded its investigation to review the propriety of all employee usage of transit benefits.

During the course of its investigation, the OIG reviewed transit benefit records, WEBTA records, and parking garage records for the months of January 2015 through June 2016. Additionally, the OIG interviewed Office of Human Resources (OHR) Director, Derrick Allen (Allen). The interview revealed that the maximum amount of transit benefits that can be issued an employee each month is \$255, and if an employee does not use all of the allocated subsidy each month, the remaining balance is credited back to the FEC. Allen indicated that while the FEC may obtain records to determine how each employee uses his/her transit benefits each month, the FEC does not obtain reports on a routine basis, and OHR does not conduct monthly or periodic reviews of the subsidy usage. Allen further noted that there is no collaboration between OHR and other offices, in particular the Office of Equal Employment Opportunity (EEO), such that OHR is unaware of which employees may be receiving a special accommodation for telework or a parking pass. While Allen indicated that upon separation from the FEC, an employee should be removed from the Program list, he could not verify that the removal always occurs.

The Program is governed by FEC Directive 54 (the Directive), which states that the objective is to "encourage FEC employees to use mass transit to commute from their residence to and/or from their official duty station in order to reduce air pollution, noise, and traffic congestion." Pursuant to the Directive, in order to be eligible for the Program, an employee must commute to the FEC's office via public transportation a minimum of 50% of his/her scheduled work days. Further, the Directive prohibits employees from using the subsidy received from the Program for any purpose other than commuting to the FEC office. It requires the Director of OHR to "periodically review employee SmarTrip card usage to ensure no unusual commuting patterns, significant changes in commuting activity or potential abuse of" the Program. The Directive additionally requires that OHR remove employees from the Program as part of the exit clearance procedures. The Directive however does not require that FEC managers be involved in the process and verify the employees' schedule.

The OIG investigation for the time period of January 2015 through June 2016 found many of the Directive's requirements were not followed and that theft of funds occurred by separated employees using transit subsidy after separation from the FEC. Specifically, the OIG found:

1. Neither the OHR Director nor his staff were reviewing SmarTrip usage on a periodic basis as required by Directive 54;
2. Seventeen separated employees were not removed from the Program after their departure from the agency. Use of the subsidy by fourteen of these separated employees resulted in a loss of \$2,142.45;
3. There were fourteen employees receiving the subsidy who were ineligible for the Program under the Directive's 50% usage rule;
4. Five employees were receiving a subsidy and using the parking garage in violation of the Directive;
5. The subsidies of twenty-one employees were not amended to reflect telework or altered commuting schedules;
6. Four employees were using their subsidies in excess of their actual commuting costs;
7. Nine employees were receiving full subsidies in spite of terminating their usage of the Program; and
8. Several of the recommendations of the OIG's Audit of the Commission's Transit Benefit Program 06-01 (Audit) were not implemented.

II. Background

On June 24, 2016, the OIG received a complaint that separated employees were still using and receiving transit subsidy benefits. The OIG requested transit subsidy reports from the Office of Human Resources (OHR) for three months, April through June 2016. The review revealed that separated employees were indeed receiving and using subsidy benefits. The OIG opened an investigation regarding current and former FEC employees' use of transit subsidy. The OIG investigated if there was theft of funds resulting from the unlawful use of funds and if FEC transit subsidy policy (Directive 54) was being followed.

A. Relevant Statutes and Authorities

FEC Directive 54: Employee Transit Benefit Program, Effective January 8, 2013

FEC Parking Policy for Agency Leased Spaces Not Reserved for Official Needs

18 U.S.C. 641: Embezzlement of Public Money, Property, or Records

18 U.S.C. 1001: False Statements

III. Investigation Findings

A. Separated employees were still receiving a transit subsidy after their departure.

FEC Directive 54 instructs that the Director of Human Resources ensures that employee SmarTrip cards are suspended or deactivated in a timely manner when an employee is separated from the FEC. Additionally, Directive 54 requires the Transit Subsidy Benefits Program Manager to “promptly discontinue benefits of ineligible individuals.” Individuals no longer employed by the FEC are not eligible to receive transit benefits. Pursuant to Directive 54, participants in the Program who separate from the FEC “must be removed from the FEC transit benefits program as part of the exit clearance procedures, by the Office of Human Resources.”

18 U.S.C. 641 states, in relevant part, that anyone who “embezzles, steals, purloins, or knowingly converts to his use or the use of another, or without authority, sells conveys or disposes of any record, voucher, money, or thing of value of the United State or of any department or agency thereof” shall be fined, imprisoned, or both, the sentence being determined based upon the sum of the property at issue. The OIG contacted Assistant United States Attorney’s (AUSA) Office for the District of Columbia and received a declaration from AUSA Virginia Cheatham that the AUSA Office declined prosecution of the case.

The OIG reviewed the transit data for twenty-four separated employees from January 2015 to June 2016. The OIG found that seventeen separated employees still received transit benefits for one or more months subsequent to separation from the FEC, equating to an output of \$4,108. (See Exhibit 1). Fourteen of the seventeen separated employees used the received transit benefits following their separation, equating to a known loss of \$2,142.45 (See Exhibit 7). One of these employees received and partially used the transit benefits for five months following separation from the agency [REDACTED]. Two additional employees [REDACTED], and [REDACTED] ([REDACTED]) received and used their transit benefits in part for three and four months, respectively, following separation. Three of the twenty-four separated employees received an increase in their transit benefit subsidies following separation. [REDACTED] and [REDACTED] separated from the agency in January 2016, and in February 2016, they received an increase of \$125. (See Exhibit 1). The increases are due to Congress signing a new tax bill that increased the benefit maximum from \$130.00 to \$250.00 per month. The increased was activated January and February 2016. Transit records indicate that current and separated employees received the \$125.00 increase if their monthly expenses were \$250 or more.

Management was made aware of this issue in the OIG 2007 audit of the Program. The OIG suggested that the Program’s internal controls be strengthened as employees participating in the Program were not returning the unused portion of their subsidies upon separation from the agency. Specifically, the OIG suggested that the Finance Office ensure that “the employee

separation clearance process includes the computation and collection of unused transit subsidy from departing employees. In 2013, as part of an audit follow-up corrective action plan, OHR reported they had implemented and were using an automated reminder to remove separated employees. Additionally, monthly reports were to be generated to ensure that the separated employees were no longer in the Program system as well as monthly and quarterly audits as a secondary check. However, based upon the OIG's interview with Allen during this investigation, while there is a question on the exit procedures checklist concerning the deactivation of transit benefits, Allen stated that "just because the box is checked does not mean that anyone actually took the employee off of the transit subsidy."

B. Employees are receiving transit benefits and using the parking garage in violation of Directive 54.

The FEC Parking Policy and FEC Directive 54 states that an employee is not eligible for the Program if he/she is contracting with the parking garage company to receive a reduce rate for parking his/her personal vehicle. Also, FEC Directive 54 states that if an employee uses public transportation on an occasional or sporadic basis, the employee does not qualify for enrollment in the Program. FEC Directive 54 sets forth the 50% usage rule which requires that an employee commute to work via public transportation on a regular, recurring basis for a minimum of 50% of the scheduled work days each month in order to be eligible for receipt of transit benefits.

In reviewing parking garage entrance records, FEC parking permit records, and FEC parking permit memoranda, the OIG found three employees who did not commute via public transportation a minimum of 50% of scheduled work days during the months of January 2016 through May 2016 as a result of using the garage for portions of the month. The employees should have ceased receiving the transit subsidy during the time they are parked in the garage as required under Directive 54.

According to parking garage entrance records, the OIG found that beginning in January 2016, [REDACTED] parked in the garage an average of eleven times per month over a five month period. The average number of work days during this time was approximately 21 days. While parking in the garage, this employee received transit benefits of \$86 per month and used an average of approximately \$15.00 per month over this period. There is no record of this employee having been issued a permanent or temporary parking permit or paying for parking with LAZ parking.

According to parking garage entrance records, [REDACTED] received a temporary parking pass and parked in the parking garage a total of 15 of the 20 work days in February 2016 and a total of 18 of the 23 work days in March 2016. During this time, [REDACTED] received a full transit benefit of \$70 of which [REDACTED] used \$3.00 in the month of February and \$10.50 in the month of March. Additionally, [REDACTED] ([REDACTED]) received a temporary parking pass, during the

months of January 2016 through May 2016, [REDACTED] parked in the parking garage a total of 13 of the 20 work days in February, 13 of the 23 work days in March, 16 of the 21 work days in April, and 14 of the 21 work days in May. During this time, [REDACTED] received a full transit benefit of \$125 per month and used an average of approximately \$66.50 per month. (See Exhibit 7)

Also, according to FEC Parking Permit Memoranda, [REDACTED] ([REDACTED]) received a temporary parking permit from January 2016 through May 2016. [REDACTED] also maintains a parking permit as a driver of the fleet vehicle. However, the records indicate that [REDACTED] parked in the garage an average of fifteen times per month over the course of these five months. During this time, [REDACTED] received a transit subsidy of \$130 in January 2016 and \$136 from February to May 2016. The transit records show that [REDACTED] never utilized these benefits in any part for those five months.

Lastly, parking garage and transit records revealed that an FEC employee [REDACTED] ([REDACTED]) is receiving the transit subsidy, without utilizing it, while paying for monthly parking in the E Street garage. In reviewing the parking garage entrance records, beginning in January 2016 and ending in May 2016, and LAZ Parking payment logs, the OIG found that [REDACTED] uses the parking garage on a daily basis and pays for a monthly parking permit with LAZ Parking. [REDACTED] purchased the parking pass in 2015, and for the months of January 2016 through May 2016, [REDACTED] has been receiving transit benefits in the amount of \$130 per month. Transit benefit records reveal that [REDACTED] does not use these benefits.

Management was made aware of the issue of employees receiving transit benefits and garage parking in the audit, and in the 2013 audit follow-up, OHR indicated that it requests a list of employees parking in the garage and reviews it monthly. It noted that "if discrepancies are discovered," OHR will act accordingly and remove an employee from participation in the program if necessary. However, FEC transit records and parking records evidence that employees are still receiving transit and parking benefits and OHR is not aware that double benefits are being received. When asked if he is notified when employees receive permanent or temporary parking passes, OHR Director, **Derrick Allen** (Allen) stated that he does not receive such data nor is he notified when employees receive permission to telework for medical accommodations. Allen stated that the only information they receive is from the employee themselves and the information submitted is not verified by the employee's manager.

C. Employees use the subsidy at rates higher than the days they actually commute into the FEC office.

Directive 54 requires that each year, participants of the Program review and recertify eligibility as well as provide information that is used to compute the amount of an employee's benefit. Additionally, participants are required to notify OHR of changes in their commuting patterns. Along with the employee responsibility, the Director of Human Resources is required to

periodically review employee SmarTrip card usage to ensure that there are no unusual commuting patterns or significant changes in the commute. Directive 54 further makes clear that it is a crime under Federal law “to make a false, fictitious or fraudulent statement to claim benefits” pursuant to 18 U.S.C. 1001.

Directive 54 prohibits the use of transit benefits for personal use or for any purpose other than commuting to the FEC. 18 U.S.C. 641 states, in relevant part, that anyone who “embezzles, steals, purloins, or knowingly converts to his use or the use of another, or without authority, sells conveys or disposes of any record, voucher, money, or thing of value of the United State or of any department or agency thereof” shall be fined, imprisoned, or both, the sentence being determined based upon the sum of the property at issue.

Using WEBTA records to determine the number of days each employee commuted to the FEC office, and comparing this data to each employee’s subsidy usage and claimed cost of the daily commute, using the Transit Subsidy Benefits Program Application (TSBA), the OIG found that from the months of January 2016 through June 2016, four employees used the transit subsidy in excess of their actual commuting costs. (See Exhibit 2).

██████████ TSBA indicates a claimed daily commuting cost of \$8.80. Based on the number of days ██████ commuted to the office in February 2016, ██████ should have spent \$61.60 in transit benefits. However, ██████ used \$73.85. Similarly, in April 2016, ██████ should have used \$52.80, yet ██████ used \$70.05. Thus, between the two months, ██████ used \$29.50 more than ██████ commuting cost for the number of days ██████ commuted to the office

██████████ TSBA indicates a claimed daily commuting cost of \$10.00. Based on the number of days ██████ commuted to the office from January 2016-June 2016, ██████ should have spent \$380 over that six month period. However, ██████ used \$512.80, overspending every month. Thus, ██████ used \$132.80 beyond ██████ claimed commuting cost for those six months.

██████████ TSBA indicates a claimed daily commuting cost of \$11.30. Based on the number of days ██████ commuted to the office in March 2016, ██████ should have spent \$33.90 in transit benefits. However, ██████ used \$68.50. Similarly, in April 2016, ██████ should have used \$56.20, yet ██████ used \$77.50, and in May and June 2016, ██████ should have used \$45.20, but used \$72.80 and \$68.90 respectively. Thus, between the four months, ██████ used \$106.90 more than ██████ should have based upon the number of days ██████ commuted and ██████ claimed commuting cost.

██████████ TSBA indicates a claimed daily commuting cost of \$8.70. Based on the number of days ██████ commuted to the office in March 2016, ██████ should have spent \$87.00 in transit benefits. However, ██████ used \$96.35. Similarly, in April 2016, ██████ should have used \$60.90, yet ██████ used \$79.80, and in May 2016, ██████ should have spent \$87.00, but ██████ used \$114.70. Thus,

between the three months, [REDACTED] used \$55.95 more than [REDACTED] commuting cost for the number of days [REDACTED] commuted to the office.

Finally, since September 2015, [REDACTED] ([REDACTED]) has been teleworking three days per week, receiving \$130 per month in transit benefits, and using the entire subsidy. In February 2016, [REDACTED] received an increase in her monthly subsidy to \$255, the maximum amount at that time, and [REDACTED] continued to use the entire subsidy. An examination of [REDACTED] TSBA revealed that [REDACTED] has a high commuting cost of \$14.95/day. [REDACTED] indicated on [REDACTED] application that this equated to \$298.90/per month. However, \$298.90 is based upon commuting to the office twenty days per month. Transit benefit usage records show that even when [REDACTED] was teleworking three days per week, she was spending the entire \$255 she received. In teleworking three days per week, [REDACTED] should have only been spending around \$30/week, \$120 per month. Thus, beginning September 2016 through June 2106, [REDACTED] overused her subsidy \$135.00 per month for a total of \$1,350.00 (10 x \$135.00).¹

D. Employees use the subsidy in amounts below their allotted subsidy and in some cases are ineligible to receive the transit subsidy due to their three day or more telework scheduled.

Directive 54 states that employees who use public transportation on an occasional or sporadic basis do not qualify for enrollment in the Program, and only employees who commute via public transportation on a regular and recurring basis, a minimum of 50% of the working days, qualify for enrollment and continued eligibility. Employees are responsible for notifying OHR of any changes that impact eligibility for the program, including, but not limited to, changes in usage of public transportation for commuting purposes. Furthermore, the Director of Human Resources is required to periodically review employee SmarTrip card usage to ensure that there are no unusual or significant changes in commuting patterns or activity.

Notwithstanding these requirements, the OIG located nine employees who, from January 2015 through June 2016, received transit benefits but did not use the subsidy in *any* part for seven or more months. One employee [REDACTED] did not use the benefits for eighteen consecutive months. Furthermore, in spite of not having used transit benefits at all for nine of twelve months in 2015, one employee's benefits [REDACTED] increased \$33 in January 2016, and the employee ceased using the benefits altogether. . The total output of unused transit benefits to these nine employees described above equates to \$11,568.00. (See Exhibit 3).

Furthermore, from the months of January 2015 through June 2016, the OIG found forty-three employees who consistently did not fully use their allotted transit subsidy. As a whole, these forty-three employees were allotted a total of \$81,578 for the months of January 2015 through

¹ The OIG's review period is from January 2015 through June 2016

June 2016; however, together these employees only used a total of \$42,813.05. Thus, a total of \$38,764.95 was issued and went unused. (See Exhibit 5). From the months of January 2016 through June 2016, the OIG found twenty-four additional employees who consistently did not fully use their allotted transit subsidy. As a whole, these twenty-four employees were issued a total \$22,859.00 for the six month period, and only used \$13,706.95. Thus, \$9,152.05 was issued and went unused. (See Exhibit 6).

The OIG found that one of the contributing factors is that employees are not adjusting their subsidy when they commence teleworking on a consistent basis. As a result, the subsidy allotted is not being used. The OIG investigation revealed that seven employees telework away from the FEC office in excess of two days per week yet these employees still receive full transit subsidies as if they were commuting to the office five days per week, and these allotted subsidies were not decreased in spite of decreased usage, limited, or no usage. Transit records revealed that two employees, [REDACTED] and, [REDACTED] telework approximately two to four days per week and although subsidy records reflect a slight decrease in the monthly subsidy allocation of each employee, the employees still only use approximately half of the allotted subsidy each month. Another employee received a full subsidy in spite of commencing fulltime telework and ceasing use of the subsidy altogether. [REDACTED] (See Exhibit 4). The above-mentioned employees are not eligible to receive transit benefits since they do not commute to FEC via public transportation a minimum of 50% of their work days as required by Directive 54.

Additionally, the OIG found that the subsidies of two teleworking employees increased *prior* to the commencement of telework and were never adjusted after telework began and the employees began commuting on a lesser basis. For example, the OIG found [REDACTED] was receiving a subsidy of \$130 per month. In March 2016, [REDACTED] subsidy increased to \$255 per month. He began to telework two days per week in May 2016; however, [REDACTED] subsidy remained at \$255 and [REDACTED] used an average of 176.53 per month. In addition, the OIG found that due to medical condition an employee began to telework exclusively from home after they received their increased transit benefit and WebTA records revealed that from January 2015 through January 2016, the FEC employee² was receiving a subsidy of \$130 per month. In February 2016, their subsidy was increased to \$200 per month. The employee began fulltime telework in April 2016 due to a medical condition; yet from April 2016 through June 2016, they were still receiving \$200 per month and only using an average of \$12.50 per month. Similarly, from January 2015 through February 2016. Per Directive 54, the employee's transits benefits should have been terminated once they began teleworking exclusively from home and did not commute at least 50% of their work days.

Transit and WebTA records also revealed that that the subsidies of four teleworking employees

² The OIG acknowledges that the staff member is dealing with an ongoing illness thus to protect their privacy their name is not mentioned in the report. .

increased *after* the employees began teleworking away from the FEC office in spite of a decrease in the days the employees would need to commute. In some instances the employees' regular telework schedule resulted in them being ineligible for transit benefits. The employees did not commute at least 50% of their workdays on a consistent basis. Transit and WebTA records revealed that prior to beginning to telework in December 2015, ██████ (████) received \$130 per month, and each month ██████ used an average of \$98.55 per month from January 2015-November 2015. While the month of December 2015 was an exception where ██████ used \$130 of ██████ subsidy, once ██████ began teleworking two to three days per week, her usage dropped to an average of \$32.55 for the months of January 2016 through June 2016. In spite of this decrease in usage and decrease in commuting days due to telework, ██████ received an increase to ██████ subsidy of \$36 in February 2016, taking ██████ total subsidy to \$166 per month. WebTA and transit records reveal that ██████ may not be eligible for transit subsidy due to the frequency of telework and that ██████ should not have received a subsidy benefit increase of \$36.

Transit and WebTA records revealed that prior to the commencement of three day per week telework in October 2015, ██████ (████) received \$130 per month (with the exception of February 2015 when ██████ only received \$53) and she used an average of \$102.63 per month from January 2015 to September 2016. However, once ██████ began teleworking three days per week, ██████ usage did not decrease, using an average of \$128.11 per month from October 2015 through January 2016. Then, in February 2016, ██████ received an increase of \$22 to ██████ subsidy, and in spite of only commuting to the FEC office two days per week, ██████ usage increased to an average of \$140.76 per month from February 2016 through June 2016. ██████ records indicate that ██████ should not have received a \$22 subsidy increase and may not be eligible for the transit subsidy since ██████ only commuted two days week and ██████ is using transit subsidy for purposes other than commuting to work.

WebTA records revealed that ██████ (████) began teleworking three days per week in October 2015, which made her ineligible for the transit subsidy since ██████ teleworked less than 50% of her workdays. Transit records revealed that she used the same amount prior to starting telework, ██████ received \$130 per month in ██████ transit subsidy. With the exception of January 2015, ██████ used \$130 per month from February 2016 through September 2016. Once ██████ began teleworking in October 2015, coming to the office only two days per week, ██████ subsidy usage did not decrease. Transit records reveal ██████ continued using \$130 per month from October 2015 through December 2015, where January was again an exception. In February 2016, ██████ received an increase in ██████ subsidy up to \$226; yet ██████ still used an average of \$130.44 per month from February 2016-June 2016. WebTA reveals ██████ was not eligible for transit subsidy since ██████ teleworked 3 days a week. Also, Transit records reveal that ██████ should not have received an increase of \$94 per month since ██████ does not commute to work 5 days a week. Also, transit records reveal that ██████ may be using ██████ transit subsidy for other uses other than commuting to work.

Management was made aware of the issue that employees were not properly adjusting their subsidy amount in anticipation of their commuting days for the coming month in the OIG's Audit. The OIG recommended that OHR should provide clear policies and procedures "to provide participant with specific instructions on how adjustments should be made." The OIG closed the audit as management completed all corrective actions; however, in a subsequent 2013 audit follow-up, OHR indicated that it was increasing the visibility of the transit subsidy program and had developed an a "new auto load feature [to] eliminate the need to adjust monthly benefits for non-usage. Additionally, OHR indicated that it implemented monthly, quarterly, and annual reviews/audits to identify irregular claims and situations where benefits were not claimed. However, based upon information received from Allen during the interview, OHR does not obtain routine reports to determine how employees use their transit subsidy nor does anyone in OHR review employee transit subsidy spending on a monthly basis. He indicated that the unused portions of employee transit benefits at the end of each month are credited back to the FEC. While the OIG recognizes that unused portions of transit subsidies are credited back to the FEC, providing more transit benefits to employees than necessary opens the agency to the loss of funds due to usage other than commuting to and from work. As evidenced in the report, this has occurred. Additionally, , FEC management is not aware and has not addressed the issue of employees who do not commute more than 50% of their work week receiving transit benefits in violation of Directive 54. The OIG investigation revealed 14 employees receiving the transit subsidy who were ineligible for the Program under the Directive 50% usage rule.

IV. Conclusion

The OIG found that due to lack of oversight of the OHR and FEC current transit procedures some current and former employees are incorrectly receiving benefits. The OIG found that the requirements of Directive 54 are not being followed and although the OIG was told otherwise and provided evidence to indicated compliance, some of the OIG 2006 Audit recommendations were not implemented. The OIG investigation revealed that neither the Director of OHR nor his staff are reviewing the transit benefits subsidy records on a periodic basis, and additionally, OHR is failing to remove separated employees from the Program as part of the exit procedure, which in turn enabled former employees to receive, and in some cases, use transit benefits after they are no longer eligible as FEC employees. The OIG also found, that the current FEC policies and procedures result in incorrect transit subsidy applications being submitted and staff are not revising applications when their work schedule changes. Specifically, current FEC policies do not require OHR to be notified if an employee receives permanent or temporary parking benefits; or if the employee receives permission to telework more than 2 times a week. The OIG found that FEC managers are not part of the transit subsidy process. Managers do not have to sign off on the application or verify that the employee submitted schedule is correct.

Furthermore, ineligible employees are receiving full transit benefits, specifically employees who are not commuting to work via public transportation a minimum of 50% of the work days and employees who are parking in the garage. In addition, employees are using their subsidies in excess of their actual commuting costs. Finally, employees are not amending their subsidies based on changes in their commute or changes in their work schedule, such as telework, or ceasing use of the Program altogether as required by Directive 54. Funds lost due to former employees receiving and using benefits after departure from the FEC, ineligible employees receiving the benefits, and employees using their transit benefits beyond their commuting costs are slightly over \$3,700. This does not include the transit benefits received by those employees who, based on their commuting to the FEC less than 50% of the time, continued to receive the benefit.

A. Scope of the Investigation

The investigation was limited to an overview of the Office of Human Resources internal controls regarding oversight of FEC employees' transit subsidy use and possible violations of Directive 54.

ATTACHMENTS

Attachment	Description
1	Exhibit 1: Separated employees who continued to receive transit subsidy benefits
2	Exhibit 2: Employees who used transit subsidy in excess of actual days commuting
3	Exhibit 3: Employees who did not use any of their transit subsidy amount for at least 7 months during the period of January 2015-June 2016
4	Exhibit 4: Employees who teleworked at least 2 days a week but received transit subsidy amount for 5 days during the period of January 2016-June 2016
5	Exhibit 5: Employees that consistently did not use a large portion of their subsidy in 2015 and 2016 (January 2015-June 2016)
6	Exhibit 6: Employees who did not use a large portion of their subsidy during 2016 only (January 2016-June 2016)
7	Exhibit 7: Total amount transit subsidy used by separated employees during the period of January –June 2016
8	FEC Transit Form

Exhibit 1: Separated employees who continued to receive transit subsidy benefits

Employee	Date of Separation	Number of Months Issued Transit Benefits After Separation	Total Received After Separation Total: \$4108	Total Used After Separation Total: \$2142.45	Received Increase
[REDACTED]	12/19/14	1	\$92	\$92	No
[REDACTED]	12/31/14	2	\$260	\$130	No
[REDACTED]	1/2/15	1	\$130	\$130	No
[REDACTED]	2/13/15	1	\$130	\$130	No
[REDACTED]	7/24/15	1	\$86	\$0	No
[REDACTED]	7/25/15	1	\$70	\$0	No
[REDACTED]	11/30/15	1	\$130	\$100	No
[REDACTED]	12/3/15	2	\$260	\$17.40	No
[REDACTED]	1/9/16	1	\$130	\$0	No
[REDACTED]	1/9/16	5	\$350	\$292.90	No
[REDACTED]	1/23/16	4	\$1020	\$523.50	Yes
[REDACTED]	1/23/16	2	\$510	\$130	Yes
[REDACTED]	1/23/16	1	\$150	\$7.5	Yes
[REDACTED]	1/29/16	1	\$52	\$1.75	No
[REDACTED]	3/18/16	1	\$78	\$21.50	No
[REDACTED]	4/2/16	3	\$576	\$558.50	No
[REDACTED]	4/28/16	2	\$84	\$7.40	No

Exhibit 2: Employees who used transit subsidy in excess of actual days commuting

Employee	Claimed Daily Cost of Commute	Projected Cost (based on days in office) vs. Actual Use Cost January 2016 –June 2016		
			Projected Cost	Actual Use Cost
[REDACTED]	\$8.80	Jan	35.20	35.20
		Feb	61.60	73.85
		March	88	88
		April	52.80	70.05
		May	79.20	52.90
		Jun	88	82.10
		Total:	404.80	402.10
[REDACTED]	\$10.00		Projected Cost	Actual Use Cost
		Jan	50	59
		Feb	80	167
		March	70	82.60
		April	80	86.20
		May	60	70.80
		Jun	40	47.20
		Total:	380	512.80
[REDACTED]	\$11.30		Projected Cost	Actual Use Cost
		Jan	45.20	4.30
		Feb	90.40	17.20
		March	33.90	68.50
		April	56.50	77.50
		May	45.20	72.80
		Jun	45.20	68.90
		Total:	316.40	309.20
[REDACTED]	\$8.70		Projected Cost	Actual Use Cost
		Jan	69.60	56.55
		Feb	69.60	52.20
		March	87	96.35
		April	60.90	79.80
		May	87	114.70
		Jun	78.30	17.40
		Total:	452.40	417

Exhibit 3: Employees who did not use any of their transit subsidy amount for at least 7 months during the period of January 2015-June 2016

Employee	Month Ceased Usage	# of Months Transit Benefit Received without Usage	# of Months with Intermittent Usage	Amt. Received per Month (\$)	Total Unused Output (\$)
██████████	Sept 2015	9	1	120.00	1,194.75
██████████	Oct 2015	9	0	130.00 (4 months) 136.00 (5 months)	1,200.00
██████████	Dec 2015	7	0	130.00	910.00
██████████	Jan 2015	18	0	121.00	2,178.00
██████████	Mar 2015	15	1	94.00 (10 months) 127.00 (5 months)	1,823.10
██████████	Dec 2015	7	0	130.00	910.00
██████████	July 2015	8	4	110 (1 month) 73.00 (7 months)	857.05
██████████	May 2015	13	1	130.00	1,810.50
██████████	Jan 2015	16	3	61.00 (6 months) 43.00 (12 months)	684.60
Total					11,568.00

Exhibit 4: Employees who teleworked at least 2 days a week but received transit subsidy amount for 5 days during the period of January 2016-June 2016 in violation of Directive 50 usage requirement.

Employee	Transit Benefit Received After Commencing Telework (\$)	Average Usage while Teleworking(\$)
██████████	80.00 (12 months) 64.00 (6 months)	47.98 (12 months) 32.15 (6 months)
██████████	130.00 (4 months) 226.00 (5 months)	117.31 (4 months) 130.44 (5 months)
██████████	130.00 (2 months) 166.00 (5 months)	75.00 (2 months) 35.06 (5 months)
██████████	74.00 (5 months)	45.23 (5 months)
██████████	130.00 (3 months)	23.90 ³ (1 month)
██████████	74.00 (5 months)	48.18 (5 months)

³ \$23.90 reflects actual usage. █████ only used the 23.90 during one of the months in which she was teleworking and then ceased usage.

Exhibit 5: Employees that consistently did not use a large portion of their subsidy in 2015 and 2016 (January 2015-June 2016) and in possible violation of 50% usage requirement

Employee	Subsidy Issued (\$)	Subsidy Used (\$)
██████████	2034	1493.00
██████████	2263	1432.35
██████████	1300	843.65
██████████	2033	943.70
██████████	2016	624.20
██████████	1728	1164.35
██████████	1880	994.95
██████████	2315	1487.10
██████████	1493	887.05
██████████	2515	1344.55
██████████	1908	1139.10
██████████	1462	331.60
██████████	2460	1752.05
██████████	2250	1366.05
██████████	1960	1471.40
██████████	774	165.10
██████████	2304	516.30
██████████	1867	1353.65
██████████	2560	1690.40
██████████	2088	911.75
██████████	2370	1687.10
██████████	2286	332.40
██████████	1621	952.20
██████████	896	550.35
██████████	2290	2067.25
██████████	2600	1427.10
██████████	1800	733.65
██████████	946	582.75
██████████	1290	457.95
██████████	774	491.30
██████████	1098	253.70
██████████	2645	1567.70
██████████	2195	175.60
██████████	1573	408.60
██████████	2345	1323.85
██████████	2420	1436.90
██████████	1440	559.00
██████████	1422	137.10
██████████	1802	820.50
██████████	1404	287.60
██████████	1776	1260.70
Employee	Subsidy Issued (\$)	Subsidy Used (\$)

██████████	2755	1854.35
██████████	2620	1533.10
Totals	81,578	42,813.05

**Exhibit 6: Employees who did not use a large portion of their subsidy during 2016 only
(January 2016-June 2016)**

Employee	Subsidy Issued (\$)	Subsidy Used (\$)
██████████	617	367.55
██████████	405	192.10
██████████	448	213.20
██████████	1110	616.75
██████████	990	624.90
██████████	1220	860.15
██████████	450	181
██████████	1130	780
██████████	1174	943.35
██████████	1170	764.80
██████████	1030	549.09
██████████	1020	658.50
██████████	825	460.30
██████████	1220	763.90
██████████	1140	775.95
██████████	660	251.40
██████████	1095	578.55
██████████	1260	800.90
██████████	910	617.25
██████████	835	360.86
██████████	855	575.55
██████████	660	460.55
██████████	1405	746.80
██████████	1230	563.55
Totals	22,859.00	13,706.95

Exhibit 7: Individuals who received benefits but were ineligible due to departure from agency or received other transportation benefit

Employee	Total Used in Spite of Ineligibility (Lost Funds) Total: \$2,473.35
██████████	\$523.50
██████████	\$558.50
██████████	\$130
██████████	\$130
██████████	\$13.50
██████████	\$51.30
██████████	\$130
██████████	\$130
██████████	\$7.50
██████████	\$17.40
██████████	\$100
██████████	\$266.10
██████████	\$1.75
██████████	\$21.50
██████████	\$7.40
██████████	\$292.90
██████████	\$92

Exhibit 8: FEC Transit Subsidy Form

FEDERAL ELECTION COMMISSION TRANSIT SUBSIDY BENEFITS PROGRAM APPLICATION		
Date Received in Human Resources:		
ACTION REQUESTED (CHECK ONE): <input type="checkbox"/> New Application <input type="checkbox"/> Modification <input type="checkbox"/> Cancellation <input type="checkbox"/> Annual Recertification		
NOTE: Complete items 1 through 10, the reverse side of this form, as well as affix a completed copy of the WMATA "trip-planner," before submitting to the Office of Human Resources. (Please type or print legibly in blue or black ink.)		
APPLICANT INFORMATION		
1. Legal Name of Applicant (Last, First, Middle Initial):	2. Division:	3. Work Telephone Number:
4. Home Address (Street, City, State, Zip Code): Work Address/Official Duty Station: 999 E Street, NW Washington, DC 20463	5. Mode(s) of Transportation to be Used to Commute In and from Work: <input type="checkbox"/> Bus <input type="checkbox"/> Subway <input type="checkbox"/> Train <input type="checkbox"/> Authorized Vanpool <input type="checkbox"/> Other (Specify):	6. Type of Media: SmartTrip Card (Card No.): If you do not currently possess a SmartTrip Card, one will be provided.
7. Do you receive reduced fare public transportation rates (Employee with disabilities or Senior Citizen): <input type="checkbox"/> Yes <input type="checkbox"/> No	8. Total Monthly Commuting Costs (calculated from worksheet on back): \$	
Employee Acknowledgement and Certification: <p>I certify I am employed by the Federal Election Commission. I certify I am eligible for a public transportation fare benefit. I will use it for my daily commute to and from work. I will not give, sell, or transfer it to anyone else. I certify I am not a member of a carpool. Furthermore, I do not receive Federal parking privileges. I certify the monthly transit benefit I am receiving does not exceed my monthly commuting costs (based on my worksheet schedule). I certify that in any given month, I will not use the Government provided transit benefit in excess of the statutory limit. If my commuting costs per month exceed the monthly statutory limit, I will supplement those additional costs with my own funds. I certify I am responsible for returning ALL unused fare media to my agency. I certify my usual monthly public transportation commuting costs (excluding any parking costs, as parking fees are not eligible for transit benefits and should not be included) is the amount listed above (amount is supported by completed worksheet and "trip-planner" printout). I understand that I must submit a new Transit Subsidy Benefits Program Application if there is any permanent change in the information provided above. I hereby authorize the FEC to obtain and agree to furnish any and all transit activity details provided from WMATA, as needed, to effectively monitor program compliance.</p> <p>This certification constitutes a matter with the jurisdiction of an agency of the United States and making a false, fictitious, or fraudulent certification may render the maker subject to criminal prosecution under title 18, United States Code, section 1001, civil penalty action providing for administrative recoveries of up to \$1,000 per violation, and/or agency disciplinary action up to and including dismissal.</p>		
9. Signature of Employee/Applicant:		10. Date:
TO BE COMPLETED BY THE OFFICE OF HUMAN RESOURCES		
Name of Reviewer/Processor:	Date Application Verified and Processed:	
Signature of Reviewer/Processor:		
Name of Transit Subsidy Program Manager:	Date Application Reviewed:	
Signature of Transit Subsidy Program Manager:		
PRIVACY ACT STATEMENT		
This information is collected under authority of 5 U.S.C. Sections 301 and 7905. Furnishing the information on this form is voluntary, but failure to do so may result in disapproval of your request for a public transportation transit fare benefit. The purpose of this information is to facilitate timely processing of your request, to ensure your eligibility, and to prevent misuse of the funds involved. This information will be provided to the Human Resources and Finance to administer this program and to ensure that you are not listed as a carpool participant or a holder of any other form of vehicle work site parking permit with FEC or any other Federal Agency.		

VI.

Federal Election Commission Office of Inspector General



Fraud Hotline 202-694-1015

or toll free at 1-800-424-9530 (press 0; then dial 1015)
Fax us at 202-501-8134 or e-mail us at oig@fec.gov
Visit or write to us at 999 E Street, N.W., Suite 940, Washington DC 20463

Individuals including FEC and FEC contractor employees are encouraged to alert the OIG to fraud, waste, abuse, and mismanagement of agency programs and operations. Individuals who contact the OIG can remain anonymous. However, persons who report allegations are encouraged to provide their contact information in the event additional questions arise as the OIG evaluates the allegations. Allegations with limited details or merit may be held in abeyance until further specific details are reported or obtained. Pursuant to the Inspector General Act of 1978, as amended, the Inspector General will not disclose the identity of an individual who provides information without the consent of that individual, unless the Inspector General determines that such disclosure is unavoidable during the course of an investigation. To learn more about the OIG, visit our Website at: <http://www.fec.gov/fecig/fecig.shtml>

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Investigative Report Distribution Log

Assignment Title: Report of Investigation Misuse of Transit Benefit Subsidy

Assignment Number: INV-16-06 March 3, 2017

<u>Name</u>	<u>Position</u>	<u>Date</u>	<u>Report Number*</u>
Steven Walther	Chair	03/03/17	01
Caroline Hunter	Vice Chair	03/13/17	02
Lee Goodman	Commissioner	03/03/17	03
Matthew Petersen	Commissioner	03/03/17	04
Ellen Weintraub	Commissioner	03/03/17	05
Alec Palmer	Staff Director	03/03/17	06

* **Report Number, reports are numbered to control copies (i.e. investigations).**

Ed Holder (redacted version)	Acting Director	03/07/17	07
	Office of Management and Administration		
Derrick Allen (redacted version)	Director, HR	03/07/17	08

**FEDERAL ELECTION COMMISSION
OFFICE OF INSPECTOR GENERAL**



Report of Investigation
Theft of Mac Computer

Case Number INV-17-05

August 1, 2019

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I. Executive Summary

On May 11, 2017, the Federal Election Commission (FEC) Office of Inspector General (OIG) was notified by Kim Humphries (Humphries), Acting Deputy Chief Information Officer (DCIO) of Operations, that a MacBook was stolen from FEC employee, (b) (7)(C) and former FEC employee (b) (7)(C) office. According to interviews conducted with (b) (3) (A), Humphries, and (b) (3) (A) it is believed the computer was stolen sometime between, April 5th and April 16, 2017.

The OIG received conflicting information from Humphries, (b) (7)(C) regarding when and who noticed there was a missing MacBook and the steps taken by the Information Technology (IT) staff after it was revealed the MacBook was missing. Humphries stated that notified her of the missing MacBook and there was no sense of urgency for the first few days after noticed the theft, as (b) (3) (A) was testing the computers and the initial thought was that may have taken an additional one to test. Humphries stated when notified her of the missing MacBook, she checked with and had search throughout the offices to see if it was misplaced. According to Humphries, this resulted in a delay for several days before it became apparent the computer had likely been stolen.

Documentation and interviews with (b) (7)(C) revealed that Humphries' statement was not factually correct. According to noticed the MacBook was missing on April 17, 2017 when he went to retrieve a MacBook for testing. After confirming with there should be 13 and not 12 MacBooks, searched office and the IT help desk suite. Emails obtained by the OIG revealed that after searching for the MacBook, sent an email to Humphries asking if she had the missing MacBook because one was missing. was cc'd on the email to Humphries and all subsequent emails. Emails obtained by the OIG revealed that did not begin distributing MacBooks for testing until April 17, 2017, the day after he reported the MacBook missing.

Documentation obtained by the OIG revealed that on March 27, 2017, the FEC spent \$29,804.97 to purchase 13 MacBook computers for various staff members that worked on the FEC website. On April 3 and 4, 2017, the MacBooks were delivered in two installments to Wei Luo (Luo), Deputy CIO, Enterprise Architecture. (b) (7)(C) picked up the MacBooks and stored them in his and (b) (7)(C) office. When interviewed, all stated normal protocol is to store computers in the lock storage area also known as the "cage". (b) (7)(C) barcoded and captured the serial number for the 13 MacBooks. On April 17, 2017, (b) (7)(C) notified (b) (7)(C) the MacBook was missing. searched the area and Humphries was notified that a MacBook with serial number, CO2TF0QZHF1T, was missing from office.

On May 15, 2017, the OIG opened an investigation regarding the matter. After interviewing staff, the OIG submitted subpoena's to Apple Inc. on three occasions. On June 11, 2019, the OIG received notice that the computer was used to register an iTunes account to a (b) (3) (A)

On June 19, 2019, the OIG was advised by Kim Humphries and Kate Higginbotham, Deputy Staff Director of Administration, that FEC management did not file a police report for the missing computer.

On August 1, 2019, the OIG forward a memo to Alec Palmer, Staff Director / CIO, advising that no legal action can be taken unless a police report is filed with the District of Columbia police department. The OIG provided the name and address of the individual that opened the iTunes account and pledged to cooperate with the police if FEC files a police report. The OIG will be closing this case and providing a report to the Commissioner with our findings.

II. Background

On March 27, 2017, the FEC IT department purchased 13 MacBook for \$29,804.97 (\$2,292.69 each). On April 3 and 4, 2017, thirteen MacBook computers were delivered to FEC's Wei Lou's office. On April 17, 2017, (b) (7)(C) realized a MacBook was missing. Humphries notified the OIG on May 5, 2017, 12 working days after the MacBooks were reported missing and that 1 MacBook with serial number, CO2TF0QZHF1T, was stolen from (b) (7)(C) office. The MacBooks were purchased for all the staff members that worked on the newly created FEC website. The OIG interviewed [REDACTED], Humphries, and [REDACTED].

A. Relevant Statutes and Policies

18 U.S. Code § 641, Public money, property or records, embezzlement of government property

B. Scope of Investigation

The investigation was limited to gathering evidence to determine when the MacBook was removed from FEC premises and if a FEC employee or contractor removed the MacBook.

III. Investigation Findings

On May 11, 2017, Humphries, filed an in person complaint with James Thurber (Thurber), former Deputy Inspector General. Humphries advised that a MacBook was stolen from FEC employee [REDACTED] and former FEC employee [REDACTED] office. According to emails obtained by the OIG, thirteen MacBook computers were delivered to FEC on April 3 and 4, 2017 to Luo, Deputy CIO, Enterprise Architect. Humphries stated [REDACTED] noticed the day after [REDACTED] scanned the boxes that one out of the two piles of computers looked unusual. [REDACTED] also noted the bar codes were out of order, indicating a computer had been removed from the middle of the stack. Humphries stated by the way they were stacked, it would not have been apparent that a computer was missing. There was no sense of urgency for the first few days after [REDACTED] noticed the theft, as [REDACTED] was testing the computers and the initial thought was that [REDACTED] may have taken an additional one to test. According to Humphries, when [REDACTED] notified Humphries of the missing MacBook, Humphries stated she checked with (b) (7)(C) [REDACTED], [REDACTED] and [REDACTED] search through the offices to see if it was misplaced. This resulted in a delay for several days before it became apparent the computer had likely been stolen.

After speaking with Thurber, Humphries was contacted by Carla Smith (Smith), Counsel to the IG / Chief Investigator, with follow-up questions on May 11, 2017. Humphries advised during the interview that she did not know the exact process regarding the acceptance of the laptops or when the laptop went missing. Humphries stated 13 laptops arrived in two shipments and that Tran bar placed a barcode on each one and their serial number was documented. The missing MacBook serial number is CO2TF0QZHF1T.

The documentation retrieved by the OIG revealed that 13 MacBooks were purchased for \$29,804.97 (\$2,292.69 each) on March 27, 2017. On April 4, 2019, Luo advised Humphries via email that the computers had arrived and (b) (7)(C) [REDACTED] picked up the computers from Luo's office. The OIG was advised during interviews with [REDACTED] that the computers were never placed in storage as required, but were stored in [REDACTED] office. All three also stated that the cleaning staff does not have access to individual offices and that all offices are locked. According to [REDACTED] and emails, the missing MacBook was given a FEC barcode of 610845 and had an Apple serial number of CO2TF0QZHF1T.

Emails retrieved by the OIG and interviews with IT staff members [REDACTED] revealed that Humphries' statement to the OIG was not factually correct. According to [REDACTED] [REDACTED] noticed the MacBook was missing on April 17, 2017 when he went to retrieve a MacBook for testing. After confirming with (b) (7)(C) [REDACTED] there should be 13 and not 12 MacBooks, [REDACTED] searched [REDACTED] office and the IT help desk suite. Emails obtained by the OIG revealed that after searching for the MacBook, [REDACTED] sent an email to Humphries asking if she had the missing MacBook because one was missing. [REDACTED]

was cc'd on the email to Humphries and all subsequent emails. In addition, the emails obtained by the OIG revealed that (b) (7)(C) did not begin distributing MacBooks for testing until April 17, 2017, the day after the MacBook was reported missing.

On May 15, 2017, Smith interviewed [REDACTED], both of whom worked in the configuration and installation department. According to [REDACTED] the MacBooks were purchased for all staff members who were tasked with maintenance of the newly created FEC website. A GSA contractor was monitoring the page, but their contract was ending and now FEC staff would be responsible. [REDACTED] admitted [REDACTED] knew that the MacBooks were in the office and not in cage as they should be.

[REDACTED] explained he noticed on April 17, 2019, one MacBook was missing when [REDACTED] started delivering the MacBooks to the staff. According to (b) (7)(C) after [REDACTED] realized one was missing, [REDACTED] asked [REDACTED] how many MacBooks there should be and [REDACTED] responded 13 however, they counted 12. [REDACTED] stated [REDACTED] contacted Humphries the same day and advised one was missing. [REDACTED] further admitted that the Apple and the OIG were notified weeks later. According to [REDACTED] [REDACTED] was advised by Humphries that she wanted to see if the computer showed up before notifying the OIG.

During the interview with [REDACTED] stated [REDACTED] customized and downloaded the user profile for each computer. According to [REDACTED], computers are not usually kept in the office, but in a locked cage on the second floor, but because there was a small amount of computers, [REDACTED] kept them in the office. [REDACTED] acknowledged that [REDACTED] and [REDACTED] office were located in a suite and both the suite door and their office door are kept unlock during the day. [REDACTED] stated [REDACTED] and [REDACTED] searched their office after they realized that one of the MacBooks was missing. Coleman stated [REDACTED] was not sure what date [REDACTED] division realized the MacBook was missing or the date they conducted the search.

On May 15, 2017, Smith interviewed [REDACTED] stated that 13 MacBooks were delivered in two shipments. [REDACTED] barcoded each and placed a serial number on each one. The MacBook were kept on the side of [REDACTED] desk in a pile. [REDACTED] stated that the office is unlocked during the day, but at night the office is locked. [REDACTED] acknowledged that it is not normal procedure for computers to be left in [REDACTED] office, but instead they should be left in the second floor cage area. [REDACTED] did not give a reason as to why [REDACTED] kept the computers in his office. [REDACTED] also admitted [REDACTED] did not know that the MacBook was missing until [REDACTED] advised [REDACTED] on April 17, 2017. According to [REDACTED] the missing MacBook was taken from the middle of the pile and [REDACTED] does not know what date the MacBook was taken.

[REDACTED] explained once [REDACTED] realized the MacBook was missing, [REDACTED] emailed Humphries on April 17, 2017, and asked if [REDACTED] had the missing MacBook. Documents obtained by the OIG identified

that Humphries responded in the negative the same day. [REDACTED] emailed Humphries and advised that all the MacBooks had been moved to the cage except the one that [REDACTED] was testing for a staff member. According to the emails obtained by the OIG, the MacBooks were registered on April 27, 2017 with Apple.

The OIG requested videotape of the entrance building. The FEC former building located 999 E Street, NW, only had cameras in the elevator area of the ground floor and the garage entrance. A review of available videotape revealed no leads. On May 18, 2017, via email, Humphries advised the OIG that she had contacted Microsoft and opened a case with their office. Humphries was advised by Microsoft that they could not provide her information regarding the status of the computer because it violates their privacy policy. However, the OIG received a response to subpoenas issued to Microsoft.

On May 24, 2017, the OIG sent a subpoena to Apple Privacy and Law Enforcement via email.

(b) (3) (A)

Apple sent a response on June 2, 2017, stating there was no results for the information requested. The OIG decided to send subsequent subpoenas to see if the computer was ever registered with Apple. Subpoenas were sent on January 26, 2018 and June 3, 2019. On June 11, 2019, Apple responded to the OIG's subpoena via email. The results stated that an Apple iTunes account associated with the computer is registered to a (b) (7)(C)

The residence is listed as a (b) (7)(C). On June 18, 2019, the OIG was notified by the Carroll County Police Department that a police report would have to be filed before any law enforcement action can commence. Also, the OIG was advised that since the laptop went missing in the District of Columbia, a police report should be filed in the District of Columbia. Humphries advised the OIG on June 19, 2019 and Kate Higginbotham, Deputy Staff Director for Administration on June 25, 2019 that FEC had not filed a police report for the missing MacBook.

IV. Conclusion

On April 17, 2017, the IT staff noticed that a one of 13 MacBooks with the serial code, CO2TF0QZHFIT, was missing. The OIG was given inconsistent statements regarding the actions and how the missing MacBook was discovered by Humphries and IT staff members, (b) (7)(C) (b) (7)(C) did not follow protocol and store the computers in the storage unit. On June 11, 2019, the OIG was notified by Apple that the computer was used to register an

(b) (7)(C) On June 18, 2019, the OIG was notified by Carroll County Police Department, that a police report must be filed before any Law Enforcement action can take place and the police report must be filed with the District of Columbia's Police Department since the theft occurred in the District.

On August 1, 2019, the Acting Inspector General sent a memo to Alec Palmer, Staff Director / CIO, advising him that no legal action can be taking unless a police report is filed with the District of Columbia Police. Also, if the FEC decides to purse this matter further and file a police report, it is suggested due to the inconsistency of the facts given to the OIG that FEC management file the report. The OIG provided the name and address of the individual that opened the iTunes account and pledged to cooperate with the police if FEC decides to file a police report.



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

Office of Inspector General

MEMORANDUM

TO: Christopher Skinner
Inspector General

FROM: Carla Smith
Counsel / Chief Investigator

SUBJECT: INV-19-03 Case Closure

DATE: August 23, 2019


On October 18, 2018, the Federal Election Commission (FEC) Office of Inspector General (OIG) received an anonymous complaint via MySafeWorkplace hotline. The complainant alleged that (b) (3) (A), (b) (7)(C) from the Office of General Counsel (OGC), and (b) (3) (A), (b) (7)(C)), from the Office of Chief Information Officer (OCIO), browsed Facebook and YouTube videos daily from 10am to 6pm in (b) (7)(A) OGC cubicle, located on the (b) (7)(C). The complainant additionally stated that the videos were played through the computer speakers which caused staff members to close their office doors due to the disturbance. On November 6, 2018, the OIG closed the matter as a hotline complaint and opened an investigation regarding the falsifying of time records for (b) (3) (A), (b) (7)(C).

The OIG obtained (b) (3) (A), (b) (7)(C) Kastle Key records and their accompanying WebTA records. Subsequently, the OIG requested computer hard drive records for (b) (7)(C) from the Alec, Palmer Chief Information Officer on July 31, 2019. A review of the subject's Kastle Key records indicated no pattern of (b) (7)(C) consistently spending work time on each other's floor. Furthermore, the evidenced obtained indicated that (b) (7)(C) does spend time on the 11th floor; however, the time spent is minimal and not consistent with the alleged complaint. Due to the initial evidence received, the OIG cancelled the request to pull (b) (7)(C) hard drive.

Accordingly, the preponderance of evidence received indicates no further investigation required and the OIG considers this case closed. In accordance with section XVI of the FEC OIG Investigative Manual, this memorandum deems the subject case closed.

Concurrence:

**Christopher
Skinner**

 Digitally signed by Christopher
Skinner
Date: 2019.08.23 15:44:57
-04'00'

Christopher Skinner, Inspector General

Date



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

Office of Inspector General

MEMORANDUM

TO: Chair Ellen Weintraub
Vice-Chair Matthew Petersen

FROM: Tony Baptiste Antonio
Acting Inspector General Baptiste

SUBJECT: Management Alert

Digitally signed by Antonio Baptiste
DN: c=US, o=U.S. Government,
ou=FEC, cn=Antonio Baptiste
Date: 2019.07.19 18:05:09 -0400

DATE: July 19, 2019

The Inspector General Act (IG-Act)¹ requires that each Inspector General (IG) must keep the agency head and the Congress “fully and currently informed” about problems and deficiencies relating to the administration of agency programs and operations. Consequently, I am alerting you to complaints that my office received and I have concluded they could be better addressed by the Office of Equal Employment Opportunity & Programs (EEOP) and/or the Office of Human Resources (HR).

During Fiscal Year 2019, the Office of Inspector General (OIG) received more than one anonymous hotline complaint alleging that two Office of General Counsel (OGC) supervisor engaged in potentially racially insensitive² behavior and that Federal Election Commission (FEC) employees of color are treated differently because of their race. It is alleged that the one supervisors makes racially insensitive remarks to women of color and the other supervisor provides preferential treatment to his white employees.

The two OGC supervisors mentioned in the complaint are supervisors, (b) (7)(C). Both complaints were anonymous, however, only the complaint against, provided the names of the alleged victims. The complainant alleges makes racial remarks towards the women of color employees that he supervises. The complaint alleges, will use Ebonics terminology when speaking to women of color and refers to women of color he supervises as “brown girls”. The complaint further alleges, supervisor, Greg Baker, Deputy General Counsel for Administration and Katie Higginbotham, Deputy General Counsel for Administration and Ben Streeter (Streeter), Staff Attorney and Union President were made aware of the complaints.

The second complaint received by the OIG alleges that, in OGC provides the white employees he supervises special treatment and does not equally engage with

¹ Public Law No. 95-452 (Oct. 12, 1978) Sec. 4(a) (5), 5 U.S.C. app. 3 available at <https://www.govinfo.gov/content/pkg/STATUTE-92/pdf/STATUTE-92-Pg1101.pdf>

² The OIG did not conduct an analysis of the complaints under Title VII of the Civil Rights Act of 1964.

the non-white employees he supervises. The anonymous complaint alleges that [REDACTED] ignores the employees of color request for work and refuses to give employees of color work assignments. The complaint alleges that other employees have witness this behavior. The complainant states Harry Summers, Charles Kitcher, and Streeter have witnessed [REDACTED] behavior and these instances were also reported to them.

The OIG has decided not investigate this matter due to the subject matter provided and believes this matter should be handled by FEC's EEOP or HR office. Therefore, we are providing this memo of facts to you for review. The OIG request, that the Commission provide the OIG with an update by September 15, 2019 as to any actions or decisions taken in regards to this matter.


If you have any questions or concerns, our office would be happy to answer any questions.



Federal Election Commission
Office of the Inspector General

MEMORANDUM OF FINDINGS

TO: The Commission

FROM: Christopher Skinner
Inspector General 

SUBJECT: Memorandum of Findings I19INV00007: Allegations of Nepotism
Against Senior FEC Employee

DATE: October 15, 2021

This memorandum transmits the results of an investigation into allegations against a senior FEC employee. On January 31, 2019, the Federal Election Commission (FEC) Office of Inspector General (OIG) received an anonymous hotline complaint that alleged prohibited personnel practices (i.e., nepotism) on the part of (b) (7)(C). Specifically, the complaint alleged that (b) (7)(C) improperly influenced a hiring process to the advantage of a family member, which is prohibited by 5 U.S.C. § 2302(b).

The OIG referred this complaint to the Office of Special Counsel (OSC) in May 2020 due to the lack of internal investigative personnel resources. OSC completed its investigation and determined that the allegation was not substantiated based on the preponderance of the evidence, which included review of relevant personnel records and testimony by agency employees. Among other things, OSC found essentially no evidence that the employee in question was related to (b) (7)(C) as provided in 5 U.S.C. § 2302(b). As such, the OIG has closed the matter.

Please note that the OIG will publish a summary of this investigation on the FEC OIG webpage in accordance with *OIG Policy 500.1, Issuance and Publication of OIG Investigative Reports*. That summary will not identify (b) (7)(C) by name.

Should you have any questions regarding this matter, please contact Mr. Dennis Phillips at 202-694-1015 or via email at dphillips@fec.gov. Thank you.



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463
Office of Inspector General

MEMORANDUM

TO: Christopher Skinner
Inspector General

FROM: Shayla Walker
Inspector General Specialist

SUBJECT: INV-19-09 Case Closure

DATE: September 4, 2019

On June 11, 2018, the Federal Election Commission (FEC) Office of Inspector General (OIG) received an anonymous complaint via the MysafeWorkplace hotline. The complainant alleged that FEC employees (b) (3) (A), (b) (7)(C) [REDACTED] abused telework privileges and were not “reachable” when engaged in a telework status. Additionally, the complaint alleged that the subjects utilized SmarTrip benefits on telework days, thus, concluding that the benefits were used for personal use. On May 22, 2019, the OIG merged the telework abuse complaint with INV-19-01,¹ and opened a separate investigation regarding the potential abuse of transit benefits.

The OIG obtained TranServe applications and monthly TranServe summary usage statements from the FEC Office of Human Resources (OHR) on July 25th and August 30th, 2019. Additionally, the OIG compared the usage statements of each subject to the corresponding WebTA records for the timeframe identified in the complaint (November 2018 to July 2019). FEC OHR was unable to retrieve individual SmarTrip card transactions which would provide the OIG specific data related but not limiting to date, time, and location of each TranServe transaction for the respective subject(s).²

The OIG reviewed the evidence and found no significant indication of fraud. The evidence further illustrated that, during the 8 month time frame, the subjects utilized their requested monthly benefit 47%, 67%, and 87% of the time, respectively. However, the OIG’s review of (b) (7)(C) [REDACTED] monthly TranServe usage statement for January 2019,

¹ INV-19-01 and 19-02 were consolidated into a management alert memorandum which was provided to the appropriate management officials on August 29, 2019.

² FEC OHR indicated to the OIG that it only has the capability to provide the latest six current transactions for individuals.

highlight a potential situation for abuse. The January 2019 TranServe usage data does not correlate with the corresponding WebTA records reported for the subject period.³

In light of the initial finding related to the possible abuse of TranServe benefits during a government shutdown, the OIG elects to close the investigation and conduct a special review to determine if all TranServe applicants conformed to applicable policy during the shutdown (i.e., personal use of benefits). Therefore, in accordance with section XVI of the FEC OIG Investigative Manual, this memorandum deems the subject case closed.

Concurrence:

**Christopher
Skinner**

Digitally signed by
Christopher Skinner
Date: 2019.09.04 12:07:37
-04'00'

Christopher Skinner, Inspector General

Date

³ The FEC was shut down from December 22, 2018 to January 25, 2019 due to a lack of budget appropriations.



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463
Office of Inspector General

MEMORANDUM

TO: Tony Baptiste
Acting Inspector General

FROM: Carla Smith
Counsel/ Chief Investigator

SUBJECT: INV-19-11 Case Closing

DATE: June 19, 2019

On February 28, 2018, the Federal Election Commission (FEC) Office of Inspector General (OIG) received a complaint via United States postal mail, alleging (b) (3) (A), (b) (7) (C) (b) (7) (C)

(b) (7) (C) FEC's Office of General Counsel (OGC) were providing former (b) (7) (C) confidential FEC matters via email. The complaint alleges that the information provided identified when Commissioners recused themselves on pending confidential matters.

The complaint states that (b) (7) (C) is currently an associate at the law firm Venable LLP. The complaint further alleges that (b) (7) (C) is forwarding the information (b) (7) (C) receives from FEC employees to (b) (7) (C) colleague at Venable, Bill Powers. (b) (7) (C) is a former FEC attorney who also worked in the FEC's OGC office. According to Venable's website, it is a law firm that specializes in regulatory and campaign law. The complaint also alleges that the FEC staff are forwarding the information to (b) (7) (C) using their FEC email accounts.

On June 7, 2019, the OIG requested the emails of all the FEC attorneys cited. The review period was 6 months prior to the complaint (August 1, 2017 through February 28, 2018) and the query consisted of the words (b) (7) (C)

(b) (7) (C) On June 18, 2019, the OIG received and reviewed the query results. The results found two emails that were sent to (b) (7) (C) in a group email. The emails did not provide any information regarding FEC matters or Commission activity. Since the OIG did not find proof of the allegations presented, the OIG did not continue an investigation in this matter. Therefore, this investigation meets the requirements set forth in section XVI of the FEC OIG Investigative Manual to be closed by memorandum.

Concurrence:



Tony Baptiste, Acting Inspector General



Date

FEDERAL ELECTION COMMISSION

Office of Inspector General



(Amended)

Report of Investigation

FEC Commissioners Salary Increases from 2014-2018

Case Number: INV 19-12

December 18, 2019

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I. EXECUTIVE SUMMARY

On June 10, 2019, the Federal Election Commission (FEC) Office of Inspector General (OIG) received information from several FEC management officials that suggested FEC Commissioners were provided salary increases from 2014 to 2018 that exceeded the limitations in the Consolidated Appropriations Act, 2014 (the “Act”).¹ The FEC Office of General Counsel (OGC) was made aware of the potential discrepancy sometime in December 2018 and notified the appropriate management officials shortly thereafter. FEC OIG investigators analyzed the information and supplementary evidence and found no indication of employee misconduct and, therefore, did not frame an allegation against any one person or persons of the FEC. As a result, the OIG expanded the scope of the investigation and analyzed where, if at all, the FEC failed to implement the Act.

The investigation confirmed that FEC Commissioners were subject to the pay freeze provisions set forth in the Act. Additionally, the preponderance of evidence supported that FEC failed to impose the salary limitation within the Act from 2014 through 2018. As a result, FEC Commissioners salaries’ continued to increase in correlation with level IV of the Executive Schedule pay table from 2014 to 2018 as provided in preexisting law.

Investigators could not determine who at the FEC received the initial Office of Personnel Management (OPM) Memorandum dated January 28, 2014² that highlighted the pay freeze for certain senior official positions. The FEC underwent numerous personnel turnover to key administrative personnel³ from 2013 to 2018, which may have contributed to the legislation bypassing agency officials. Additionally, the pay freeze required an agency representative to manually withhold the automatic salary increases for those positions subject to the freeze. Without manual intervention, those salary increases continued to increase for the subsequent five years. Moreover, the agency lacked internal policy and internal controls to mitigate a financial error such as this.

The investigation identified numerous proactive steps by FEC senior management to resolve the overpayments. Additionally, senior management initiated steps to implement internal controls to mitigate future related concerns. Some of those actions include, but are not limited to, corrected Commissioner salaries, working with the National Finance Center (NFC) to submit appropriate financial paperwork, implementing additional checks and balances, and developing a central repository for updates to legislation.

The OIG was advised by management that the FEC Commissioners are still awaiting additional guidance from NFC regarding the appropriate overpayment amounts and actions required to resolve the debts. As a result, the OIG may follow up on the matter through the conduct of a special review or internal audit to confirm reconciliation.

¹ The information was not submitted through the OIG hotline, but rather provided directly to the previous Acting IG.

² See Figure 1.

³ The Human Resource Director and Deputy Staff Director positions.

II. BACKGROUND AND ALLEGATIONS

- A. **Background and Scope**: On June 10, 2019, the FEC OIG received information from several FEC management officials that suggested FEC Commissioners were provided salary increases from 2014 to 2018 in excess of the limitations imposed by the Consolidated Appropriations Act, 2014.⁴ The matter was identified after an OGC staff member received an inquiry from a member of another agency, sometime in December 2018, that solicited advice on the issue. OGC staff identified the concern with the Commission sometime in late February 2019.

The OIG opened an investigation into the matter to address the following:

- (1) Are FEC Commissioners subject to the pay freeze provisions set forth in the Consolidated Appropriations Act, 2014?
- (2) Did the FEC fail to implement the limitation identified in the Act from 2014 to 2018?
- (3) What action(s), if any, has the FEC taken in response to the allegations?
- (4) Do FEC policies exist to address the implementation of updated legislation and what, if any, internal controls are in place to mitigate the risk for future excess payments?

B. **Allegation(s)**

Investigators analyzed the relevant information and supplementary evidence and found no indication or allegation of employee misconduct and, therefore, did not frame an allegation against any specific FEC personnel. As a result, the OIG expanded the scope of this investigation and analyzed where, if at all, FEC management failed to implement updated legislation. Additionally, the investigation focused on FEC internal controls with regard to implementing new and updated legislative requirements. As such, investigators determined to frame the following allegation for this investigation:


That the FEC failed to implement the pay freeze provisions of the Consolidated Appropriations Acts, from 2014 to 2018.

⁴ Hereafter referred to as the “Act.”

III. RELEVANT STATUTES AND POLICIES

- A. The United States OPM CPM 2014-03 Memorandum of January 28, 2014. See excerpt(s) from the memorandum in Figure 1 below:

**Figure 1 – Excerpt(s) from “2014 Pay Freeze for Certain Senior Political Officials”
Memorandum**

2014 Pay Freeze for Certain Senior Political Officials	
Tuesday, January 28, 2014 CPM 2014-03	
	UNITED STATES OFFICE OF PERSONNEL MANAGEMENT Washington, DC 20415
The Director	
MEMORANDUM FOR: Heads Of Executive Departments And Agencies From: Katherine Archuleta Director Subject: 2014 Pay Freeze for Certain Senior Political Officials	
<p>The Consolidated Appropriations Act, 2014, which was enacted on January 17, 2014, contains a provision prospectively freezing pay rates for the Vice President and certain senior political appointees at 2013 levels during calendar year 2014. (See section 741 of title VII of division E of the Act.) This memorandum provides guidance on implementing this pay freeze. Additional detailed guidance is provided in the attachment to this memorandum.</p>	
2014 Pay Freeze for Certain Senior Political Officials	
Page 2 of 2	
<p>Since the 2014 officially established rates (or ranges) of pay for the Vice President, the Executive Schedule, and other senior political appointee positions are generally considered to be in effect, those officially established rates (or ranges) will be used in determining pay for other employees. For example, the officially established rates for the Vice President and the Executive Schedule will be used in determining the 2014 pay limitations for other pay systems, such as the General Schedule and the Senior Executive Service. Section 741 permits career employees (and other employees not covered by the pay freeze) to receive pay increases as otherwise provided by applicable law and such employees are not adversely affected by the pay freeze on senior political officials.</p>	
Additional Information	
<p>Agency headquarters-level human resources offices may contact OPM at pay-leave-policy@opm.gov. Employees should contact their agency human resources office for further information on this memo.</p>	
cc: Chief Human Capital Officers Human Resources Directors	

B. The Consolidated Appropriations Act, 2014, SEC. 741 (Public Law 113-76, January 17, 2014) which states in pertinent part:⁵

(e) Any employee paid a rate of basic pay (including any locality based payments under section 5304 of title 5, United States Code, or similar authority) at or above level IV of the Executive Schedule who serves under a political appointment may not receive a pay rate increase in calendar year 2014, notwithstanding any other provision of law, except as provided in subsection (g), (h), or (i).⁶

C. 52 U.S. Code § 30106. Federal Election Commission, states in pertinent part:

(1) There is established a commission to be known as the Federal Election Commission. The Commission is composed of the Secretary of the Senate and the Clerk of the House of Representatives or their designees, ex officio and without the right to vote, and 6 members appointed by the President, by and with the advice and consent of the Senate. No more than 3 members of the Commission appointed under this paragraph may be affiliated with the same political party.

...

(3) Members shall be chosen on the basis of their experience, integrity, impartiality, and good judgment and members (other than the Secretary of the Senate and the Clerk of the House of Representatives) shall be individuals who, at the time appointed to the Commission, are not elected or appointed officers or employees in the executive, legislative, or judicial branch of the Federal Government. Such members of the Commission shall not engage in any other business, vocation, or employment. Any individual who is engaging in any other business, vocation, or employment at the time of his or her appointment to the Commission shall terminate or liquidate such activity no later than 90 days after such appointment. (4) Members of the Commission (other than the Secretary of the Senate and the Clerk of the House of Representatives) shall receive compensation equivalent to the compensation paid at level IV of the Executive Schedule (5 U.S.C. 5315).

⁵ Subsequent legislation, including Continuing Resolutions, extended the pay freeze through calendar year 2018. Section 749 of division D of the Consolidated Appropriations Act, 2019 applied a modified pay freeze to calendar year 2019. This modification eliminated the pay freeze for certain positions covered by section 741 of the Consolidated Appropriations Act, 2014.

⁶ Investigators determined that the aforementioned subsections do not apply to FEC Commissioners.

IV. INVESTIGATION FINDINGS

A. Are FEC Commissioners subject to the pay freeze provisions set forth in the Consolidated Appropriations Act, 2014?

Senior Political officials are subject to the pay freeze provisions set forth in section 741 in the Act so as long as the position meets two key elements:⁷

- i. An employee paid a rate of basic pay at or above level IV of the Executive Schedule;
- ii. Who serves under a political appointment.

52 U.S. Code § 30106 states that “Members of the Commission (other than the Secretary of the Senate and the Clerk of the House of Representatives) shall receive compensation equivalent to the compensation paid at level IV of the Executive Schedule (5 U.S.C. 5315).” This legislation indicates that FEC Commissioner meet the first foregoing element, as provided in section 741 of the Act.

Additionally, 52 U.S. Code § 30106 states that the FEC is to be composed of “6 members⁸ appointed by the President, by and with the advice and consent of the Senate” rendering that FEC Commissioners are political appointed positions who meet the second foregoing element, as provided in Section 741 of the Act. As a result, FEC Commissioners are subject to the pay freeze provisions set forth in the Act.

B. Did the FEC fail to implement the limitations identified in the Consolidated Appropriations Act, 2014 to date?

Investigators retained evidence from FEC management officials that confirmed FEC Commissioners salaries’ continued to increase in correlation with level IV of the Executive Schedule pay table from 2014 to 2018. Figure 2 provides salary data retrieved from Agency Staffing Reports from 2014 to 2018, which provide among other things, personnel salaries. All Agency Staff Reports were retrieved for Pay Period 5 (March) for each calendar year. As of March 16, 2019, Commissioners salaries were adjusted to comply with the Act.

⁷ Sec 741 of the Act provides “Any employee paid a rate of basic pay (including any locality based payments under section 5304 of title 5, United States Code, or similar authority) at or above level IV of the Executive Schedule who serves under a political appointment may not receive a pay rate increase in calendar year 2014.”

⁸ 52 U.S. Code § 30106 further provides that “no more than 3 members of the Commission appointed under this paragraph may be affiliated with the same political party.”

Figure 2 - Salary Data Retrieved from Agency Staffing Reports (2014 to 2018)⁹

Commissioner Annual Salaries						
	2014	2015	2016	2017	2018	2019
Lee Goodman*	\$157,100	\$158,700	\$160,300	\$161,900	N/A	N/A
Ann Ravel*	\$157,100	\$158,700	\$160,300	N/A	N/A	N/A
Caroline Hunter	\$157,100	\$158,700	\$160,300	\$161,900	\$164,200	\$155,500
Matthew Petersen	\$157,100	\$158,700	\$160,300	\$161,900	\$164,200	\$155,500
Steve Walther	\$157,100	\$158,700	\$160,300	\$161,900	\$164,200	\$155,500
Ellen Weintraub	\$157,100	\$158,700	\$160,300	\$161,900	\$164,200	\$155,500

Figure 3 provides the annual salaries for level IV ES employees from 2014 to 2018.¹⁰ In 2013, the level IV ES schedule indicates an annual salary of \$155,500, a salary that FEC Commissioners should have maintained until the Act implemented a modified pay freeze for certain political appointees. This indicates that the FEC failed to implement the pay limitations identified in the Act.

Figure 3 - OPM Executive Schedule (EX) Level IV Annual Salary Table (2014-2018)

Year	2013	2014	2015	2016	2017	2018
EX (Level IV) Salary	\$155,500	\$157,100	\$158,700	\$160,300	\$161,900	\$164,200

Section 749 of the Consolidated Appropriations Act, 2019 incorporates a modified pay freeze which provides a 1.9% salary increase for certain political appointees, which the FEC Commissioners would be subject to, as provided in Figure 4 below.

Figure 4 - Excerpt from the “Guidance on Application of Pay Freeze” document

3. The payable rates for freeze-covered Executive Schedule individuals (or an employee paid at an EX rate under law) during calendar year 2019 are shown in the table below. The new payable EX rates are effective on January 6, 2019—the date on which official EX rates were retroactively adjusted.

Executive Schedule (EX) Level	Payable Frozen Annual Rates after 1.9 Percent Increase
EX-I	\$203,500
EX-II	\$183,100
EX-III	\$168,400
EX-IV	\$158,500
EX-V	\$148,500

⁹ Commissioner Matthew Petersen retired from the agency effective August 11, 2019. Two commissioners were also subject to the pay freeze requirement from 2014-2016, Commissioner Ann Ravel and Commissioner Lee Goodman.

¹⁰ Data derived from Senior Executive Service pay schedules via <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2014/executive-senior-level>

The current annual salary of each commissioner is required to be set at \$158,500 in accordance with new legislation and investigators confirmed that to be accurate in the latest Agency Staffing Report for the pay period ending August 31, 2019.

Investigators identified no evidence that FEC Commissioners received or were otherwise aware of the limitations imposed by the Act or OPM Memorandum of January 28, 2014. Further, investigators could not determine who at the FEC received the initial memorandum highlighting the pay freeze for certain senior official positions. The OIG interviews indicated that FEC management officials who would have received this memorandum or notification, and would have been responsible for implementing the action, have since departed the agency.¹¹ The FEC Chief Financial Officer stated that the FEC is a somewhat unique entity as there has not been a high frequency of turnover among Commissioners. Any turnover would have prompted payroll processors to conduct reviews and potentially identify any payroll discrepancies, such as those discussed in this report.

Additionally, the agency underwent turnover to key administrative personnel in 2013 and 2014 which may have contributed to the lack of administrative oversight. Additional evidence supported that one OGC staff member was aware of the Memorandum issued on January 28, 2014, but assumed it was a matter for the National Finance Center (NFC)¹² to address, and not the agency. The Act's pay freeze required an agency representative to manually withhold the automatic salary increases for those positions subject to the freeze; as such, without notification or appropriate implementation, those salary increases would, and did, continue to increase for the subsequent five years.

C. What action(s), if any, has the FEC taken in response to the allegations?

Investigators determined that FEC OGC staff became aware of the potential overpayments sometime in December 2018 and notified the Commissioners in February 2019. At that time, the Commissioners all agreed that the agency should attempt to address the concern. An email from the FEC Deputy Staff Director dated February 28, 2019, addressed to FEC Commissioners, indicated that members of the FEC OGC, the Staff Directorate, and the Chief Financial Officer discussed that the Commissioners had received salary increases from 2014 to date that exceeded limitations in the Act, as provided in Figure 5.

Two Commissioners who were present at that meeting,¹³ Vice Chair Commissioner Matthew Petersen and Commissioner Caroline Hunter, verbally requested to adjust their salaries to the 2013 frozen salary level of \$155,500 once becoming aware of the overpayments. The other two Commissioners, Chair Commissioner Ellen Weintraub and Commissioner Steven Walther, were unable to attend the meeting but similarly agreed to adjust their salaries to the

¹¹ OIG interviews with current FEC management indicated that the FEC Chief Human Capital Officer, otherwise referred to as the Deputy Staff Director, and/or the FEC Director of Human Resources may have received the 2014 memorandum but failed to take action. It is unclear to investigators if the agency received suitable notification of the updates to the Consolidated Appropriations Act, 2014.

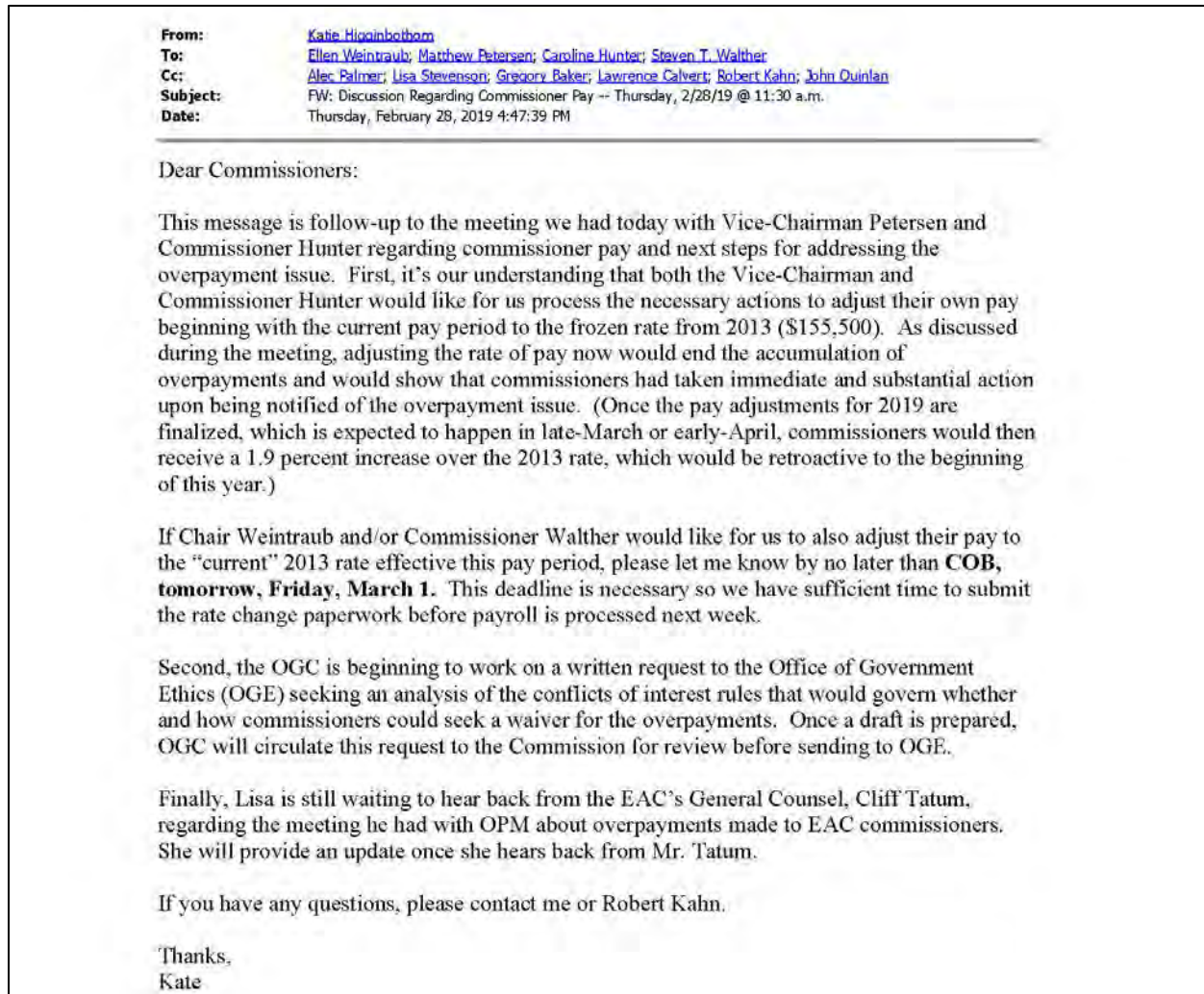
¹² The agency financial management service provider.

¹³ Due to the sensitive nature of the issue, Chair Weintraub agreed for Commissioners Petersen and Hunter to proceed with the February 28, 2019 meeting although she and Commissioner Walther were unable to attend.

2013 frozen level once they became aware of the overpayment on February 28, 2019.

Another result of that February 28, 2019 meeting indicated that OGC would prep a letter to send to the Office of Government Ethics (OGE) seeking analysis of the conflict of interest rules regarding the process for submitting a waiver request for the overpayment. Investigators did not further examine or expound upon the waiver request as it was outside the scope of this investigation.

Figure 5 – February 28, 2019 Email from FEC Deputy Staff Director to FEC Commissioners



Accordingly, the FEC has been proactive in taking action on this matter once agency officials became aware of the issue. Figure 5 provides a summary of the timeline of events that transpired since the Commissioners were made aware of the issue.

Figure 5 - Timeline of events to address commissioner salary discrepancies

 OMB Action
 FEC Action

DATE	ACTIVITY
01/28/2014	OMB issues memo regarding pay freeze for senior officials (Consolidated Appropriations Act, 2014), #CPM-2014-03.
12/18/2015	OMB issues memo continuing pay freeze (Consolidated Appropriations Act, 2015), #CPM-2015-14.
01/10/2016	OMB issues memo continuing pay freeze (Consolidated Appropriations Act, 2016), #CPM-2016-20.
05/09/2017	OMB issues memo continuing pay freeze (Consolidated Appropriations Act, 2017), #CPM-2017-05.
01/03/2018	OMB issues memo continuing pay freeze (Consolidated Appropriations Act, 2018). #CPM-2018-02
01/24/2019	OMB issues memo continuing a modified pay freeze. #CPM-2018-03
02/26/2019	OGC sends email to Commissioners, copying staff directorate agency leaders, ¹⁴ requesting meeting to discuss proposed course of action.
02/27/2019	Chair Weintraub agrees that Commissioners Petersen and Hunter should meet with OGC on 02/28/2019 as her and Commissioner Walther are unable to attend but agreed to meet with OGC at a later date, if required.
02/28/2019	Per Commissioners request, FEC Deputy Staff Director sends email to relevant parties, providing a copy of the 2014 OMB memo and states that the memo was allegedly provided to the FEC Chief Human Capital Officer, at the time, but never communicated to staff for implementation.
02/28/2019	FEC Deputy Staff Director sends email to all relevant parties summarizing the outcome of the meeting. Commissioners Petersen and Hunter verbally agreed to adjust their salaries to the 2013 frozen level (\$155,500). Once Chair Weintraub and Commissioner Walther received the information, they elected to do the same.
03/01/2019	Deputy Staff Director sends email to responsible parties advising that the Office of Human Resources confirmed that they implemented a personal action adjusting Commissioners pay rates to the 2013 frozen level (\$155,500) per request. This change would be reflected in pay period 4 (February 17 through March 2, 2019).
03/01/2019	FEC Office of Finance Office (OCFO) sends an email to a USDA ¹⁵ contact to discuss how best to address the reconciliation efforts.
03/28/2019	OPM issues memo to agency heads which provides, among other things, that section 749 of the Consolidated Appropriations Act, 2019 allows for a salary increase of 1.9% in the preexisting frozen pay table

¹⁴ Hereafter referred to as “relevant parties.”

¹⁵ NFC is part of USDA’s Office of the Chief Financial Officer.

	for covered officials.
04/26/2019	USDA sends email to Chief Financial Officer (CFO) advising that FEC should submit History Correction Update Processing System (HCUP) packages for all Commissioners but not before May 17, 2019. NFC advised that FEC Commissioners payroll, retirement, thrift savings plan (TSP), W-2, and annuity payments would all require adjustments. CFO forwards the information to FEC management.
04/29/2019	CFO forwards an email response from USDA to responsible parties identifying answers to reconciliation questions posed by OCFO.
05/09/2019	USDA provides CFO NFC's responses regarding FEC questions related to W-2s.
05/17/2019	USDA sends email to CFO advising FEC not to process HCUP packages for years 2014, 2016, 2017, 2018, and to only submit paperwork for 2019 for the time being. CFO forwards email to responsible parties.
05/17-31/2019	USDA and CFO exchange emails and determine that Chair Weintraub's situation will be used to provide examples of corrections required. NFC advises that it would suspend repayment for 15 pay periods once a repayment waiver is sought. USDA advises that if FEC pursues guidance from OGE, it would constitute as a waiver request.
06/06/2019	USDA sends email to CFO questioning salaries of former FEC Commissioners Ann Ravel and Lee Goodman.
06/10/2019	Acting IG at the time, is notified of the payroll discrepancy. The OIG opens an investigation into the matter.
06/20/2019	The Acting IG sends a request for documentation regarding all actions and communications related to commissioner salaries.
06/28/2019	The OIG receives documents requested and proceeds with investigation.
09/2019	Permanent IG consolidates all data and documents ROI.

At the time of this report, the FEC Human Resources (HR) and FEC Finance departments continue to work the issue with the NFC. The overpayment equates to approximately \$24,000 of excess payments to each commissioner. The OIG found that FEC continues to be in the process of resolving the issue. The OIG obtained evidence that FEC HR is currently working on submitting paperwork to the NFC to correct each Commissioners pay from 2014-2018.

This effort requires FEC HR to generate documents from NFC's current system of record and their previous retired legacy system. This adjustment in pay additionally affects tax statements, benefits, TSP contributions, etc. Once the appropriate paperwork is submitted, it is projected that the NFC will likely issue debt letters to each commissioner and at that time, each commissioner may submit a waiver request or repay the funds.

D. Do FEC policies exist to address the implementation of new and updated legislation and what, if any, internal controls are in place to mitigate the risk for future excess payments?

The OIG found no internal policies in place to address whom at the FEC is responsible for implementing new and updated legislation. Further, FEC Commission Directive 53 requires the agency to implement an internal control program in accordance with OMB Circular A-123 to provide reasonable assurance that programs operate effectively and efficiently, that financial reports are reliable, and that programs comply with applicable laws and regulations.

In 2017, the FEC established a Senior Management Council (SMC) to oversee FEC internal control activities. As a result of the improper payments made to Commissioners, the SMC is creating a central repository of executive orders, directives, memorandums, and other external guidance from key agencies such as OPM, Office of Management and Budget (OMB), and General Services Administration (GSA). The SMC is requesting all agency personnel forward all impending applicable guidance to the Office of the Staff Directorate. Additionally, members of the Staff Directorate have registered their email addresses on the OPM list serve webpage to ensure that more than one person is notified via updated legislation announcements. According to FEC senior management, the Office of Staff Directorate will proactively check the Federal Register and the White House webpages to ensure critical guidance does not bypass agency personnel.

Management further stated that all updated memorandums, executive orders, and other guidance will be discussed at the director's bi-weekly meetings. Subsequently, guidance will be assigned to a member of OGC to determine if applicable to the FEC. If applicable, OGC will discuss an implementation plan in coordination with the FEC Commissioners.

In conclusion, the agency has no such policy to address new and updated legislation requirements and initially lacked internal controls to identify and mitigate financial errors associated with those requirements. The agency has been proactive in implementing a process, of which it continues to refine, to mitigate unnoticed legislation requirements bypassing agency personnel.

Recommendation(s). The OIG recommends the following:

1. The FEC should complete the reconciliation of Commissioners' salaries with limitations imposed in the Act in a manner that is timely, but with due regard for accuracy and thoroughness, given that the reconciliation requires corrections to numerous impacts.
2. In light of the oversights of changes to federal law discussed herein, the FEC should implement and document internal controls that ensure it monitors updates to laws and regulations that may impact the FEC.
3. The FEC should develop and/or improve a routine payroll audit process to proactively identify and mitigate future payroll discrepancies.

V. CONCLUSION

The preponderance of evidence indicates that FEC failed to implement the pay freeze provisions of the Consolidated Appropriations Acts, 2014 to 2018. As a result, during that time, FEC Commissioners received unauthorized salary increases in excess of the Executive Schedule Level IV pay schedule. However, the OIG found no misconduct by any FEC employees and attributes the improper payments to an administrative oversight. The preponderance of evidence established that the oversight may have occurred due to turnover of key personnel from 2013 to 2018, the lack of internal policy and guidance, and lack of key internal controls to mitigate improper payments.

The OIG recognized that FEC senior management has been proactive in taking action to resolve the matter once the issue was presented. Additionally, senior management initiated steps to implement internal controls to mitigate future related concerns. Some of those actions include but are not limited to, adjusted Commissioner salaries', working with NFC to submit appropriate financial paperwork, implementation of additional checks and balances, and application of agency internal controls.

The overpayment is not resolved as the FEC Commissioners are still awaiting additional guidance from NFC on the appropriate overpayment amount and how best to settle the debt. Accordingly, the OIG may follow up on the matter through the conduct of a special review or internal audit at a later date to confirm reconciliation. In the interim, the OIG requests that management provide an update as to the status of the Commissioners reconciliation of the overpayment not later than 90 days from this reports date of issuance.



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463
Office of Inspector General

TRANSMITTAL MEMORANDUM

TO: The Commission

FROM: Christopher Skinner
Inspector General

SUBJECT: Report of Investigation - FEC Commissioners Salary Increases from
2014-2018 (Case number INV 19-12)

DATE: September 30, 2019

ENCLOSURE: (1) Report of Investigation INV 19-12

This memorandum transmits the Office of Inspector General's (OIG) Report of Investigation (ROI) for case number INV19-12, as provided in enclosure (1).

On June 10, 2019, the FEC OIG received information from FEC management officials that suggested FEC Commissioners were provided salary increases from 2014 to 2018 that exceeded the limitations in the Consolidated Appropriations Act, 2014 (the "Act"). FEC OIG investigators analyzed the information and supplementary evidence and found no indication of employee misconduct and, therefore, did not investigate any one person or persons of the FEC. Thus, the OIG expanded the scope of the investigation and analyzed where, if at all, the FEC failed to implement the Act.

The subject ROI concludes that FEC failed to implement the pay freeze provisions of the Consolidated Appropriations Act, 2014 from 2014 to 2018. As a result, during that time, FEC Commissioners received unauthorized salary increases in excess of the SES level IV pay schedule. However, the OIG found no misconduct by any FEC employees and attributes the improper payments to an administrative oversight error. The preponderance of evidence established that the oversight may have occurred due to turnover of key personnel from 2013 to 2018, the lack of internal policy and guidance, and lack of key internal controls to mitigate improper payments. As a result, the ROI provides, among other things, recommendations to improve agency internal controls related to the monitoring of laws and regulations that impact the FEC.

As acknowledged in the ROI, FEC is awaiting further guidance from the National Finance Center (NFC) on how best to settle the debt. Accordingly, the OIG requests that management provide an update as to the status of the Commissioners reconciliation of the overpayment not later than 90 days from this reports date of issuance

Should you have any questions regarding this report and its conclusions, please contact my office at 202-694-1015. Thank you.

FEC OIG 2019-09-013

FEDERAL ELECTION COMMISSION

Office of Inspector General



Report of Investigation

FEC Commissioners Salary Increases from 2014-2018

Case Number: INV 19-12

September 30, 2019

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I. EXECUTIVE SUMMARY

On June 10, 2019, the Federal Election Commission (FEC) Office of Inspector General (OIG) received information from several FEC management officials that suggested FEC Commissioners were provided salary increases from 2014 to 2018 that exceeded the limitations in the Consolidated Appropriations Act, 2014 (the “Act”).¹ The FEC Office of General Counsel (OGC) was made aware of the potential discrepancy sometime in December 2018 and notified the appropriate management officials shortly thereafter. FEC OIG investigators analyzed the information and supplementary evidence and found no indication of employee misconduct and, therefore, did not frame an allegation against any one person or persons of the FEC. As a result, the OIG expanded the scope of the investigation and analyzed where, if at all, the FEC failed to implement the Act.

The investigation confirmed that FEC Commissioners were subject to the pay freeze provisions set forth in the Act. Additionally, the preponderance of evidence supported that FEC failed to impose the salary limitation within the Act from 2014 through 2018. As a result, FEC Commissioners salaries’ continued to increase in correlation with level IV of the Senior Executive Schedule (SES) pay table from 2014 to 2018 as provided in preexisting law.

Investigators could not determine who at the FEC received the initial Office of Personnel Management (OPM) Memorandum dated January 28, 2014² that highlighted the pay freeze for certain senior official positions. The FEC underwent numerous personnel turnover to key administrative personnel³ from 2013 to 2018, which may have contributed to the legislation bypassing agency officials. Additionally, the pay freeze required an agency representative to manually withhold the automatic salary increases for those positions subject to the freeze. Without manual intervention, those salary increases continued to increase for the subsequent five years. Moreover, the agency lacked internal policy and internal controls to mitigate a financial error such as this.

The investigation identified numerous proactive steps by FEC senior management to resolve the overpayments. Additionally, senior management initiated steps to implement internal controls to mitigate future related concerns. Some of those actions include, but are not limited to, corrected Commissioner salaries, working with the National Finance Center (NFC) to submit appropriate financial paperwork, implementing additional checks and balances, and developing a central repository for updates to legislation.

The OIG was advised by management that the FEC Commissioners are still awaiting additional guidance from NFC regarding the appropriate overpayment amounts and actions required to resolve the debts. As a result, the OIG may follow up on the matter through the conduct of a special review or internal audit to confirm reconciliation.

¹ The information was not submitted through the OIG hotline, but rather provided directly to the previous Acting IG.

² See Figure 1.

³ The Human Resource Director and Deputy Staff Director positions.

II. BACKGROUND AND ALLEGATIONS

- A. **Background and Scope**: On June 10, 2019, the FEC OIG received information from several FEC management officials that suggested FEC Commissioners were provided salary increases from 2014 to 2018 in excess of the limitations imposed by the Consolidated Appropriations Act, 2014.⁴ The matter was identified after an OGC staff member received an inquiry from a member of another agency, sometime in December 2018, that solicited advice on the issue. OGC staff identified the concern with the Commission sometime in late February 2019.

The OIG opened an investigation into the matter to address the following:

- (1) Are FEC Commissioners subject to the pay freeze provisions set forth in the Consolidated Appropriations Act, 2014?
- (2) Did the FEC fail to implement the limitation identified in the Act from 2014 to 2018?
- (3) What action(s), if any, has the FEC taken in response to the allegations?
- (4) Do FEC policies exist to address the implementation of updated legislation and what, if any, internal controls are in place to mitigate the risk for future excess payments?

B. **Allegation(s)**

Investigators analyzed the relevant information and supplementary evidence and found no indication or allegation of employee misconduct and, therefore, did not frame an allegation against any specific FEC personnel. As a result, the OIG expanded the scope of this investigation and analyzed where, if at all, FEC management failed to implement updated legislation. Additionally, the investigation focused on FEC internal controls with regard to implementing new and updated legislative requirements. As such, investigators determined to frame the following allegation for this investigation:


That the FEC failed to implement the pay freeze provisions of the Consolidated Appropriations Acts, from 2014 to 2018.

⁴ Hereafter referred to as the “Act.”

III. RELEVANT STATUTES AND POLICIES

- A. The United States OPM CPM 2014-03 Memorandum of January 28, 2014. See excerpt(s) from the memorandum in Figure 1 below:

**Figure 1 – Excerpt(s) from “2014 Pay Freeze for Certain Senior Political Officials”
Memorandum**

2014 Pay Freeze for Certain Senior Political Officials	
Tuesday, January 28, 2014 CPM 2014-03	
	UNITED STATES OFFICE OF PERSONNEL MANAGEMENT Washington, DC 20415
The Director	
MEMORANDUM FOR: Heads Of Executive Departments And Agencies From: Katherine Archuleta Director Subject: 2014 Pay Freeze for Certain Senior Political Officials	
<p>The Consolidated Appropriations Act, 2014, which was enacted on January 17, 2014, contains a provision prospectively freezing pay rates for the Vice President and certain senior political appointees at 2013 levels during calendar year 2014. (See section 741 of title VII of division E of the Act.) This memorandum provides guidance on implementing this pay freeze. Additional detailed guidance is provided in the attachment to this memorandum.</p>	
2014 Pay Freeze for Certain Senior Political Officials	
Page 2 of 2	
<p>Since the 2014 officially established rates (or ranges) of pay for the Vice President, the Executive Schedule, and other senior political appointee positions are generally considered to be in effect, those officially established rates (or ranges) will be used in determining pay for other employees. For example, the officially established rates for the Vice President and the Executive Schedule will be used in determining the 2014 pay limitations for other pay systems, such as the General Schedule and the Senior Executive Service. Section 741 permits career employees (and other employees not covered by the pay freeze) to receive pay increases as otherwise provided by applicable law and such employees are not adversely affected by the pay freeze on senior political officials.</p>	
Additional Information	
<p>Agency headquarters-level human resources offices may contact OPM at pay-leave-policy@opm.gov. Employees should contact their agency human resources office for further information on this memo.</p>	
cc: Chief Human Capital Officers	
Human Resources Directors	

B. The Consolidated Appropriations Act, 2014, SEC. 741 (Public Law 113-76, January 17, 2014) which states in pertinent part:⁵

(e) Any employee paid a rate of basic pay (including any locality based payments under section 5304 of title 5, United States Code, or similar authority) at or above level IV of the Executive Schedule who serves under a political appointment may not receive a pay rate increase in calendar year 2014, notwithstanding any other provision of law, except as provided in subsection (g), (h), or (i).⁶

C. 52 U.S. Code § 30106. Federal Election Commission, states in pertinent part:

(1) There is established a commission to be known as the Federal Election Commission. The Commission is composed of the Secretary of the Senate and the Clerk of the House of Representatives or their designees, ex officio and without the right to vote, and 6 members appointed by the President, by and with the advice and consent of the Senate. No more than 3 members of the Commission appointed under this paragraph may be affiliated with the same political party.

...

(3) Members shall be chosen on the basis of their experience, integrity, impartiality, and good judgment and members (other than the Secretary of the Senate and the Clerk of the House of Representatives) shall be individuals who, at the time appointed to the Commission, are not elected or appointed officers or employees in the executive, legislative, or judicial branch of the Federal Government. Such members of the Commission shall not engage in any other business, vocation, or employment. Any individual who is engaging in any other business, vocation, or employment at the time of his or her appointment to the Commission shall terminate or liquidate such activity no later than 90 days after such appointment. (4) Members of the Commission (other than the Secretary of the Senate and the Clerk of the House of Representatives) shall receive compensation equivalent to the compensation paid at level IV of the Executive Schedule (5 U.S.C. 5315).

⁵ Subsequent legislation, including Continuing Resolutions, extended the pay freeze through calendar year 2018. Section 749 of division D of the Consolidated Appropriations Act, 2019 applied a modified pay freeze to calendar year 2019. This modification eliminated the pay freeze for certain positions covered by section 741 of the Consolidated Appropriations Act, 2014.

⁶ Investigators determined that the aforementioned subsections do not apply to FEC Commissioners.

IV. INVESTIGATION FINDINGS

A. Are FEC Commissioners subject to the pay freeze provisions set forth in the Consolidated Appropriations Act, 2014?

Senior Political officials are subject to the pay freeze provisions set forth in section 741 in the Act so as long as the position meets two key elements:⁷

- i. An employee paid a rate of basic pay at or above level IV of the Executive Schedule;
- ii. Who serves under a political appointment.

52 U.S. Code § 30106 states that “Members of the Commission (other than the Secretary of the Senate and the Clerk of the House of Representatives) shall receive compensation equivalent to the compensation paid at level IV of the Executive Schedule (5 U.S.C. 5315).” This legislation indicates that FEC Commissioner meet the first foregoing element, as provided in section 741 of the Act.

Additionally, 52 U.S. Code § 30106 states that the FEC is to be composed of “6 members⁸ appointed by the President, by and with the advice and consent of the Senate” rendering that FEC Commissioners are political appointed positions who meet the second foregoing element, as provided in Section 741 of the Act. As a result, FEC Commissioners are subject to the pay freeze provisions set forth in the Act.

B. Did the FEC fail to implement the limitations identified in the Consolidated Appropriations Act, 2014 to date?

Investigators retained evidence from FEC management officials that confirmed FEC Commissioners salaries’ continued to increase in correlation with level IV of the SES pay table from 2014 to 2018. Figure 2 provides salary data retrieved from Agency Staffing Reports from 2014 to 2018, which provide among other things, personnel salaries. All Agency Staff Reports were retrieved for Pay Period 5 (March) for each calendar year. As of March 16, 2019, Commissioners salaries were adjusted to comply with the Act.

⁷ Sec 741 of the Act provides “Any employee paid a rate of basic pay (including any locality based payments under section 5304 of title 5, United States Code, or similar authority) at or above level IV of the Executive Schedule who serves under a political appointment may not receive a pay rate increase in calendar year 2014.”

⁸ 52 U.S. Code § 30106 further provides that “no more than 3 members of the Commission appointed under this paragraph may be affiliated with the same political party.”

Figure 2 - Salary Data Retrieved from Agency Staffing Reports (2014 to 2018)⁹

Commissioner Annual Salaries						
	2014	2015	2016	2017	2018	2019
Lee Goodman*	\$157,100	\$158,700	\$160,300	\$161,900	N/A	N/A
Ann Ravel*	\$157,100	\$158,700	\$160,300	N/A	N/A	N/A
Caroline Hunter	\$157,100	\$158,700	\$160,300	\$161,900	\$164,200	\$155,500
Matthew Petersen	\$157,100	\$158,700	\$160,300	\$161,900	\$164,200	\$155,500
Steve Walther	\$157,100	\$158,700	\$160,300	\$161,900	\$164,200	\$155,500
Ellen Weintraub	\$157,100	\$158,700	\$160,300	\$161,900	\$164,200	\$155,500

Figure 3 provides the annual salaries for level IV SES employees from 2014 to 2018.¹⁰ In 2013, the level IV SES schedule indicates an annual salary of \$155,500, a salary that FEC Commissioners should have maintained until the Act implemented a modified pay freeze for certain political appointees. This indicates that the FEC failed to implement the pay limitations identified in the Act.

Figure 3 - OPM SES Level IV Annual Salary Table (2014-2018)

Year	2013	2014	2015	2016	2017	2018
SES (Level IV) Salary	\$155,500	\$157,100	\$158,700	\$160,300	\$161,900	\$164,200

Section 749 of the Consolidated Appropriations Act, 2019 incorporates a modified pay freeze which provides a 1.9% salary increase for certain political appointees, which the FEC Commissioners would be subject to, as provided in Figure 4 below.

Figure 4 - Excerpt from the “Guidance on Application of Pay Freeze” document

3. The payable rates for freeze-covered Executive Schedule individuals (or an employee paid at an EX rate under law) during calendar year 2019 are shown in the table below. The new payable EX rates are effective on January 6, 2019—the date on which official EX rates were retroactively adjusted.	
Executive Schedule (EX) Level	Payable Frozen Annual Rates after 1.9 Percent Increase
EX-I	\$203,500
EX-II	\$183,100
EX-III	\$168,400
EX-IV	\$158,500
EX-V	\$148,500

⁹ Commissioner Matthew Petersen retired from the agency effective August 11, 2019. Two commissioners were also subject to the pay freeze requirement from 2014-2016, Commissioner Ann Ravel and Commissioner Lee Goodman.

¹⁰ Data derived from SES pay schedules via <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2014/executive-senior-level>

The current annual salary of each commissioner is required to be set at \$158,500 in accordance with new legislation and investigators confirmed that to be accurate in the latest Agency Staffing Report for the pay period ending August 31, 2019.

Investigators identified no evidence that FEC Commissioners received or were otherwise aware of the limitations imposed by the Act or OPM Memorandum of January 28, 2014. Further, investigators could not determine who at the FEC received the initial memorandum highlighting the pay freeze for certain senior official positions. The OIG interviews indicated that FEC management officials who would have received this memorandum or notification, and would have been responsible for implementing the action, have since departed the agency.¹¹ The FEC Chief Financial Officer stated that the FEC is a somewhat unique entity as there has not been a high frequency of turnover among Commissioners. Any turnover would have prompted payroll processors to conduct reviews and potentially identify any payroll discrepancies, such as those discussed in this report.

Additionally, the agency underwent turnover to key administrative personnel in 2013 and 2014 which may have contributed to the lack of administrative oversight. Additional evidence supported that one OGC staff member was aware of the Memorandum issued on January 28, 2014, but assumed it was a matter for the National Finance Center (NFC)¹² to address, and not the agency. The Act's pay freeze required an agency representative to manually withhold the automatic salary increases for those positions subject to the freeze; as such, without notification or appropriate implementation, those salary increases would, and did, continue to increase for the subsequent five years.

C. What action(s), if any, has the FEC taken in response to the allegations?

Investigators determined that FEC OGC staff became aware of the potential overpayments sometime in December 2018 and notified the Commissioners. At that time, the Commissioners all agreed that the agency should attempt to address the concern. An email from the FEC Deputy Staff Director dated February 28, 2019, addressed to FEC Commissioners, indicated that members of the FEC OGC, the Staff Directorate, and the Chief Financial Officer discussed that the Commissioners had received salary increases from 2014 to date that exceeded limitations in the Act, as provided in Figure 5.

Two Commissioners who were present at that meeting,¹³ Vice Chair Commissioner Matthew Petersen and Commissioner Caroline Hunter, verbally requested to adjust their salaries to the 2013 frozen salary level of \$155,500 once becoming aware of the overpayments. The other two Commissioners, Chair Commissioner Ellen Weintraub and Commissioner Steven Walther, were unable to attend the meeting but similarly agreed to adjust their salaries to the

¹¹ OIG interviews with current FEC management indicated that the FEC Chief Human Capital Officer, otherwise referred to as the Deputy Staff Director, and/or the FEC Director of Human Resources may have received the 2014 memorandum but failed to take action. It is unclear to investigators if the agency received suitable notification of the updates to the Consolidated Appropriations Act, 2014.

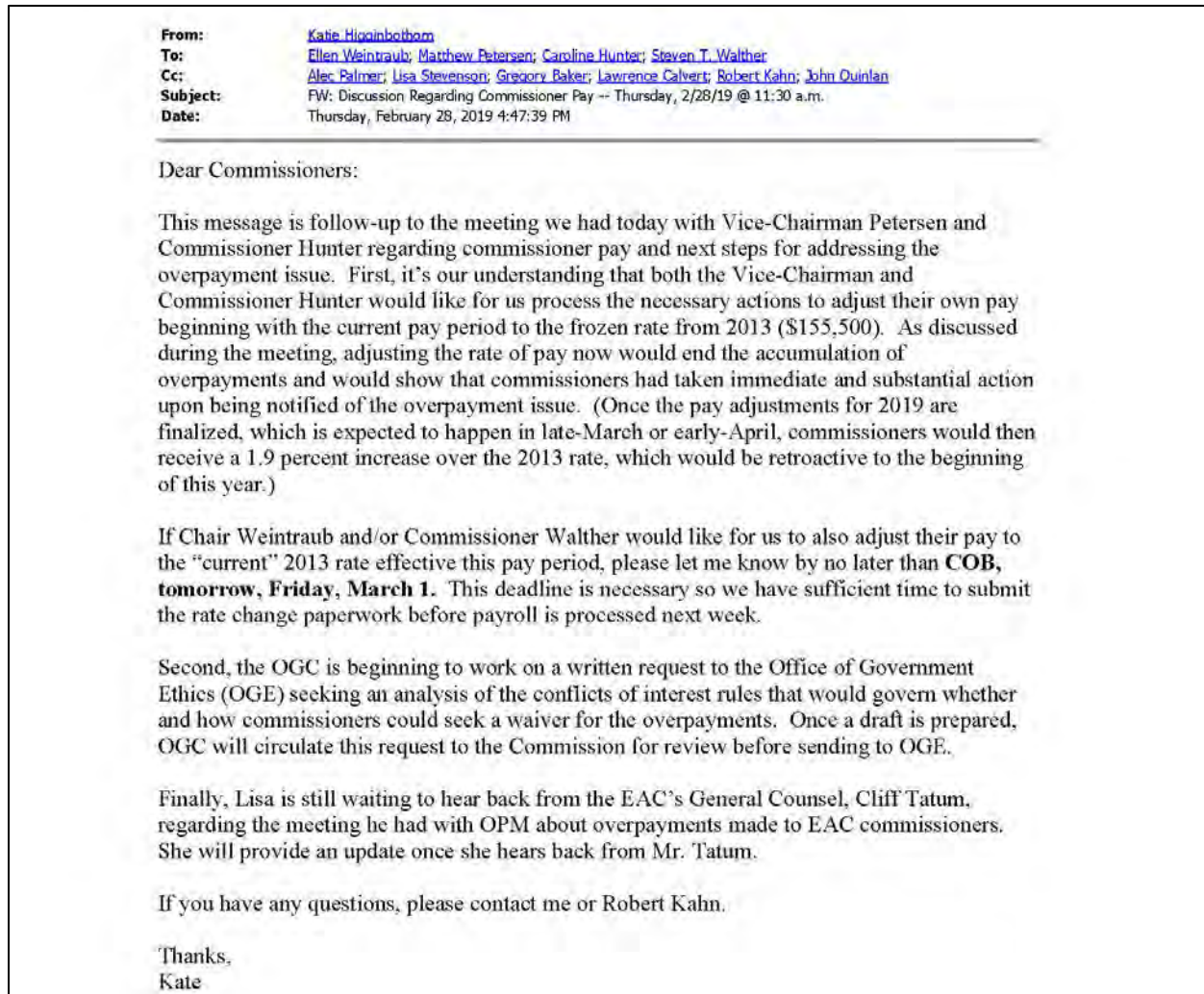
¹² The agency financial management service provider.

¹³ Due to the sensitive nature of the issue, Chair Weintraub agreed for Commissioners Petersen and Hunter to proceed with the February 28, 2019 meeting although she and Commissioner Walther were unable to attend.

2013 frozen level once they became aware of the overpayment on February 28, 2019.

Another result of that February 28, 2019 meeting indicated that OGC would prep a letter to send to the Office of Government Ethics (OGE) seeking analysis of the conflict of interest rules regarding the process for submitting a waiver request for the overpayment. Investigators did not further examine or expound upon the waiver request as it was outside the scope of this investigation.

Figure 5 – February 28, 2019 Email from FEC Deputy Staff Director to FEC Commissioners



Accordingly, the FEC has been proactive in taking action on this matter once agency officials became aware of the issue. Figure 5 provides a summary of the timeline of events that transpired since the Commissioners were made aware of the issue.

Figure 5 - Timeline of events to address commissioner salary discrepancies

 OMB Action
 FEC Action

DATE	ACTIVITY
01/28/2014	OMB issues memo regarding pay freeze for senior officials (Consolidated Appropriations Act, 2014), #CPM-2014-03.
12/18/2015	OMB issues memo continuing pay freeze (Consolidated Appropriations Act, 2015), #CPM-2015-14.
01/10/2016	OMB issues memo continuing pay freeze (Consolidated Appropriations Act, 2016), #CPM-2016-20.
05/09/2017	OMB issues memo continuing pay freeze (Consolidated Appropriations Act, 2017), #CPM-2017-05.
01/03/2018	OMB issues memo continuing pay freeze (Consolidated Appropriations Act, 2018). #CPM-2018-02
12/2018	OGC advises FEC Commissioners that FEC may be in violation of the pay freeze provisions set forth in the Consolidated Appropriation Act, 2014.
01/24/2019	OMB issues memo continuing a modified pay freeze. #CPM-2018-03
02/26/2019	OGC sends email to Commissioners, copying staff directorate agency leaders, ¹⁴ requesting meeting to discuss proposed course of action.
02/27/2019	Chair Weintraub agrees that Commissioners Petersen and Hunter should meet with OGC on 02/28/2019 as her and Commissioner Walther are unable to attend but agreed to meet with OGC at a later date, if required.
02/28/2019	Per Commissioners request, FEC Deputy Staff Director sends email to relevant parties, providing a copy of the 2014 OMB memo and states that the memo was allegedly provided to the FEC Chief Human Capital Officer, at the time, but never communicated to staff for implementation.
02/28/2019	FEC Deputy Staff Director sends email to all relevant parties summarizing the outcome of the meeting. Commissioners Petersen and Hunter verbally agreed to adjust their salaries to the 2013 frozen level (\$155,500). Once Chair Weintraub and Commissioner Walther received the information, they elected to do the same.
03/01/2019	Deputy Staff Director sends email to responsible parties advising that the Office of Human Resources confirmed that they implemented a personal action adjusting Commissioners pay rates to the 2013 frozen level (\$155,500) per request. This change would be reflected in pay period 4 (February 17 through March 2, 2019).
03/01/2019	FEC Office of Finance Office (OCFO) sends an email to a USDA ¹⁵ contact to discuss how best to address the reconciliation efforts.

¹⁴ Hereafter referred to as “relevant parties.”

¹⁵ NFC is part of USDA’s Office of the Chief Financial Officer.

03/28/2019	OPM issues memo to agency heads which provides, among other things, that section 749 of the Consolidated Appropriations Act, 2019 allows for a salary increase of 1.9% in the preexisting frozen pay table for covered officials.
04/26/2019	USDA sends email to Chief Financial Officer (CFO) advising that FEC should submit History Correction Update Processing System (HCUP) packages for all Commissioners but not before May 17, 2019. NFC advised that FEC Commissioners payroll, retirement, thrift savings plan (TSP), W-2, and annuity payments would all require adjustments. CFO forwards the information to FEC management.
04/29/2019	CFO forwards an email response from USDA to responsible parties identifying answers to reconciliation questions posed by OCFO.
05/09/2019	USDA provides CFO NFC's responses regarding FEC questions related to W-2s.
05/17/2019	USDA sends email to CFO advising FEC not to process HCUP packages for years 2014, 2016, 2017, 2018, and to only submit paperwork for 2019 for the time being. CFO forwards email to responsible parties.
05/17-31/2019	USDA and CFO exchange emails and determine that Chair Weintraub's situation will be used to provide examples of corrections required. NFC advises that it would suspend repayment for 15 pay periods once a repayment waiver is sought. USDA advises that if FEC pursues guidance from OGE, it would constitute as a waiver request.
06/06/2019	USDA sends email to CFO questioning salaries of former FEC Commissioners Ann Ravel and Lee Goodman.
06/10/2019	Acting IG at the time, is notified of the payroll discrepancy. The OIG opens an investigation into the matter.
06/20/2019	The Acting IG sends a request for documentation regarding all actions and communications related to commissioner salaries.
06/28/2019	The OIG receives documents requested and proceeds with investigation.
09/2019	Permanent IG consolidates all data and documents ROI.

At the time of this report, the FEC Human Resources (HR) and FEC Finance departments continue to work the issue with the NFC. The overpayment equates to approximately \$24,000 of excess payments to each commissioner. The OIG found that FEC continues to be in the process of resolving the issue. The OIG obtained evidence that FEC HR is currently working on submitting paperwork to the NFC to correct each Commissioners pay from 2014-2018.

This effort requires FEC HR to generate documents from NFC's current system of record and their previous retired legacy system. This adjustment in pay additionally affects tax statements, benefits, TSP contributions, etc. Once the appropriate paperwork is submitted, it is projected that the NFC will likely issue debt letters to each commissioner and at that time, each commissioner may submit a waiver request or repay the funds.

D. Do FEC policies exist to address the implementation of new and updated legislation and what, if any, internal controls are in place to mitigate the risk for future excess payments?

The OIG found no internal policies in place to address whom at the FEC is responsible for implementing new and updated legislation. Further, FEC Commission Directive 53 requires the agency to implement an internal control program in accordance with OMB Circular A-123 to provide reasonable assurance that programs operate effectively and efficiently, that financial reports are reliable, and that programs comply with applicable laws and regulations.

In 2017, the FEC established a Senior Management Council (SMC) to oversee FEC internal control activities. As a result of the improper payments made to Commissioners, the SMC is creating a central repository of executive orders, directives, memorandums, and other external guidance from key agencies such as OPM, Office of Management and Budget (OMB), and General Services Administration (GSA). The SMC is requesting all agency personnel forward all impending applicable guidance to the Office of the Staff Directorate. Additionally, members of the Staff Directorate have registered their email addresses on the OPM list serve webpage to ensure that more than one person is notified via updated legislation announcements. According to FEC senior management, the Office of Staff Directorate will proactively check the Federal Register and the White House webpages to ensure critical guidance does not bypass agency personnel.

Management further stated that all updated memorandums, executive orders, and other guidance will be discussed at the director's bi-weekly meetings. Subsequently, guidance will be assigned to a member of OGC to determine if applicable to the FEC. If applicable, OGC will discuss an implementation plan in coordination with the FEC Commissioners.

In conclusion, the agency has no such policy to address new and updated legislation requirements and initially lacked internal controls to identify and mitigate financial errors associated with those requirements. The agency has been proactive in implementing a process, of which it continues to refine, to mitigate unnoticed legislation requirements bypassing agency personnel.

Recommendation(s). The OIG recommends the following:

1. The FEC should complete the reconciliation of Commissioners' salaries with limitations imposed in the Act in a manner that is timely, but with due regard for accuracy and thoroughness, given that the reconciliation requires corrections to numerous impacts.
2. In light of the oversights of changes to federal law discussed herein, the FEC should implement and document internal controls that ensure it monitors updates to laws and regulations that may impact the FEC.
3. The FEC should develop and/or improve a routine payroll audit process to proactively identify and mitigate future payroll discrepancies.

V. CONCLUSION

The preponderance of evidence indicates that FEC failed to implement the pay freeze provisions of the Consolidated Appropriations Acts, 2014 to 2018. As a result, during that time, FEC Commissioners received unauthorized salary increases in excess of the SES level IV pay schedule. However, the OIG found no misconduct by any FEC employees and attributes the improper payments to an administrative oversight. The preponderance of evidence established that the oversight may have occurred due to turnover of key personnel from 2013 to 2018, the lack of internal policy and guidance, and lack of key internal controls to mitigate improper payments.

The OIG recognized that FEC senior management has been proactive in taking action to resolve the matter once the issue was presented. Additionally, senior management initiated steps to implement internal controls to mitigate future related concerns. Some of those actions include but are not limited to, adjusted Commissioner salaries, working with NFC to submit appropriate financial paperwork, implementation of additional checks and balances, and application of agency internal controls.

The overpayment is not resolved as the FEC Commissioners are still awaiting additional guidance from NFC on the appropriate overpayment amount and how best to settle the debt. Accordingly, the OIG may follow up on the matter through the conduct of a special review or internal audit at a later date to confirm reconciliation. In the interim, the OIG requests that management provide an update as to the status of the Commissioners reconciliation of the overpayment not later than 90 days from this reports date of issuance.



FEDERAL ELECTION COMMISSION
Office of the Inspector General

CASE DISPOSITION MEMORANDUM

Case #: 12INV00037	Prepared By: Hung Huynh
Case Title: Allegations of Bias Against Federal Election Commission Personnel Reviewing 58th Presidential Inaugural Committee Reports	
Date: August 10, 2021	
Subject: Case Closure	

Summary of Investigation

The OIG initiated an investigation based on allegations reported in the media in October 2020 concerning the FEC's Reports Analysis Division (RAD). That report alleged that RAD may have failed to exercise adequate oversight of the 58th Presidential Inaugural Committee due to an alleged personal relationship between the (b) (7)(C) and a former FEC Commissioner who was associated with the 2016 Trump campaign and related entities.

The OIG investigation found that RAD personnel acted in accordance with applicable law, regulation, and policy in its oversight of the 58th Inaugural Committee's report. However, we developed five recommendations for the Commission and senior leaders to consider in efforts to reinforce the impartiality (in fact and appearance) of senior managers, to enhance the oversight of inaugural committees and to better address potential foreign donations to political and inaugural committees.

OIG Disposition

A report was issued to the Commission on July 29, 2021, and an investigative summary was posted on the OIG's website. The OIG will monitor and follow up on any actions the agency may take based on our recommendations.

Preparer: Hung Huynh 8/10/21
Hung Huynh Date
Senior Investigator

Concurrence: Dennis Phillips 8/10/21
Dennis Phillips Date
Deputy Inspector General

RESTRICTED INFORMATION: This report is confidential and may contain information that is prohibited from disclosure by the Privacy Act, 5 USC 552a. Therefore, this report is On May 7, 2021, the Hotline received a complaint from Michael Gordon, general public, alleging FEC Commissioners Allen Dickerson, James E. Trainor III, and Sean J. Cooksey were placed on the commission in December 2020 for the sole purpose of ending an investigation into former President Donald Trump's campaign finance violations.

FEDERAL ELECTION COMMISSION

Office of the Inspector General



Report of Investigation

Allegations of Bias Against Federal Election Commission Personnel Reviewing 58th Presidential Inaugural Committee Reports

Case Number: I21INV00037

July 29, 2021

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I. EXECUTIVE SUMMARY

The Federal Election Commission (FEC) Office of Inspector General (OIG) initiated this investigation based on allegations reported in the media in October 2020 concerning the FEC's Reports Analysis Division (RAD). That report suggested that RAD may have failed to exercise adequate oversight of the 58th Presidential Inaugural Committee (the Inaugural Committee) due to an alleged personal relationship between the (b) (7)(C) and a former FEC Commissioner who was associated with the 2016 Trump campaign and related entities.¹

The media report further alleged that the Inaugural Committee's reports filed with the FEC contained numerous errors concerning donations. It further questioned expenditures by the Inaugural Committee, including alleged fraudulent and excessive spending at Trump properties. In addition, it questioned the Commission's decision to dismiss a May 2, 2017 complaint that alleged the Inaugural Committee violated federal law and agency regulations by filing a disclosure report that did not include required information and that contained erroneous donor addresses. The report suggested that personal and political biases on the part of the (b) (7)(C) may have improperly influenced the Commission's decision to dismiss the complaint, which the Inspector General determined warranted further inquiry.

Accordingly, the OIG initiated this investigation and sought answers to the following questions:

- **Did personal or political biases on the part of senior RAD personnel undermine the impartiality of its oversight of the 58th Inaugural Committee's FEC filings or the Commission's dismissal of the 2017 complaint against the Inaugural Committee?**
- **What criteria did RAD use to determine that there were no apparent serious violations on the Inaugural Committee's report in light of allegations to the contrary filed in the 2017 complaint and raised in media reports?**

In order to answer the foregoing questions, the OIG reviewed relevant statutes, regulations, and FEC policies; obtained and reviewed relevant agency records; and interviewed FEC personnel that included attorneys from the Office of General Counsel (OGC) and RAD staff. Our investigation reached the following findings.

First, the relevant legal standards provide for limited FEC oversight of presidential inaugural committees. Specifically, 36 U.S.C. § 510 provides for virtually no oversight of inaugural committee expenditures and places essentially no restrictions on expenditures. Accordingly, the OIG found there were no opportunities for the (b) (7)(C) or other RAD staff to improperly influence agency reviews or outcomes concerning Inaugural Committee expenditures.

¹ <https://www.propublica.org/article/top-fec-officials-undisclosed-ties-to-trump-raise-concerns-over-agency-neutrality>

The OIG considered developing recommendations to address the risks posed by the lack of FEC oversight of presidential inaugural committee expenditures given the allegations of fraud and conflicts of interest reported in multiple media outlets. However, the lack of statutory authority for FEC review of inaugural committee expenditures prevents the OIG from recommending additional oversight absent Congressional action to amend 36 U.S.C. § 510 and related standards.

Second, the investigation found that the (b) (7)(C) and other RAD personnel acted consistent with relevant law and policy concerning review of the Inaugural Committee's reports. The evidence obtained by the OIG established that RAD personnel adhered to FEC practice that delegates review of filings to staff-level career analysts. Senior RAD personnel were not directly involved in the review or analysis of the Inaugural Committee's reports. As such, there were no opportunities for senior RAD personnel to act improperly without personally intervening in the review and analysis of the relevant reports, which by all accounts did not occur here.

Although this investigation found no instances in which RAD officials acted improperly, we nonetheless believe it is important to address the ethical principle that federal employees should avoid even the appearance of impropriety. Ethical principles promulgated by the Office of Government Ethics encourage (and in some cases require) federal employees to seek guidance and potentially recuse themselves to avoid unethical situations, in fact or appearance. Although the facts of this case did not trigger any such requirements, the FEC's unique mission raises heightened concerns that allegations of personal or political bias against senior personnel could undermine the public's confidence in the agency. Accordingly, we developed a recommendation that the Commission evaluate the effectiveness of current agency policies on ethical behavior and update them, as may be appropriate.

Third, this investigation found that FEC policy regarding the oversight of presidential inaugural committees provides insufficient guidance concerning the identification of potential violations. Standard 21 of the RAD Review and Referral Procedures governs the review and analysis of inaugural committee filings. Unlike most other standards in the RAD Procedures, Standard 21 is very short (i.e., less than one page) and lacks clarity in several respects:

- Standard 21 confers subjective discretion to the (b) (7)(C) to identify apparent "serious violations" by inaugural committees that may warrant the issuance of a Request for Additional Information (RFAI). However, it neither defines "serious violations" nor provides standards by which the (b) (7)(C) should exercise that discretion. That ill-defined and subjective standard creates a reasonable likelihood of inconsistent results and arbitrary or capricious application (in fact or appearance).
- Standard 21 provides for assessment of no audits points, no referrals to OGC for potential enforcement actions, and no referrals to alternative dispute resolution (ADR). That differs from standards concerning reviews of political committee filings (authorized and unauthorized), which may be assessed audit points and referred to OGC or for ADR. This in turn undermines the potential for audits and enforcement actions involving inaugural committees and could reasonably result in the lack of accountability for violations by inaugural committees.

- Standard 21 effectively limits RAD’s oversight of inaugural committee reports to the identification of “mathematical discrepancies,” essentially, a nominal computational review to ascertain whether the committee’s reported totals are internally consistent.
- Accordingly, we recommend that the Commission update Standard 21 to include specific criteria for a “serious violation” and provide measurable standards concerning the review of inaugural committee reports.

Fourth, this investigation found that RAD’s existing process for review of inaugural committee reports is antiquated and lacks adequate internal controls. Unlike reviews of political committee reports (which are submitted and reviewed electronically), inaugural committee reports are completed on paper and manually reviewed by a RAD analyst. Those manual submission and review processes are inefficient and creates substantial risk of human error, given the voluminous data involved.

In addition, RAD personnel testified that inaugural committee reports are generally not subject to quality control reviews, as those quality control reviews are accomplished via the same electronic program used for political committee reports (but not for inaugural committee reports). Accordingly, the risk of error is further heightened by the lack of internal quality control reviews of inaugural committee reports. As such, the OIG recommends that the Commission update the inaugural committee review process to include quality control reviews.

Lastly, the OIG found that the FEC’s current practice concerning donors to all committees (inauguration and political) with foreign addresses poses significant national security risks, particularly in light of recent high-profile reports of foreign influence in U.S. elections. Federal law prohibits inaugural committees (as well as other political committees) from accepting donations from foreign nationals. RAD identifies potential foreign national donations based on the reported addresses of donors. However, RAD personnel testified that the division generally defers to a committee’s self-certification that it verified the U.S. citizenship of donors with foreign addresses.

This investigation found the current practice of relying on a committee’s conclusory “verification” is not memorialized in any RAD policy. In addition, committees may not be familiar with regulations concerning citizenship verification and the relevant FEC forms provide neither instructions nor direct reference to the regulations concerning foreign donations. Accordingly, the OIG recommends that RAD memorialize a policy concerning the identification of potential foreign donations and that the Commission consider updating relevant forms and instructions to ensure filers are aware of verification requirements imposed by federal regulation.

We further recommend that RAD’s policy include specific thresholds that will trigger the issuance of RFAs for donations with foreign addresses, notwithstanding purported “verification” by the relevant committees (political and inaugural). We recommend that RFAs should require the relevant committees to produce the bases for their citizenship verifications (e.g., copies of current and valid U.S. passport papers for U.S. citizens, as provided in 11 C.F.R. § 110.20) when donations associated with foreign addresses exceed a specific threshold. We

also recommend that RAD's policy include appropriate referrals when U.S. citizenship cannot be verified.

Based on the foregoing findings, the OIG recommends the following actions for the Commission to consider in efforts to reinforce the impartiality (in fact and appearance) of FEC personnel, to enhance the oversight of inaugural committees, and to better address potential foreign donations to political and inaugural committees:

1. Evaluate the effectiveness of current agency policies on ethical behavior and update them, as may be appropriate, to ensure FEC personnel are proactive in addressing situations that could violate ethical standards or otherwise adversely impact the reputation of the agency.
2. Update Standard 21 to include the criteria for a serious violation and provide measurable standards concerning the review of inaugural committee reports.
3. Update the inaugural committee review process to include electronic review and potential quality control reviews.
4. RAD memorialize a policy concerning the identification of potential foreign donations and that the Commission consider updating relevant forms and instructions to ensure filers are aware of verification requirements imposed by federal regulation.
5. RAD's policy should include specific thresholds that trigger the issuance of RFAs for donations with foreign addresses, notwithstanding purported "verification" by the relevant committees (political and inaugural). We recommend that those RFAs should require relevant committees to produce the bases for their citizenship verifications (e.g., copies of current and valid U.S. passport papers for U.S. citizens, as provided in 11 C.F.R. § 110.20) when donations associated with foreign addresses exceed a specific threshold. The policy should also provide for appropriate referrals when citizenship cannot be verified.

II. BACKGROUND AND ALLEGATIONS

A media report in late 2020 alleged that (b) (7)(C)

may have failed to exercise adequate oversight of the 58th Presidential Inaugural Committee (the Inaugural Committee) due to a personal relationship with a former FEC Commissioner.²

Specifically, the media report raised questions about the (b) (7)(C) and (b) (7)(C) alleged prior personal interactions with former President Donald Trump's 2016 campaign attorney (and subsequently, White House Counsel), Mr. Donald McGahn, and suggested their relationship may have undermined RAD's oversight of the Inaugural Committee.³ The (b) (7)(C) is responsible for supervising the RAD division that reviews committee compliance with federal election reporting requirements and routinely examines reports filed by political and inaugural committees.

Media reports also alleged that the Inaugural Committee engaged in numerous improper expenditures, such as lavish and fraudulent spending on Trump properties. For example, reports alleged that the Inaugural Committee spent over \$1 million at the Trump International Hotel in Washington, DC in 2017.⁴

In addition, the foregoing media report raised questions about the FEC's dismissal of a May 2, 2017 complaint that alleged the Inaugural Committee violated the Federal Election Campaign Act of 1971 (FECA) and agency regulations by filing a disclosure report that did not include required information and contained erroneous donor addresses.⁵

The Inaugural Committee filed an amended report on June 29, 2017, which it asserted had resolved all the reporting issues identified in the complaint. On March 14, 2018, the Commission closed the 2017 complaint after the FEC Office of General Counsel (OGC) recommended as much.⁶

² <https://www.propublica.org/article/top-fec-officials-undisclosed-ties-to-trump-raise-concerns-over-agency-neutrality>

³ Mr. McGahn served as FEC Commissioner from July 2008 to September 2013. He was elected Chairman on July 10, 2008 and served in that capacity until December 31, 2008.

⁴ See, e.g., <https://www.nbcnews.com/politics/trump-impeachment-inquiry/d-c-attorney-general-charges-trump-inaugural-committee-enriched-family-n1120361>

⁵ See First General Counsel's Report, MUR #7244. <https://www.fec.gov/data/legal/matter-under-review/7244/>

⁶ On April 26, 2017, a separate complaint was filed with the FEC relating to the Inaugural Committee. According to the complaint, CITGO Petroleum Corporation, a domestic subsidiary of a Venezuelan state-owned company, donated \$500,000 to the Inaugural Committee on December 22, 2016. The complaint alleged that foreign nationals were involved in the decision to make the donation and that CITGO thus violated the prohibition against foreign donations. The complaint further alleged that the Inaugural Committee knowingly accepted that alleged foreign donation. OGC advised the Commission that CITGO had violated prohibitions against foreign donations. However, the Commission split in a 3-3 vote on enforcement and the complaint was dismissed. See First General Counsel's Report, MUR #7243: <https://www.fec.gov/data/legal/matter-under-review/7243/>

The FEC OIG initiated this investigation on April 2, 2021, based on the foregoing media reports and sought answers to the following questions:

Did personal or political biases on the part of senior RAD personnel undermine the impartiality of its oversight of the 58th Inaugural Committee's FEC filings or the Commission's dismissal of the 2017 complaint against the Inaugural Committee?

What criteria did RAD use to determine that there were no apparent serious violations on the Inaugural Committee's report in light of allegations to the contrary filed in the 2017 complaint and raised in media reports?

III. FINDINGS

In the course of this investigation, the OIG reviewed relevant agency records and interviewed FEC personnel, including attorneys from the OGC and RAD staff. This investigation reached the following findings.

1. The FEC's authority to review inaugural committee reports is limited to reports of donations received and does not include inaugural committee expenditures. Accordingly, there was no potential for impropriety at the FEC concerning reviews of inaugural committee spending.

As an initial matter, notwithstanding media reports and allegations that the Inaugural Committee engaged in improper spending, there are no federal laws or regulations within the FEC's purview concerning disbursements by inaugural committees.⁷ Political committees are generally required to file reports of both their receipts and disbursements with the FEC. *See* 2 U.S.C. § 434 and 11 C.F.R. § 102.9. However, unlike those political committees, inaugural committees are required to report only donations received and not their expenditures.

Disclosure of Federal Campaign Funds 2 U.S.C. § 434

Reporting requirements

- (a) Receipts and disbursements by treasurers of political committees; filing requirements
 - (1) Each treasurer of a political committee shall file reports of receipts and disbursements in accordance with the provisions of this subsection. The treasurer shall sign each such report.
 - ...

Disclosure of and Prohibition on Certain Donations 36 U.S.C. § 510

(1) IN GENERAL.—

Not later than the date that is 90 days after the date of the Presidential inaugural ceremony, the committee shall file a report with the Federal Election Commission disclosing any donation of money or anything of value made to the committee in an aggregate amount equal to or greater than \$200.

(2) CONTENTS OF REPORT.—A report filed under paragraph (1) shall contain—

- (A) the amount of the donation;
- (B) the date the donation is received; and
- (C) the name and address of the person making the donation.

(c) Limitation.—The committee shall not accept any donation from a foreign national (as defined in section 319(b) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441e(b))).

⁷ With a limited exception for refunds (i.e., disbursements) to donors. *See* 36 U.S.C. § 510.

Reporting requirements for inaugural committees are codified in 36 U.S.C. § 510, which requires reports of donations that aggregate \$200 or more. 11 C.F.R. § 104.21 provides detailed requirements concerning reports of donations. The donations are reported on FEC Form 13 and must be submitted to the FEC no later than the 90th day following the date on which the presidential inaugural ceremony is held. Based on current law, the FEC's oversight of inaugural committees is limited to reports of donations and refunds to donors reported on Form 13. As such, despite media reports that alleged fraudulent and unethical spending by the 58th Inaugural Committee on Trump properties, the FEC lacked oversight authority to review such expenditures or to further inquire into allegations concerning spending.

The OIG considered developing recommendations to address the risks posed by the lack of FEC oversight by the FEC of presidential inaugural committee expenditures given the serious allegations reported in multiple media outlets. However, the lack of statutory authority for FEC review of such expenditures prevents the OIG from recommending additional oversight.

2. The preponderance of the evidence established that the (b) (7)(C) and other RAD personnel acted consistent with relevant law and policy.

5 C.F.R. Part 2635 establishes the “Standards of Ethical Conduct for Employees of the Executive Branch.” 5 C.F.R. § 2635.101(b)(8) provides that “Federal employees shall act impartially and not give preferential treatment to any private organization or individual.” The (b) (7)(C) is responsible for supervising the division that reviews committee compliance with federal election reporting requirements and routinely examines reports filed by political and inaugural committees. Standard 21 of the 2015-2016 RAD Review and Referral Procedures delegates discretion to the (b) (7)(C) to issue Requests for Additional Information (RFAI) to inaugural committees if RAD's review of the relevant reports identifies apparent “serious violations.”

Office of Government Ethics Regulation 5 C.F.R. Part 2635

§ 2635.101 Basic obligation of public service.

...

(8) Employees shall act impartially and not give preferential treatment to any private organization or individual.

...

(14) Employees shall endeavor to avoid any actions creating the appearance that they are violating the law, or the ethical standards set forth in this part. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.

§ 2635.107 Ethics advice.

...

(b) Employees who have questions about the application of this part or any supplemental agency regulations to particular situations should seek advice from an agency ethics official.

The OIG interviewed the former senior RAD analyst who was assigned to review the Inaugural Committee's report. According to the senior analyst, her review was consistent with similar reviews and that neither the (b) (7)(C) nor anyone else directed her to take a particular action or reach a specific conclusion regarding the Inaugural Committee's report. The senior analyst further testified that she had no interaction whatsoever with the (b) (7)(C) regarding the review, which was typical of her work as an analyst with multiple levels of supervision between her and the (b) (7)(C).

The OIG corroborated her testimony by reviewing relevant contemporaneous emails. Specifically, a branch chief sent an email to the (b) (7)(C) on September 21, 2017, in which the branch chief informed the (b) (7)(C) that the same senior analyst had verified there were no serious violations in the report and that the branch chief had conveyed that verification to OGC.



Source: OIG review of FEC email records

The senior analyst further testified that if she had identified a potential serious violation in the Inaugural Committee's report, she would have raised it to her supervisor's attention for potential review by the (b) (7)(C) to determine whether to issue the Inaugural Committee an RFAI. She testified that she identified no potential serious violations in the Inaugural Committee's report that warranted further attention.

The OIG independently reviewed the Inaugural Committee's reports. The OIG verified the corrections to the reporting errors alleged in the 2017 complaint by cross referencing those alleged errors with the original report to identify them and subsequently reviewing the corrections made in the amended report.

In doing so, the OIG identified a specific donor with a foreign address and raised that donation (in the amount of \$25,000) to the senior analyst as a potential serious violation.⁸ When asked about that donation, the analyst stated that she did not elevate it to her supervisor because

⁸ As previously noted, 36 U.S.C. § 510 prohibits donations to inaugural committees by foreign nationals.

the Inaugural Committee's report indicated it had verified the donor's U.S. citizenship and it is RAD's practice to take such "verifications" at face value.⁹

The OIG also interviewed the branch chief who oversaw review of the Inaugural Committee's report. The branch chief testified that he or the assistant branch chief assigned the reports to RAD analysts for review and that the (b) (7)(C) had no role in assigning the reports. The branch chief also testified that he observed no interaction or correspondence (aside from the aforesaid September 21, 2017 email) between the (b) (7)(C) and RAD staff about potential serious violations on the Inaugural Committee's report.

The branch chief also stated there was nothing unusual with RAD's review of the report and that it was consistent with past reviews. In a separate interview, the OGC attorney who drafted an OGC opinion regarding the 2017 complaint testified that he similarly recalled nothing improper or unusual regarding RAD's work on the matter and further stated that he had no reason to question the integrity of the RAD staff in that matter or otherwise.

Additionally, the OIG interviewed the FEC's designated ethics officials regarding whether they had any concerns related to the allegations against the (b) (7)(C). They testified that in 2017 they had no concerns about the (b) (7)(C) overseeing the branch that reviewed the Inaugural Committee's report because there was no basis to believe she was conflicted. However, they developed concerns in 2020 after becoming aware of allegations reported by the media referenced in this report.

The Designated Agency Ethics Official (DAEO) testified she had a discussion with the Deputy Ethics Official on whether the (b) (7)(C) sought ethics advice and the Deputy Ethics Official informed her that the (b) (7)(C) had not done so. In addition, the Alternate DAEO testified he had a concern that some of the (b) (7)(C) emails identified in the media reports struck him as outside of the institutional norm for communication between FEC staff and Commissioners.

Nonetheless, the DAEO further testified she had a discussion with the Alternate DAEO and both agreed that the details in the October 2020 media report were not sufficient to require recusal by the (b) (7)(C). However, both testified that they believed the (b) (7)(C) should have considered seeking advice given the potential appearance of impropriety.

The OIG also interviewed the Deputy Staff Director for Compliance, who served as the (b) (7)(C) direct supervisor. She testified she had no concerns about the (b) (7)(C) conduct. She further testified that in her opinion there were no biases with her managers because they were aware of the importance of following policy and conducting themselves in an unbiased and non-partisan manner. She stated that, as a result, she did not have any discussions with the (b) (7)(C) on seeking ethics advice.

⁹ The OIG has concerns about this practice, as well as concerns about the lack of more specific guidance in Standard 21, which are discussed in subsequent sections of this report.

The OIG interviewed the (b) (7)(C) who testified that a RAD analyst reviewed the Inaugural Committee's reports without her direct involvement. (b) (7)(C) further stated that no RAD personnel approached (b) (7)(C) during the review of the Inaugural Committee's report to raise issues relating to the filing. The (b) (7)(C) also told the OIG (b) (7)(C) did not contemporaneously engage with the Commission or RAD personnel to discuss the report. The OIG reviewed emails relating to the Inaugural Committee and identified no evidence that undermined the (b) (7)(C) testimony.

The OIG further asked the (b) (7)(C) if (b) (7)(C) had sought advice from the agency's Ethics Official on whether to recuse (b) (7)(C) on matters related to the Inaugural Committee, as provided by 5 C.F.R. § 2635.107(b), which states that employees who have questions about situations should seek advice from an agency's ethics official. The (b) (7)(C) stated that (b) (7)(C) did not consider recusing (b) (7)(C) or seeking ethics advice because (b) (7)(C) had no reason to think (b) (7)(C) should have done so. Additionally, (b) (7)(C) stated no FEC management or officials at the time suggested (b) (7)(C) should recuse (b) (7)(C).

Although the investigation found no instances where the (b) (7)(C) impartiality was affected, it is important to nonetheless address the ethical principle in 5 C.F.R. § 2635.101(b)(14). That standard provides that federal employees shall endeavor to avoid any actions creating the appearance that they are violating the law, or the ethical standards set forth in those regulations.

The October 2020 media report featured a social media post of the (b) (7)(C) photographed at President Trump's 2017 inauguration with several people, one whom was holding a "Make America Great Again" banner. This created a situation where appearance could be a concern, given that the post depicted an FEC senior official attending an event celebrating the outcome of a partisan election. However, the OIG recognizes that the inauguration was an official event that was open to the public and that the (b) (7)(C) attendance was not specifically prohibited.

The OIG also recognizes the concern that the appearance could create a perception of favoring one political party over another, given the (b) (7)(C) senior position at the FEC.¹⁰ As a result, the OIG believes the perception created by the (b) (7)(C) appearance should have caused (b) (7)(C) supervisor or OGC to reiterate the importance of 5 C.F.R. § 2635.101(b)(14), if only to ensure that the employee did not engage in future conduct that went too far. Importantly, neither the (b) (7)(C) nor (b) (7)(C) supervisor are attorneys or experts in federal ethics rules and, therefore, should seek advice from the agency's experts in questionable situations. Accordingly, the OIG recommends that the Commission evaluate the effectiveness of current agency policies on ethical behavior and update them, as may be appropriate, to ensure FEC personnel are proactive in addressing situations that could violate ethical standards or otherwise adversely impact the reputation of the agency.

¹⁰ The fact that a FEC senior official attended the 2017 Inauguration and having (b) (7)(C) photo taken that featured a Trump banner did not violate the Hatch Act. The (b) (7)(C) was off duty when (b) (7)(C) apparently attended the inauguration. In addition, the Office of Special Counsel has opined that "post-Election Day activities showing support for or opposition to a presidential candidate will not affect the result of the election for that office," and, therefore, do not violate the Hatch Act. See, e.g.:

<https://osc.gov/Documents/Hatch%20Act/Advisory%20Opinions/Federal/The%20Hatch%20Act%20and%20Activities%20after%20Election%20Day.pdf>

3. FEC policy regarding the oversight of presidential inaugural committees provides insufficient guidance concerning the identification of potential violations.

The 2017 complaint to the FEC alleged the Inaugural Committee filed a disclosure report that did not include required information and contained erroneous donor addresses. OGC reviewed the matter and recommended dismissing the complaint based on the Inaugural Committee's amendment to its original report to correct addresses of certain donors and the Commission's treatment of analogous errors by past inaugural committees.

In reviewing the Inaugural Committee's reports, RAD relied on its review and referral procedures manual, which is updated every election cycle.¹¹ The 2015-2016 manual was comprised of 30 standards; Standard 21 applied to inaugural committees. Unlike most others, Standard 21 is short (less than one page), essentially confers unlimited discretion to the [REDACTED] to issue RFAs for "serious violations" (other than nominal mathematical discrepancies), and provides neither for the assignment of audit points, nor for enforcement or ADR referrals.

2015-2016 RAD Review and Referral Procedures

Standard 21: Host and Inaugural Committee Reporting Problems

(This Standard does not apply to Title 52 Authorized or Title 26 Authorized Committees)

Notices Sent/Applying this Standard:

I

An RFAI will be sent if a host or inaugural committee's report discloses mathematical discrepancies. In this regard, Standard 6 will be followed.

An RFAI may be sent at the discretion of the Assistant Staff Director if there appears to be serious violations on a host or inaugural committee's report.

Assessment of Audit Points:

No audit points will be assessed under this Standard.

Referral to ADRO:

There will be no referrals made to ADRO under this Standard.

Referral to OGC:

There will be no referrals made to OGC under this Standard.

¹¹ Review of prior versions of Standard 21 confirmed that it has remained unchanged over prior election cycles.

The brevity of this standard presents significant risks. The subjective discretion conferred on the (b) (7)(C) may create the potential for arbitrary and capricious results (in fact or appearance). The OIG questioned a RAD branch chief about this concern and the branch chief agreed that the discretion conferred on the (b) (7)(C) posed such risks. The branch chief further stated that the public disclosure of committee reports should deter misconduct but ultimately agreed that Standard 21 lacked clarity and warranted revision to aid RAD analysts in its application.

The OIG also interviewed several OGC attorneys who worked on related matters or were otherwise experienced with the agency policies or ethical standards. One attorney told the OIG he was not aware of any guidance for the (b) (7)(C) in exercising (b) (7)(C) discretion under Standard 21. Further, the same attorney agreed that in hindsight, the lack of guidance creates risk. Two other attorneys stated it was RAD policy and they were not familiar enough with the policy to provide adequate responses.

In contrast, Standard 5, which applied to other committees outside of inaugural committees, offered specific guidance on violations. It laid out procedures for analysts to follow when violations are found in their review of the financial reports. This standard also required the issuance of RFAs when a violation exceeded a specific threshold. The RAD branch chief opined that certain thresholds could be taken from Standard 5 and adapted into Standard 21. In addition, the branch chief stated he was not in favor of giving one person discretion over a decision that could have serious ramifications and that standard 21 could be improved.

Similarly, the (b) (7)(C) testified that if (b) (7)(C) were faced with a potential serious violation on an inaugural committee report, (b) (7)(C) would reference the thresholds outlined under Standard 5 to help (b) (7)(C) determine what constitutes a serious violation under standard 21. The (b) (7)(C) further opined that Standard 21 could use more clarification. Accordingly, the OIG recommends that the Commission update Standard 21 to include criteria for a serious violation and provide measurable standards concerning the review of inaugural committee reports.

4. RAD's existing process for review of inaugural committee reports is inefficient and lacks adequate internal controls.

Unlike reviews of political committee reports (which are submitted and reviewed electronically), inaugural committee reports are completed on paper (i.e., PDF) and are manually reviewed by a RAD analyst. The senior RAD analyst testified that she manually reviewed the relevant files because inaugural committees do not file electronically in the same manner as political committees. She further testified that the electronic system used to review political committee reports incorporates numerous automated processes that aid analysts in identifying questionable transactions that warrant further scrutiny.

The branch chief corroborated this account. The branch chief further testified that he could not recall any quality control reviews of RAD analysts' work on inaugural committee reports because the filings are infrequent and are not contained within the electronic system from which samples are identified for quality control review.

Interviews with FEC staff revealed that the current inaugural committee submission and review process is inefficient and poses risk of human error. The current RAD process requires a single analyst to manually review a voluminous number of transactions with minimal to no oversight or other quality control checks. Accordingly, the OIG recommends that the Commission update the inaugural committee review process to include electronic review and potential quality control reviews .

5. The current practice of relying on an inaugural committee's self-certification concerning donations with foreign addresses poses a national security risk and provides insufficient oversight of possible illegal foreign donations.

Inaugural committees are prohibited from accepting donations from foreign nationals by 36 U.S.C. § 510. In addition, 11 C.F.R. § 110.20(j) further provides that a foreign national shall not, directly or indirectly, donate to an inaugural committee, and that no personal shall knowingly accept a donation to an inaugural committee from a foreign national.

RAD personnel told the OIG that the division historically relied on the committee's self-certification on FEC Form 13 that U.S. citizenship was verified. The OIG identified a \$25,000 donation on the Inaugural Committee's report by a donor with a foreign address. The report indicated "US citizenship verified" with no reference to the method of verification.

Full Name (Last, First, Middle Initial) or Full Organization Name C. RODRIGUEZ, FRANK, A., ,		Date Donation Received 12 / 22 / 2016
US CITIZENSHIP VERIFIED		Amount of This Donation 25000.00
Mailing Address 47 ORCHARD TOWER		Donor's Aggregate Donations To Date 25000.00
City SINGAPORE	State ZZ	Zip Code 99999
SUBTOTAL of Donations This Page (optional) ▶		Transaction ID : 1068
TOTAL (optional) ▶		25150.00

FEC Schedule 13-A (Form 13) 10/2004
FESAN013

Source: 58th Inaugural Committee Filing

The OIG questioned both the senior campaign analyst who worked on the Inaugural Committee report and the RAD branch chief about that \$25,000 donation, given that it provided a foreign address (i.e., in Singapore). The senior analyst stated the donation would not raise a red flag because of the text that indicated U.S. citizenship had been verified. According to the senior analyst, that statement would be sufficient to satisfy RAD's requirement because RAD relied on the conclusory statement of the filer. The branch chief similarly told the OIG that he would have accepted that text as sufficient. The branch chief further stated RAD generally takes at face value a committee's asserted verification of a donor's citizenship.

11 C.F.R. § 110.20 provides the appropriate process for a committee to verify U.S. citizenship. Under (a)7 of the regulation, a person shall be deemed to have conducted a reasonable inquiry if he or she seeks and obtains copies of current and valid U.S. passport papers for U.S. citizens. There is no indication that the Inaugural Committee followed that process in determining that the donor's U.S. citizenship was "verified" as asserted in its report. In addition, Form 13 provides neither instructions concerning the verification of donor citizenship nor reference to the applicable regulation.

In addition, this investigation did not identify any written policy concerning RAD's existing practice of relying on committees for verification. The practice of relying on committees to verify U.S. citizenship and without a clear policy to ensure proper verification poses a risk of foreign influences in elections and a national security risk. Accordingly, the OIG recommends that RAD memorialize its policy and that the Commission consider updating relevant forms and instructions to ensure filers are aware of verification requirements imposed by federal regulation.

We further recommend that RAD's policy include specific thresholds that will trigger the issuance of RFAs for donations with foreign addresses, notwithstanding purported "verification" by the relevant committees (political and inaugural). We recommend that those RFAs require the relevant committees to produce the bases for their citizenship verifications (e.g., copies of current and valid U.S. passport papers for U.S. citizens, as provided in 11 C.F.R. § 110.20) when donations associated with foreign addresses exceed a specific threshold. The policy should also provide for appropriate referrals when citizenship cannot be verified.

IV. RECOMMENDATIONS

Based on the foregoing findings, the OIG recommends the following actions for the Commission to consider in efforts to reinforce the impartiality (in fact and appearance) of senior managers, to enhance the oversight of inaugural committees, and to better address potential foreign donations to political and inaugural committees.

1. Evaluate the effectiveness of current agency policies on ethical behavior and update them, as may be appropriate, to ensure FEC personnel are proactive in addressing situations that could violate ethical standards or otherwise adversely impact the reputation of the agency.
2. Update Standard 21 to include the criteria for a serious violation and provide measurable standards concerning the review of inaugural committee reports.
3. Update the inaugural committee review process to include electronic review and potential quality control reviews.
4. RAD memorialize a policy concerning the identification of potential foreign donations and that the Commission consider updating relevant forms and instructions to ensure filers are aware of verification requirements imposed by federal regulation.
5. RAD's policy should include specific thresholds that trigger the issuance of RFAs for donations with foreign addresses, notwithstanding purported "verification" by the relevant committees (political and inaugural). We recommend that those RFAs should require relevant committees to produce the bases for their citizenship verifications (e.g., copies of current and valid U.S. passport papers for U.S. citizens, as provided in 11 C.F.R. § 110.20) when donations associated with foreign addresses exceed a specific threshold. The policy should also provide for appropriate referrals when citizenship cannot be verified.



Federal Election Commission
Office of the Inspector General

MEMORANDUM

TO: The Commission

FROM: Christopher Skinner
Inspector General

SUBJECT: Report of Investigation I21INV00063: HSPD-12 Personal Identity Verification (PIV) Card Incident

DATE: November 10, 2021

ENCLOSURE: (1) Report of Investigation I21INV00063

This memorandum transmits FEC OIG Report of Investigation I21INV00063 concerning an incident in early June 2021 that involved a potential information systems breach associated with agency-provided employee identification cards. We initiated this investigation on June 3, 2021, at the request of the Office of the Staff Director.

Our investigation found that the incident was limited to the FEC in which 17 new agency employees were affected and that there was no apparent disclosure of personally identifiable information. We also found that the FEC did not memorialized a change in the contract with the vendor, Wideopint, to offer PIV card services offsite. As a result, we developed five recommendations for the Commission to consider in efforts to prevent a similar incident from occurring and to reduce the risk of the agency being billed for services that were not memorialized in a contract and/or contract modification. The OIG will report and track the status of these recommendations similar to any audit or special review:

1. Review all current agency systems that require PIV card login and verify the fields that are used for authentication with third-party providers.
2. Verify with the PIV card issuer that all fields used for authentication in agency systems are unique after any upgrade to the software associated with issuing PIV cards.
3. Include the Chief Information Security Officer or other technically qualified IT

personnel in the procurement process to determine how the third-party providers grant FEC employees' access to their systems and determine how these systems may affect FEC operations.

4. Ensure there is a formal process to memorialize the actions taken by the FEC or its contractors when there is a change from the statement of work.
5. Evaluate the services Widepoint is currently providing for the PIV cards and issue a modification to the task order detailing the change in the worksite location.

Detailed findings can be found in the enclosed report, a summary of which will be posted on the FEC OIG webpage in accordance with *OIG Policy 500.1, Issuance and Publication of OIG Investigative Reports*.

Should you have any questions regarding this report and its conclusions, please contact Mr. Dennis Phillips at 202-694-1015 or via email at dphillips@fec.gov. Thank you.

cc: Alec Palmer, Staff Director/Chief Information Officer
Lisa Stevenson, Acting General Counsel

FEDERAL ELECTION COMMISSION
Office of the Inspector General



Report of Investigation
HSPD-12 Personal Identity Verification (PIV) Card Incident
Case Number: I21INV00063

November 10, 2021

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I. EXECUTIVE SUMMARY

The Federal Election Commission (FEC) Office of the Inspector General (OIG) initiated this investigation on June 3, 2021, at the request of the Office of the Staff Director concerning a security incident that occurred in early June 2021. That incident involved a potential information systems breach associated with agency-provided employee identification cards.

By way of background, on September 25, 2018, the FEC Procurement Office contracted with Widepoint Cybersecurity Solutions Corporation (Widepoint) to provide support services concerning the issuance of Personal Identity Verification (PIV) cards onsite at the FEC office located in Washington, D.C. Due to office closures related to the COVID-19 pandemic, the FEC held discussions with the vendor and ultimately decided in mid-May 2020 for Widepoint to issue the PIV cards offsite at the vendor's location in Fairfax, Virginia. The FEC directed current employees with expiring PIV cards and new employees who needed new cards to obtain them at Widepoint's office in Fairfax or to work with the Office of Chief Information Officer (OCIO) for a workaround to access the agency's network.

Subsequently, on June 1, 2021, an FEC OIG employee logged into the agency's performance management system (USA Performance) with a PIV card and discovered they were logged into the system under the credentials of another FEC employee rather than their own. The OIG employee notified the OCIO on the same day about the matter.

On June 2, 2021, the OCIO notified Widepoint about the incident. Widepoint confirmed that 17 new agency employees' PIV cards were affected by the same issue. On June 3, the FEC Staff Director, who also serves as the agency's Chief Information Officer, convened the Breach Notification and Response Team to respond to the incident and requested the OIG investigate. Widepoint deployed a software update on June 16th and informed the OCIO that it could send the 17 affected employees to Widepoint's office to receive new cards.

Timeline of Events Pertaining to the PIV Card Incident



Source: OIG

Accordingly, the OIG initiated this investigation and sought answers to the following questions:

What were the proximate and root causes of the PIV card incident?

What, if any, steps could the FEC and/or the vendor have taken to prevent this incident?

Did the PIV card incident result in a Privacy Act violation or other unauthorized disclosure of sensitive information?

In order to answer the foregoing questions, the OIG reviewed relevant guidance and policies, and interviewed staff from the Office of Chief Financial Officer, the OCIO, the Office of Management and Administration, the Office of the Staff Director, and representatives from Widepoint. The OIG investigation reached the following findings.

First, the OIG found that the FEC OCIO and Widepoint did not communicate to ensure the identifier for the Federal Agency Smartcard Number (FASC-N) was unique. The FEC only discovered that the issued FASC-N identifier was not unique for the agency's performance system after it was discovered an FEC employee was able to log into another FEC employee's performance portal. In accordance with the executed contract, Widepoint provides a support service to the FEC by conducting periodic updates to the vendor software, MyID, which is used for issuing PIV cards. According to Widepoint, during testing in the latter part of 2017, Widepoint became aware of a workflow change in MyID that was not going to be included in future releases by the vendor.

As a result, Widepoint had to modify the front end of the workflow to allow the registrar to add the applicant's information into MyID. In addition, the modified workflow did not assign a unique number to the FASC-N subset (referred to as the FASC-N Identifier); instead, it assigned a constant number because Widepoint was unaware the FEC was using that particular subset. The OCIO staff was not aware of the workflow change made by Widepoint. Furthermore, the OCIO staff did not provide any guidance to Widepoint on how the FASC-N Identifier was to be populated.

It was only after the June 1, 2021 incident that the FEC discovered the FASC-N Identifiers for the affected users were not unique. The FEC initially discovered it after contacting the Office of Personnel Management (OPM) about an agency user who was able to log into USA Performance under the credentials of another employee. OPM informed the FEC that the two users had the same personal identifier used for PIV authentication. The OIG interviewed an analyst with the Office of the Staff Director who told the OIG they contacted the OPM representative to obtain more information about the unique identifier. Widepoint took action to resolve the FASC-N Identifier issue by including another step to the front end of the PIV card workflow so the software would add a unique number to the subset of the FASC-N. Widepoint deployed the change on June 16, 2021, after successful testing.

The OIG inquired into whether this incident may have resulted in a Privacy Act violation or other unauthorized disclosure of sensitive information either to the FEC or other federal agencies. The preponderance of the evidence established that the incident was limited to a small number of employees within the FEC and that there was no apparent disclosure of personally identifiable information. Moreover, the OIG inquired with Widepoint whether it provides PIV card services to other federal agencies. According to its senior executive, from 2020 to the time of the PIV card incident, the FEC was the only federal agency to which Widepoint provided PIV card services.

The FEC was able to confirm with Widepoint that only 17 employees were affected by the incident. The OIG corroborated this by reviewing the list Widepoint provided to the FEC and identifying the 17 employees with the same FASC-N Identifier. Additionally, the OIG further narrowed the list down to 12 employees who had access to USA Performance because the other five employees are bargaining unit employees, who do not use USA Performance for performance management.

The OIG inquired with agency staff on whether other systems with personally identifiable information could have been affected by the incident. The OIG identified two other systems managed by OPM that are used by the FEC: USA Staffing and the electronic Official Personnel Folder (eOPF).

- USA Staffing – The analyst with the Office of the Staff Director told the OIG that OPM was able to verify with the analyst that the affected users were new FEC employees who only have access to their own onboarding information. Furthermore, agency managers do not have administrative access to USA Staffing, and the three agency staff who have administrative access were not affected by the incident.
- eOPF – The OIG concluded that the preponderance of the evidence established there was a low likelihood eOPF could have been affected by the incident. First, the incident was limited to a small number of employees within the FEC. Second, the OIG verified that eOPF employs a variety of security safeguards. For example, users can only access the system through the FEC's virtual private network. Also, users have to set up a user ID and password before they can register their PIV cards for logging into the system. Lastly, the OIG asked the Chief Information Security Officer (CISO) if they had any concerns that the same FASC-N Identifier could be used for authentication in eOPF. The CISO opined that it may not be possible because the system may have additional identifiers to associate with a person's record.

Given the lack of guidance the FEC OCIO provided to Widepoint regarding the coding of the FASC-N Identifier, and that the FEC became aware that the FASC-N Identifier used for USA Performance authentication was not unique only after contacting OPM, the OIG concluded the FEC did not have a process to verify with the PIV card issuer and third-party providers (e.g., OPM) that identifiers use for authentication are unique.

Accordingly, the OIG recommends the following actions for the Commission to consider:

1. Review all current agency systems that require PIV card login and verify the fields that are used for authentication with third-party providers.
2. Verify with the PIV card issuer that all fields used for authentication in agency systems are unique after any upgrade to the software associated with issuing PIV cards.
3. Include the Chief Information Security Officer or other technically qualified IT personnel in the procurement process to determine how the third-party providers grant FEC employees' access to their systems and determine how these systems may affect FEC operations.

Secondly, the OIG found that the FEC did not memorialize the change in the Widepoint task order (also referred to herein as the contract) for the vendor to offer PIV card services offsite. The Federal Acquisition Regulations (FAR) sets forth the rules regarding government procurement. FAR 43.000 prescribes policies and procedures for preparing and processing contract modifications. Specifically, 43.104 specifies when a notification is required to a change in the contract so the government can evaluate the changes. The FAR also requires, under 43.301, that any contract modification or changes shall be documented in Standard Form 30.

The original task order provided that FEC personnel would issue PIV cards onsite at the FEC office. Subsequently, the FEC discussed alternative options with Widepoint once the FEC issued the evacuation order and required mandatory telework due to the COVID-19 pandemic. As a result, Widepoint offered that it could directly issue the PIV cards to employees at its location in Fairfax, Virginia. Additionally, FEC employees who did not want to travel to Widepoint could alternatively work with the FEC's Information Technology staff as a means to establish another method that did not require a PIV card to access the FEC's network. The FEC determined sometime in mid-May 2020 to implement the foregoing options; however, the decision was not formally memorialized in an amended task order or other record.

Additionally, based on the testimony of procurement personnel, the FEC did not memorialize a modification because the procurement office believed the change in service did not require a contract modification. As such, the FEC did not draft a modification for the service because agency contracting personnel believed the service was within the scope of the contract and Widepoint was offering it at no additional cost.

The OIG believes following the requirements in FAR 43.104 may have caused the FEC to identify additional impacts and risks of allowing Widepoint to offer this service offsite. Additionally, the absence of a written modification (Standard Form 30) could present a potential risk to the agency if the contractor determined in the future to bill the agency for additional services not provided in the contract (e.g., hours expended to issue PIV cards). Without memorializing the changes agreed upon by the agency and the contractor, the FEC faces potential liability for additional and uncertain charges.

Accordingly, the OIG further recommends the Commission:

4. Ensure there is a formal process to memorialize the actions taken by the FEC or its contractors when there is a change from the statement of work.
5. Evaluate the services Widepoint is currently providing for the PIV cards and issue a modification to the task order detailing the change in the worksite location.

II. BACKGROUND AND ALLEGATIONS

On June 1, 2021, a Federal Election Commission (FEC) Office of Inspector General (OIG) employee logged into the agency's performance system (USA Performance) with a Homeland Security Presidential Directive-12 (HSPD) Personal Identity Verification (PIV) card and discovered they were logged into the system under the credentials of another employee rather than their own.¹ The employee contacted the Office of Chief Information Officer (OCIO) on the same day to notified them about the issue. On June 2, 2021, the OCIO notified the vendor who issued the PIV cards, Widepoint Cybersecurity Solutions Corporation (Widepoint), about the incident. The vendor confirmed that 17 new agency employees' PIV cards were affected by the same issue.

On June 3, 2021, the FEC Staff Director, who also serves as the agency's Chief Information Officer, convened the Breach Notification and Response Team to respond to the incident and requested the OIG investigate the incident.² Widepoint deployed an update to the software it uses for issuing PIV cards on June 16, 2021, and informed the FEC it could send the 17 affected employees to Widepoint's office to receive new cards.

The FEC Procurement Office contracts with Widepoint to provide support services for issuing the PIV cards onsite at the FEC office in Washington, DC. The Procurement Office awarded the most current task order on September

Summary of FEC Contract with Widepoint for PIV Card Services

The FEC issues the PIV smart card to employees onsite using trained FEC personnel. The FEC contracts with Widepoint to provide software certification, training, and annual maintenance support services for the agency's HSPD-12 Badge Program. The current period of performance was from September 25, 2018 through September 24, 2019, with four option years. The contract is currently in option year two.

The contract requires Widepoint to provide complete turn-key services and products for PIV card identification, certification, enrollment, registration, activation, finalization, and issuance, to FEC employees and contractors. The support Widepoint offers includes upgrading the software and providing equipment such as printers, biometric and card readers, and cameras.

¹ The FEC uses the USA Performance system, operated by the U.S Office of Personnel Management, for its performance rating cycle. USA Performance assists federal agencies in implementing their Senior Executive Service (SES) and Non-SES performance management programs and systems. USA Performance enables agencies to automate their performance appraisal process throughout the entire performance rating cycle. The agency employee who accessed the profile of another employee did not contain Personally Identifiable Information.

² According to the FEC's *Policy and Plan for Responding to Breaches of Personally Identifiable Information*, the Breach Team consists of the Staff Director or Deputy Staff Director, Deputy Chief Information Officer, Inspector General (IG) or Deputy IG, General Counsel (GC) or Deputy GC, Deputy General Counsel – Administration, and the Information Systems Security Officer.

25, 2018, with four option years. Due to office closures related to the COVID-19 pandemic, the FEC held discussions with the vendor and ultimately decided in mid-May 2020 for Widepoint to issue the PIV cards offsite at the vendor's location in Fairfax, Virginia.³ The FEC directed current employees with expiring PIV cards and new employees who needed new cards to obtain them at Widepoint's office in Fairfax or to work with the OCIO for a workaround to access the agency's network.

Timeline of Events Pertaining to the PIV Card Incident



Source: OIG

The FEC OIG initiated an investigation on June 3, 2021, at the request of the Office of the Staff Director and sought answers to the following questions:

What were the proximate and root causes of the PIV card incident?

What, if any, steps could the FEC and/or the vendor have taken to prevent this incident?

Did the PIV card incident result in a Privacy Act violation or other unauthorized disclosure of sensitive information?

³ The FEC is under a fourth mandatory evacuation order that expires on November 11, 2021. During the evacuation order, agency employees are operating at maximum telework.

III. RELEVANT STANDARDS

The OIG identified two standards from the National Institute of Standards and Technology (NIST) and one from the Office of Management and Budget (OMB) regarding setting up agency PIV cards in accordance with HSPD-12.⁴ NIST developed two publications to assist federal agencies in this effort. Federal Information Processing Standard Publication 201 (FIPS 201), *Personal Identity Verification of Federal Employees and Contractors*, was developed to establish standards for identity credentials. Furthermore, NIST Special Publication 800-73-4 (SP 800-73-4) contains technical specifications to interface with the PIV card to retrieve and use the identity credentials. FIPS 201 specifies the identifiers that are to be included in the PIV card.

4.2.1 Cardholder Unique Identifier (CHUID)

The PIV Card shall include the CHUID as defined in [SP 800-73]. The CHUID includes the Federal Agency Smart Credential Number (FASC-N) and the Global Unique Identification Number (GUID), which uniquely identify each card as described in [SP 800-73]. The value of the GUID data element shall be a 16-byte binary representation of a valid Universally Unique Identifier (UUID) [RFC4122]. The CHUID shall also include an expiration date data element in machine-readable format that specifies when the card expires. The expiration date format and encoding rules are as specified in [SP 800-73].

OMB provides further guidance to executive departments and agencies on identity, credential, and access management (ICAM) in Memorandum 19-17 (M-19-17), which was issued on May 21, 2019. M-19-17 sets out a uniform policy for the Federal Government to ensure secure and efficient operation by enhancing how it conducts identity proofing, establishes enterprise digital identities, and adopts sound processes for authentication and access control. Section IV sets the foundation for agencies to adopt the ICAM deployment by harmonizing their enterprise-wide approach to governance, architecture, and acquisition. Section IV.2 requires agencies to align their technological enterprise with the Federal Identity, Credential, and Access Management (FICAM) Architecture.

2. Each agency shall define and maintain a single comprehensive ICAM policy, process, and technology solution roadmap, consistent with agency authorities and operational mission needs. These items should encompass the agency's entire enterprise, align with the Government-wide Federal Identity, Credential, and Access Management (FICAM) Architecture and CDM requirements, incorporate applicable Federal policies, standards, playbooks, and guidelines, and include roles and responsibilities for all users.¹⁶

⁴ Homeland Security Presidential Directive-12 (HSPD-12), signed by President George W. Bush on August 27, 2004, sets the policy for a common identification standard to be adopted by federal agencies governing the interoperable use of identity credentials to allow physical and logical access to federally controlled facilities and information systems. <https://www.dhs.gov/homeland-security-presidential-directive-12>

The OIG interviewed the FEC's Chief Information Security Officer (CISO) about the agency's awareness of the standards governing PIV card identifiers. The CISO testified they were not aware of the specific NIST standard governing PIV card identifiers and they were also not familiar with the FICAM.

The OIG further asked the FEC's Office of General Counsel (OGC) to opine on whether the guidance provided by NIST and OMB are applicable to the agency. OGC stated that the FEC's status in the Executive branch does not mean that all Executive branch guidance applies to the agency. Specifically, OGC opined that any directives which implement NIST Special Publication do not apply to the FEC because "NIST's organic statute employs the Paperwork Reduction Act's definition of "agency," which specifically excludes the FEC from its definition."⁵ However, OGC further opined that FIPS 201 applies to the FEC for the following reasons:

...while its implementing guidance, FIPS 201-2, is issued by NIST it does not rely on NIST's definition of "agency." Rather, it notes that the guidance is "applicable to identification issued by Federal departments and agencies." Because the FEC falls under the broader definition of "agency" in HSPD-12 and FIPS 201-2, the directives implemented under these directives apply to the Agency.⁶

Additionally, the Federal Acquisition Regulations (FAR) sets forth the rules regarding government procurement. FAR 43.000 prescribes policies and procedures for preparing and processing contract modifications. Specifically, 43.104 specifies when a notification is needed to a change in the contract so the government can evaluate the changes. The FAR also requires, under 43.301, that any contract modification or changes shall be documented in Standard Form 30.

⁵ Section 3502 of the Paperwork Reduction Act of 1980, Pub. L. No. 96-511, 94 Stat. 2812, 44 U.S.C. §§ 3501–3521 (PRA), specifies that "the term 'agency' means any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the Executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency, but does not include . . . [the] Federal Election Commission."

⁶ Memorandum from Acting General Counsel, Lisa J. Stevenson to Inspector General, Christopher Skinner. (Dated September 8, 2021). *Applicability of PIV Card Related Guidance to the Federal Election Commission*.

IV. FINDINGS

In the course of this investigation, the OIG reviewed relevant guidance and policies, and interviewed staff from the Office of the Chief Financial Officer, OCIO, the Office of Management and Administration, the Office of the Staff Director, and representatives from Widepoint. The investigation reached the following findings:

1. The FEC OCIO and the PIV card issuer (Widepoint) did not communicate to ensure the identifier for FASC-N was unique and the FEC only discovered the identifier was not unique for access to USA Performance after contacting OPM. This resulted in identical identifiers for 17 agency employees.

Widepoint provides to the FEC, among other things, periodic updates to the vendor software, MyID, which is used for issuing PIV cards. According to a Widepoint senior executive, in the past, the software updates were tested and deployed from the Widepoint office in Fairfax, Virginia. Once the software was tested successfully, Widepoint installed the updates at the FEC office and trained agency employees with using the new version of the software.

According to a Widepoint technical representative, during testing of a new version of myID in the latter part of 2017, Widepoint became aware of a workflow modification in MyID that was not going to be included in future releases by the vendor. The representative testified that the workflow modification affected a function used to collect an applicant's basic information during registration. As a result, Widepoint had to modify the front end of the workflow to allow the registrar to add the applicant's information into MyID.⁷

The representative further testified the modification to MyID involved the creation of a web form through an application programming interface that collected the applicant information. In addition, the modified workflow did not assign a unique number to the subset of the Federal Agency Smartcard Number (referred to as the FASC-N Identifier); instead, it assigned a constant number because Widepoint was unaware the FEC was using that particular subset. When the OIG asked the Deputy CIO if they were aware of the workflow change made by Widepoint, the Deputy CIO stated they had no knowledge of it. The Deputy CIO further stated the FEC did not provide any guidance to Widepoint on how that subset was to be populated.

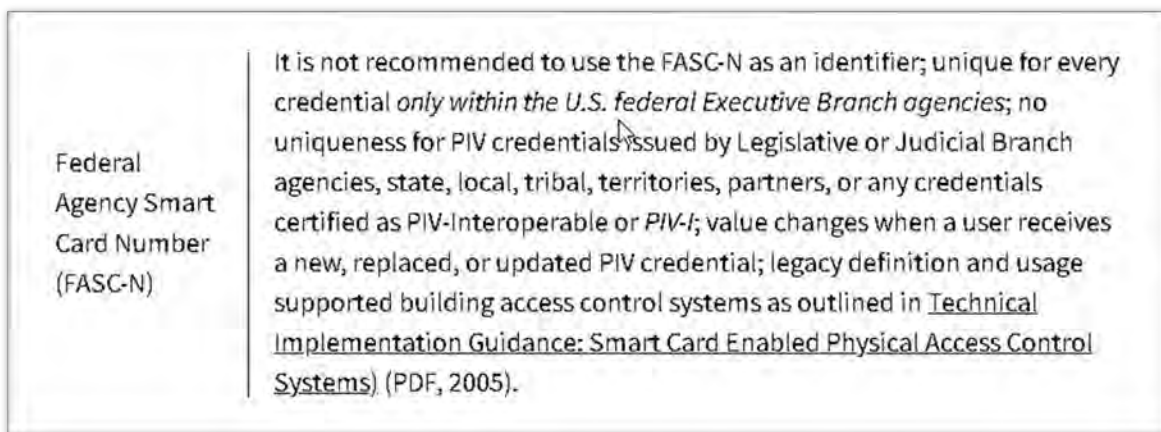
Widepoint installed the modified workflow software (referred to as version 10) at the FEC location in early February 2020. The OIG found that, as a result of the software upgrade, the FASC-N Identifier did not contain a unique number for the 17 affected agency employees. Specifically, the MyID software generated the number "0000000002" in the FASC-N Identifier for all 17 users. Furthermore, that identifier was linked to a USA Performance operated by a

⁷ The front end of the workflow involves collecting an applicant's basic information (name, email, employment status, and background investigation status) and adding it to MyID.

third-party provider that used the identifier for authentication. As a result, an agency employee was logged into USA Performance under the credentials of another employee.

A Widepoint senior executive testified that a Widepoint representative had to be physically present at the FEC office in order to perform the client software upgrade on the agency laptops used for issuing PIV cards. The technical representative confirmed the software assigned a constant number to the FASC-N Identifier rather than a unique number after the upgrade was installed; prior to the upgrade, the previous version automatically generated an incremental number to the subset. The same representative testified that Widepoint was never aware that the previous version assigned an incremental number because the FEC never communicated to Widepoint that the agency was using that particular FASC-N subset as an identifier. The senior executive opined that it was by luck the previous version assigned an incremental number to the FASC-N Identifier, which made it unique.

The OIG interviewed the Deputy CIO of Operations regarding the use of the FASC-N as an identifier. According to the Deputy CIO, the FASC-N is an available identifier that could be used for PIV card authentication and must be unique within the Executive branch; however, the FICAM does not recommend using it. The Deputy CIO's rationale was based on the FICAM Playbook for Personal Identity Verification.⁸ The FICAM PIV Guides assist agencies in implementing common PIV configurations by outlining identifiers available in the PIV Authentication certificate and design considerations for implementations. The following is pertinent guidance from the playbook on the FASC-N Identifier:



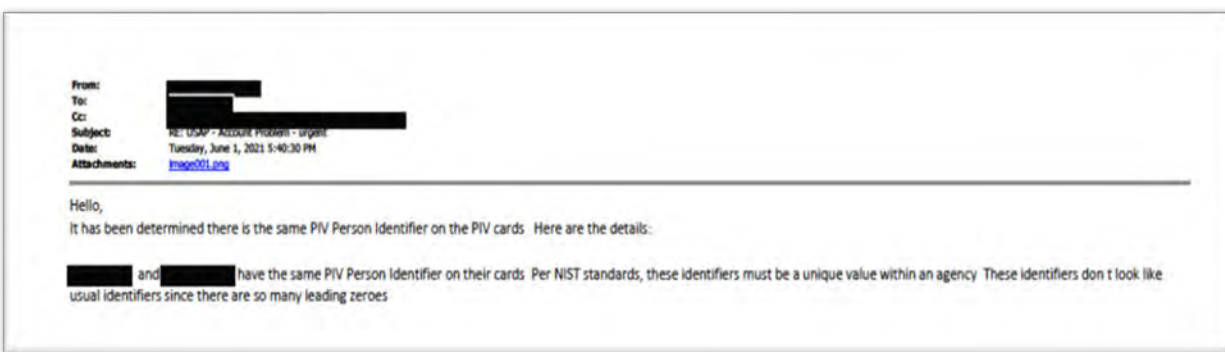
Source: FICAM Playbook

The Deputy CIO further stated it is up to the discretion of third-party providers to use the FASC-N or another identifier for authentication; therefore, the OCIO generally does not validate the identifiers use by third-party providers. However, in this case, the OCIO was aware the FASC-N Identifier had continuously been populated with a number. It was not until the June 1, 2021 incident that the OCIO became aware the identifier was not a unique number. The Deputy

⁸ The FICAM Playbooks are a series of guides developed by the U.S General Services Administration and the Federal CIO Council to help federal agencies implement best practices in securing and protecting federal information systems. <https://www.idmanagement.gov/>

CIO further testified that the OCIO did not provide Widepoint with any guidance on how the identifier was to be populated. Additionally, the Deputy CIO opined if the FASC-N Identifier were to be unique, then it was the responsibility of the issuer to ensure the identifier was unique.

It was only after the June 2021 incident that the FEC discovered the FASC-N Identifiers for the affected users were not unique. The FEC initially discovered it after contacting OPM about an agency user who logged into USA Performance under the credentials of another employee. OPM informed the FEC that the two users had the same personal identifier used for PIV authentication. The OIG interviewed an analyst with the Office of the Staff Director who stated to the OIG that they contacted the OPM representative to obtain additional information about the unique identifier. The OIG corroborated this statement by reviewing an email from the OPM representative to the Office of the Staff Director on June 1, 2021, informing them that OPM had determined it was the same personal identifier on the PIV cards for the two users. In the email, OPM provided the numerical value of the identifiers and they were identical.



Source: OIG

The OIG inquired into whether this incident may have resulted in a Privacy Act violation or other unauthorized disclosure of sensitive information either to the FEC or other federal agencies.⁹ The preponderance of the evidence established that the incident was limited to a

⁹ The Privacy Act of 1974 is a federal law that governs the collection and use of records maintain in a system of records. A system of records is any grouping of information about an individual under the control of a federal

small number of employees within the FEC and that there was no apparent disclosure of personally identifiable information. Moreover, the OIG inquired with Widepoint whether it provides PIV card services to other federal agencies. According to its senior executive, from 2020 to the time of the PIV card incident, the FEC was the only federal agency to which Widepoint provided PIV card services.

The FEC was able to confirm with Widepoint that only 17 employees were affected by the incident. The Deputy CIO testified they asked Widepoint for a list of all FEC users with PIV cards that have unique identifiers, and the Deputy CIO was able to verify there were 17 employees with the number “2” in the FASC-N Identifier. The OIG corroborated this by reviewing the list and identifying the 17 employees with the same number. The OIG was able to further narrow the list down to 12 employees who had access to USA Performance because the other five employees were bargaining unit employees, which do not use USA Performance for performance management.

The OIG inquired with agency staff on whether other systems with personally identifiable information could have been affected by the incident. The OIG identified two other systems managed by OPM that are used by the FEC: USA Staffing and the electronic Official Personnel Folder (eOPF).

- USA Staffing – The analyst with the Office of the Staff Director told the OIG that OPM was able to verify with the analyst that the affected users were new FEC employees who only have access to their own onboarding information. Furthermore, agency managers do not have administrative access to USA Staffing, and the three agency staff who have administrative access were not affected by the incident.
- eOPF – The OIG concluded that the preponderance of the evidence established there was a low likelihood eOPF could have been affected by the incident. First, the incident was limited to a small number of employees within the FEC. Second, the OIG verified eOPF employs a variety of security safeguards. For example, users can only access the system through the FEC’s virtual private network. Also, users have to set up a user ID and password before they can register their PIV card for logging into the system. Lastly, the OIG asked the CISO if they had any concerns that the same FASC-N Identifier could be used for authentication in eOPF. The CISO opined that it may not be possible because the system may have additional identifiers to associate with a person’s record.

The OIG asked Widepoint how the issue was resolved and the technical representative told the OIG that Widepoint made a system change request so that the software would add an incrementing number to the identifier during the front end of MyID registration. Widepoint deployed the change, after successful testing, as version 11 on June 16, 2021. The representative stated Widepoint took this action because the FEC wanted to continue to use the FASC-N

agency from which information is retrievable by personal identifiers, such as name, social security number, or other identifying number or symbol. Office of Special Counsel, <https://osc.gov/Pages/Privacy-Act.aspx>

Identifier for authentication. The OIG corroborated the representative's statement by reviewing the change control document that Widepoint provided to the OIG.

The lack of guidance the FEC provided to Widepoint regarding the coding of the FASC-N Identifier, and that the FEC only became aware the FASC-N Identifier used for USA Performance authentication was not unique after contacting OPM, the OIG concluded the FEC did not have a process to verify with the PIV card issuer and third-party vendors that identifiers use for authentication are unique. Accordingly, the OIG recommends the following actions for the Commission to consider:

1. Review all current agency systems that require PIV card login and verify the fields that are used for authentication with third-party providers.
2. Verify with the PIV card issuer that all fields used for authentication in agency systems are unique after any upgrade to the software associated with issuing PIV cards.
3. Include the Chief Information Security Officer or other technically qualified IT personnel in the procurement process to determine how the third-party providers grant FEC employees' access to their systems and determine how these systems may affect FEC operations.

The OIG also found the following when reviewing the Widepoint contract.

2. The FEC did not memorialize the change in the Widepoint contract for the vendor to offer PIV card services offsite.

On March 12, 2020, OPM issued a memorandum to federal agencies encouraging agencies to maximize telework due to the COVID-19 pandemic.¹⁰ The FEC operated under an evacuation order at that time and as a result, the agency had to evaluate functions that were necessary to agency operations. The agency created a COVID-19 working group to discuss the functions necessary to keep the agency operating. The working group discussed, among other things, the topic of renewing employee PIV cards during a pandemic.

The OIG interviewed the Assistant Staff Director (ASD) for Management and Administration to obtain information on the discussions related to the PIV cards. The ASD testified that they requested the Contracting Officer Representative (COR) for the Widepoint contract to contact Widepoint to seek available options on issuing PIV cards while the FEC was operating under an evacuation order. As a result, Widepoint offered to directly issue the PIV cards to FEC employees at its location in Fairfax, Virginia. Additionally, agency employees who did not want to travel to Widepoint could alternatively work with the FEC's Information Technology staff as a means to establish another method that did not require a PIV card to access

¹⁰ Office of Management and Budget M-20-13. (March 12, 2020). *Updated Guidance on Telework Flexibilities in Response to Coronavirus*. <https://www.whitehouse.gov/wp-content/uploads/2020/03/M-20-13.pdf>

the FEC's network. The ASD further testified the agency determined in mid-May 2020 to implement both actions. The ASD also testified the decision was not formally memorialized in any policy or other record.

Additionally, the FEC did not memorialize a modification to the Widepoint contract because the procurement office believed the change in service did not require a contract modification. As such, the FEC did not draft a modification for the service because agency contracting personnel believed the service was within the scope of the contract and Widepoint was offering it at no additional cost. The OIG reviewed the Widepoint contract to determine if it allowed for any deviations from the statement of work and identified the pertinent contract clause below:

d. Alternate work location - Upon approval by the COR, the contractor may perform part of the review at an alternate contractor location. Any request for this action must be approved by the COR and notice provided to the Contracting Officer and noted in the agreement prior to award or via modification if changed after award.

Source: Widepoint contract

The OIG interviewed the agency's Procurement Director to obtain their expert opinion on the contract statement of work. The OIG asked the Procurement Director if changing the work location for issuing staff PIV cards from FEC to Widepoint would require a modification to the contract. The Procurement Director responded that a modification would have to be drafted indicating an alternate location if no such language existed in the contract.

The OIG showed the Procurement Director the clause above referencing an alternate work location and asked for their interpretation. The Procurement Director responded the language in the clause was acceptable for Widepoint to provide services offsite. The Procurement Director further stated that approval by the COR could be verbal as long as it was stated in the contract that there was an alternate location. That interpretation appears to be at odds with the plain language of the clause, which on its face requires that even if the COR approves an alternate location after the award, a modification would be required.

The FAR sets forth the rules regarding government procurement functions.¹¹ FAR 43.000 prescribes policies and procedures for preparing and processing contract modifications. Specifically, 43.104 specifies that a contractor should notify the government in writing when he/she considers that the Government has effected or may effect a change in the contract that has not been identified in writing and signed by the contracting officer:

¹¹ The OIG consulted with the General Services Administration (GSA) for their opinion on the FAR requirement for contract modifications. Once the OIG receives the opinion, we will issue a supplement to this report if necessary.

43.104 Notification of contract changes.

(a) When a contractor considers that the Government has effected or may effect a change in the contract that has not been identified as such in writing and signed by the contracting officer, it is necessary that the contractor notify the Government in writing as soon as possible. This will permit the Government to evaluate the alleged change and-

- (1) Confirm that it is a change, direct the mode of further performance, and plan for its funding;
- (2) Countermand the alleged change; or
- (3) Notify the contractor that no change is considered to have occurred.

Source: FAR

Moreover, FAR 43.301 requires that any contract modifications or changes shall be documented using Standard Form 30:

43.301 Use of forms.

(a) (1) The Standard Form 30 (SF 30), Amendment of Solicitation/Modification of Contract, shall (except for the options stated in 43.301(a)(2) or actions processed under part 15) be used for-

- (i) Any amendment to a solicitation;
- (ii) Change orders issued under the Changes clause of the contract;
- (iii) Any other unilateral contract modification issued under a contract clause authorizing such modification without the consent of the contractor;
- (iv) Administrative changes such as the correction of typographical mistakes, changes in the paying office, and changes in accounting and appropriation data;
- (v) Supplemental agreements (see 43.103); and
- (vi) Removal, reinstatement, or addition of funds to a contract.

Source: FAR

In retrospect, had the FEC memorialized a modification to the task order, it may have caused the FEC to identify additional impacts and risks of allowing Widepoint to offer this service offsite. Additionally, the absence of a written modification creates potential risk to the agency—for example, the contractor may determine to bill the agency for services that are not memorialized in the contract at a future date. Here, failure to memorialize changes to a task order could result in the vendor billing the FEC for additional costs incurred as a result of changes in both personnel and worksite (i.e., Widepoint personnel are now performing work at Widepoint's offices; whereas the task order provided that FEC personnel would do so at the FEC's offices).

The OIG determined that the change in worksite location should have triggered a contract modification based on the current contract clause and aforementioned FAR requirements. Accordingly, the OIG recommends that the Commission:

4. Ensure there is a formal process to memorialize the actions taken by the FEC or its contractors when there is a change from the statement of work.
5. Evaluate the services Widepoint is currently providing for the PIV cards and issue a modification to the task order detailing the change in the worksite location.

V. RECOMMENDATIONS

Based on the foregoing findings, the OIG recommends the following actions for the Commission to consider in efforts to prevent a similar incident from occurring and to reduce the risk of being billed for services that were not memorialized in a contract and/or contract modification. The OIG will report and track the status of these recommendations similar to any audit or special review.

1. Review all current agency systems that require PIV card login and verify the fields that are used for authentication with third-party providers.
2. Verify with the PIV card issuer that all fields used for authentication in agency systems are unique after any upgrade to the software associated with issuing PIV cards.
3. Include the Chief Information Security Officer or other technically qualified IT personnel in the procurement process to determine how the third-party providers grant FEC employees' access to their systems and determine how these systems may affect FEC operations.
4. Ensure there is a formal process to memorialize the actions taken by the FEC or its contractors when there is a change from the statement of work.
5. Evaluate the services Widepoint is currently providing for the PIV cards and issue a modification to the task order detailing the change in the worksite location.

**FEDERAL ELECTION COMMISSION
OFFICE OF INSPECTOR GENERAL**



Report of Investigation



Case Number INV-15-02

March 3, 2017

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I. Executive Summary

The OIG received a complaint that [REDACTED] was telework exclusively from California in violation of the non-bargaining unit telework agreement. On November 21, 2010, [REDACTED] was employed at the Federal Election Commission (FEC) as [REDACTED]. During [REDACTED] tenure as the [REDACTED] was allowed to telework episodically. During the month of April 2014, [REDACTED] took sick leave and worked episodic telework to care for [REDACTED] sick (b) (6). From April 2014 until June 2015, [REDACTED] and (b) (7) lived in [REDACTED] and [REDACTED] spouse lived in (b) (7)(C). Evidence obtained by the Office of Inspector General (OIG) revealed that [REDACTED] tried for over a year to find a job in California. On April 29, 2014, [REDACTED] sent an email to [REDACTED] Alec Palmer (Palmer), stating that since [REDACTED] (b) (6) had become ill, [REDACTED] would like to reunite (b) (6) with [REDACTED] family in California. [REDACTED] requested that a new position [REDACTED], which would technically be a demotion) be created for [REDACTED] in the [REDACTED]. The proposed temporary demotion would make [REDACTED] the [REDACTED] employee in the [REDACTED] immediate office, behind the [REDACTED], and allow [REDACTED] to work from [REDACTED] new home in California for 13 months until [REDACTED] reached retirement in June 2015. The demotion would be a decrease in grade only and would not decrease [REDACTED] salary. At the time of the request, the [REDACTED] employed [REDACTED] employees, [REDACTED],

On May 9, 2014, Palmer sent an email to the members of the Personnel Committee, (Commissioners Matthew Petersen and Ellen Weintraub) requesting a meeting to discuss accommodating [REDACTED] request. On May 19, 2014, an email was sent to all Commissioners, reiterating the earlier discussions Palmer had with the Personnel Committee. The May 19, 2014 email stated that [REDACTED] was moving to [REDACTED] on [REDACTED] with [REDACTED] for medical reasons. The May 19, 2014 email also included a draft copy of the position description for the temporary [REDACTED] position [REDACTED] had requested. In addition to requesting a temporary position for [REDACTED] Palmer requested that Ed Holder (Holder) and Kim Humphries (Humphries) be detailed into new positions. Holder would be temporarily placed as Acting Deputy Staff Director for Management and Humphries would be temporarily placed as the Acting Deputy CIO. The acting positions would be an increase in pay and grade for Holder and Humphries.

On May 20, 2014, Palmer circulated a memo to the full Commission, recommending position changes for [REDACTED], Holder, and Humphries. The matter did not receive a full vote, and the Personnel Committee and Palmer continued to have discussions. Both Commissioners Petersen and Weintraub stated in interviews that they knew [REDACTED] [REDACTED] and that

██████ was near retirement; however, the initial request was denied because there was a fear of allowing an employee to telework for a year, across country, and unsupervised. While waiting for the Commission's decision, ██████ requested a dumpster to clean out (b) (7) office and boxes to mail items to ██████ home. ██████ also emailed the Staff Director's staff ██████ new contact information, which was ██████ address and telephone number. According to WebTA records, ██████ last day in the FEC office was May 30, 2014. ██████ took annual leave for two weeks (June 2-13, 2014) and never returned to the FEC Washington, DC office. When ██████ moved to ██████ in June 2014, ██████ took ██████ FEC issued badge (which gave access to the FEC garage and building), phone, and computer without signing a telework agreement and without having permission from the Commission to telework from California. ██████ teleworked episodically and took various forms of leave (sick, annual, and leave without pay) until the Commission voted on ██████ change in position on August 14, 2014.

On August 14, 2014, during the Executive Session, the full Commission voted 4-2 to allow 120 day details for Holder and Humphries. Prior to the vote, Chair Goodman asked for acknowledgement from the Personnel Committee that they had come to an agreement with Palmer regarding ██████ Committee acknowledged in the affirmative. The Personnel Committee had agreed to reassign ██████ to a GS-15 (Step 10) with the title of Special Assistant to the Staff Director. The temporary position created for ██████ allowed ██████ to work from home in California for 120 days, ending Friday, December 12, 2014. ██████ would be assigned specific projects, and oversight of ██████ work was to be conducted by Palmer. Interviews with Palmer and Commissioners revealed that it was agreed that ██████ would take leave after the 120 days until ██████ retirement in June 2015. At the time of the Commission's decision, no other FEC employee had been given permission to telework exclusively outside of the tri-state (DC, Maryland, and Virginia) area.¹ FEC's policy at the time required that telework be conducted in the tri-state area only. The FEC policy also stated that telework could not be used to care for sick relatives.

After the Commissioner's vote, Palmer's assistant, Ryan, emailed Human Resource Specialist, Dayna Brown (Brown), on August 19, 2014 instructing Brown to enter ██████ new position in the National Finance Center (NFC) system. The demotion of SL to GS-15 was rejected when entered into the system because NFC did not have an action to temporarily demote an employee. OPM regulations and the NFC system only provide instructions for time-limited promotions, *see* § 335.102(f), not demotions, as in the case for ██████ On September 30, 2014, Ryan and Brown agreed to enter the position as a permanent GS-15. Ryan stated the position would be monitored for 120 days and she would explain the issue to Palmer. The Staff

¹ The OIG learned during the course of the investigation that an attorney in the Office of General Counsel had moved to Boston, Massachusetts and had been teleworking full time from October 2014 to June 2015. The Commission did not give permission for the employee to telework from Boston. Once a new Labor Management Agreement was certified allowing bargaining unit employees to telework two days a week, the employee resumed coming into the Washington, DC office on a weekly basis.

Director's office did not inform the FEC Commissioners that the temporary demotion was not allowed under OPM guidelines and that the position was entered into NFC as permanent. After [REDACTED] completed [REDACTED] 120 days (December 14, 2014), there was no follow-up by the Human Resources' or Staff Director's offices regarding whether to extend [REDACTED] position or remove the position as permanent. [REDACTED] emailed members of the FEC staff on December 11, 2014, stating that December 12, 2014 would be [REDACTED] last day with FEC and that [REDACTED] would be taking leave. Even though [REDACTED] moved to California prior to [REDACTED] telework request being approved and took [REDACTED] FEC issued equipment \ (phone, computer, and badge) [REDACTED] did not return them until 6 months later when [REDACTED] retired in June 2015.

Although [REDACTED] position was to end December 2014, the staffing report reveals that it did not. According to FEC staffing reports, [REDACTED] position was permanent, and [REDACTED] remained as [REDACTED] until [REDACTED] retired on June 22, 2015. [REDACTED] also continued to telework in [REDACTED] expired position in 2015, as evidence by WebTA. [REDACTED] was allowed to telework five days in 2015, February 19 and June 8-11. [REDACTED] teleworked in February to complete [REDACTED] six month evaluation and, in June, when it was realized [REDACTED] did not have enough days to retire and [REDACTED] had exhausted [REDACTED] Family Medical Leave Act (FMLA) leave without pay. FEC Personnel policies (300.1) require that the Commission approve any position Grade 14 or higher. The OIG found no evidence that the Commission approved a permanent GS-15 in the Staff Director's office, but instead had only approved a temporary GS 15 position.

Prior to [REDACTED] position expiring, on December 9, 2014, the Commission approved 120 day extensions for Holder and Humphries in their acting positions, and the Commission continues to do so as of the issuance of this report. However, there are no records of the Commission voting to extend [REDACTED] temporary position. According to Commissioners Petersen and Weintraub, the temporary position was only for three months and there were no plans to extend. However, when asked, neither the Personnel Committee nor Palmer could advise what [REDACTED] position was after the 120 days expired.

WebTA records reveal that from December 16, 2014 to June 5, 2015, [REDACTED] took FMLA leave, alternating weekly between annual leave and FMLA leave without pay. The OIG found that the Human Resources Office had no records of [REDACTED] taking FMLA leave in 2014 or 2015. Therefore, they did not have [REDACTED] FMLA data to report to OPM as required 5 CFR 630.1211(a). Prior to taking FMLA leave [REDACTED] did not submit the OPM Form-71 as required by the FEC policy. Nor did [REDACTED] fill out a medical certification which can be required according to the FEC's FMLA written policy and was required according to OHR [REDACTED] continued to accumulate a salary, retirement benefits, sick leave, annual leave, TSP contributions and FERS credit from January 1, 2015 to until [REDACTED] retirement date of June 22, 2015. When interviewed, neither Palmer, as [REDACTED] direct supervisor, nor the Personnel Committee were aware that the required OPM Form-71 and the optional medical certification

were not submitted prior to [REDACTED] taking FMLA leave. [REDACTED] last day on the FEC staff payroll roster was June 22, 2015, and [REDACTED] retired with full benefits. The OIG initiated an investigation and found the following:

1. The Personnel Committee's allowance of [REDACTED] temporary demotion to a GS-15 (Step 10) was not allowable under OPM guidelines;
2. The Commission approved temporary position was purposely entered as permanent in the NFC system;
3. The Staff Director's office failed to notify the Commissioners that [REDACTED] temporary demotion was rejected by NFC and not allowed;
4. There is no evidence that the full Commission approved or was aware of the creation of a permanent GS-15 in the Staff Director's office;
5. Prior to allowing [REDACTED] to take FMLA leave for two weeks in 2014 and a maximum of three months FMLA leave over a six-month period in 2015, [REDACTED] failed to fill out the required OPM Form-71;
6. FEC's FMLA policy and the FMLA procedures established by the OHR office in 2013 do not coincide;
7. Incorrect data was reported to OPM regarding FEC's staff use of FMLA for calendar years 2014 and 2015;
8. The terms of the agreement between the Staff Director and the Personnel Committee regarding [REDACTED] were not followed. [REDACTED] temporary position and teleworking privileges did not cease on December 12, 2014;
9. Allowing [REDACTED] to telework from California may have violated FEC's Telework policy for non-bargaining unit employees (2011 edition). At the time of the [REDACTED] employment, the applicable telework policy did not allow for FEC employees to telework exclusively from a destination outside of the tri-state area, or telework full time and to telework while caring for a sick parent;
10. [REDACTED] was the only FEC employee given permission to telework exclusively outside of the tri-state area; and
11. To allow [REDACTED] to remain on the FEC payroll and take FMLA and annual leave from December 14, 2014 until (b) [REDACTED] reached retirement cost the FEC an additional \$64,708 in salary and benefits.

II. Background

The OIG received a complaint that (b) (3) (A) [REDACTED], [REDACTED], was living in California and teleworking from California in violation of Federal Election Commission (FEC) policy and OPM guidelines.

[REDACTED] was on hired (b) (7)(C) [REDACTED] as [REDACTED] with a salary grade of Senior Leader (SL). Staff Director Alec Palmer (Palmer) was [REDACTED] supervisor. At the time of the complaint, the FEC staff directory listed [REDACTED] title as [REDACTED] [REDACTED] with a salary grade of GS-15. The [REDACTED] and [REDACTED] were non-union positions. A review of WebTA records indicated that [REDACTED] was not working as of January 1, 2015, but was out on leave, alternating between annual and Family Medical Leave Act (FMLA). The OIG found that in June 2014, [REDACTED] had moved to California and was allowed to telework on a regular basis from August 18, 2014 to December 14, 2014. The OIG investigation was opened to determine if OPM guidelines and FEC policies were followed. Specifically:

1. If OPM policies were followed in creating a new position for [REDACTED]
2. If allowing [REDACTED] telework out of state was permissible under OPM and FEC guidelines;
3. If allowing [REDACTED] to use FMLA for an extended time was permissible under OPM and FEC guidelines and;
4. If the agency incurred additional expenses in accommodating [REDACTED] and in allowing [REDACTED] to change positions and stay on the payroll for an additional 6 months until reaching [REDACTED] retirement date.

A. Relevant Statutes, Regulations and Policies

Public Law 106-346§ 359 (Telework Enhancement Act)
FEC Telework policy for non-bargaining unit employees, 2011 edition
Department of Labor FMLA, 2011 edition
FEC FMLA policy, 2011 edition
FEC Personnel Instructions (300.1) 2005

III. Investigation Findings

A. The OIG found no evidence that the FEC Commissioners approved or were advised that a permanent GS-15 position was created in the Staff Director's office.

Audio recordings from the FEC Commissioners' Executive Session, held on August 14, 2014, revealed that the Commission voted 4-2 to grant Ed Holder (Holder) and Kim Humphries (Humphries) 120 day temporary promotions after the Commission's Personnel Committee had come to an agreement with the Staff Director to allow Deputy Staff Director [REDACTED], to be demoted to [REDACTED]. The position was created to allow [REDACTED] who had moved to California, to telework 120 days (until December 14, 2014) from California.

According to the audio recording of the August 14, 2014 Executive Session, the Commission had been waiting for the Personnel Committee (Commissioners Matthew Petersen and Ellen Weintraub) to reach an agreement with Palmer regarding [REDACTED] future with the FEC. The Personnel Committee acknowledged during the Executive Session that an agreement had been made. The Commission's vote was distributed and documented that Holder's and Humphries' temporary positions were for 120 days. The Commission's vote does not mention [REDACTED] 120-day demotion. According to Staff Director Palmer, on January 26, 2015, he confirmed with Kathy Ryan (Ryan), former Staff Assistant to the Staff Director, that [REDACTED] (b) (6) called Chairman Goodman's office and verified that the order was to confirm [REDACTED] 120-day temporary position.

The OIG obtained evidence that revealed that the temporary GS-15 position, given to [REDACTED] was not allowed under the OPM guidelines, and NFC does not allow the input of temporary demotions. OPM guidelines state that the agency has authority to issue only time-limited promotions (§335.103). [REDACTED] change to GS-15 was a demotion from [REDACTED] SL status. The OIG found that the Staff Director's and Human Resources' offices agreed to incorrectly enter the position in NFC as permanent and never removed the position after the 120-day tenure was completed. Emails obtained by the OIG revealed that on August 19, 2014, Ryan, the former Assistant to the Staff Director, requested that HR Specialist Dayna Brown (Brown) create an SF-52 for [REDACTED] new temporary position. On September 30, 2014, Brown advised Ryan that the National Finance Center (NFC) system would not accept the SF-52 because NFC will not allow the input of a demotion as temporary. Ryan and Brown agreed to input the position as permanent, and Ryan stated that she would advise Palmer and that [REDACTED] days would be tracked. The position was accepted as permanent and remained as such until [REDACTED] retired.

OIG interviews revealed that the FEC Commissioners were never advised that the 120-day demotion was not allowable under OPM regulations. The OIG asked Commissioners Petersen and Weintraub if they were advised that the temporary demotion was not allowed under OPM guidelines. Both Commissioners stated they were not advised. Staff Director Palmer was also asked; Palmer stated he did not recall being advised of the NFC rejection, and he did not recall the position being a temporary position. Palmer's statement contradicts his many emails with the Commissioners, in particular the December 8, 2014 email sent by Palmer to all of the Commissioners. The email outlined all of [REDACTED] accomplishments for the previous three months in [REDACTED] temporary position and advised that [REDACTED] term would be ending on December 13, 2014.

[REDACTED] did not return to [REDACTED] previous position as [REDACTED] nor was [REDACTED] temporary position extended. Executive Session records evidenced that the Commission did not discuss what [REDACTED] status would be after [REDACTED] completed the 120 days. During the August 14, 2014 Executive Session, Commissioner Walther questioned what [REDACTED] status would be after the 120 days were completed. Chair Goodman stated that the Personnel Committee had resolved that matter. The OIG questioned both Commissioners Petersen and Weintraub regarding the matter; Commissioner Petersen stated that he believed [REDACTED] was to take leave until retirement. Commissioner Weintraub stated [REDACTED] did not recall. The OIG also interviewed Staff Director Palmer; Palmer stated his understanding was that [REDACTED] would take leave for six months until retirement in 2015 and that he did not recall the position being temporary.

The OIG investigation revealed that since [REDACTED] position was never removed as a full time position, it resulted in a GS-15 position being created in the [REDACTED] without the approval of the Commission. According to FEC Personnel Instructions 300.1 (E) (11), all selections for GS-14 positions and above will be circulated to the Commission on a 24 hour No-Objection Basis. The OIG found that Staff Director Palmer followed proper procedure and on May 20, 2014, and circulated [REDACTED] GS-15 temporary position.

However, the OIG found that the Staff Director's office failed to notify the Commission of Ryan and Brown's decision to enter the position as permanent in the NFC system. Interviews with the Commissioners evidenced that they never intended the position to be permanent. According to interviews with Commissioners Petersen and Weintraub, the temporary position was created so that [REDACTED] could telework from California for a short duration and that is why it was only for 120 days.

The OIG also did not find any evidence that prior to the 120-day completion, the Staff Director's or the Human Resources' offices inquired into whether the temporary position was to be extended or discussed removing the permanent position from NFC system. The OIG

also found that once [REDACTED] temporary position expired, it either should have been renewed or removed from the staffing report as permanent. As a result of not entering the position as temporary, [REDACTED] was allowed to remain as a full time employee as a GS-15, Holder and Humphries were allowed to remain in their acting positions, and a permanent position GS -15 was created for a specific employee without approval by the Commission. The position was not removed from the staffing report until [REDACTED] retired June 22, 2015.

B. [REDACTED] was allowed to take Family Medical Leave Act (FMLA) leave without pay in December 2014 and the 12 weeks maximum in 2015 prior to [REDACTED] retirement date in 2015. The Office of Human Resources has no record of [REDACTED] taking FMLA leave thus, submitted incorrect FMLA data to OPM.

WebTA records revealed [REDACTED] used sick leave and FMLA leave without pay during the period of December 15 through December 31, 2014 and January 1 through June 5, 2015. FMLA is available to all federal employees. Employees are allowed 12 weeks of FMLA leave over the course of a 12 months period. . The weeks do not have to be taken concurrently and can be taken with or without pay. FMLA is allowed in instances of injury, pregnancy, or to care for immediate family members. The FEC policy states that in order to use FMLA leave, an employee must complete OPM Form-71 (Request for Leave or Approve Absence) and provide it to the employee's supervisor. The FEC Policy states that an employee's manager *may* request medical certification if the employee takes more than three days of leave and further states that under FMLA, an employee *may* need to have a medical provider complete a medical certification form. The OIG also found that the current OHR FMLA practices does not coincide with the FMLA policy and OHR was not aware of [REDACTED] use of FMLA leave. As a result, the OHR submitted incorrect FMLA data to OPM regarding FEC staff use of FMLA leave

According to evidence and interviews conducted by the OIG, [REDACTED] (b) (6) was ill in April 2014. [REDACTED] and [REDACTED] (b) (6) lived in Virginia and [REDACTED] lived in California. According to interviews, [REDACTED] would visit [REDACTED] in California on a consistent basis. The OIG also found evidence that [REDACTED] had been searching for a job in California for a year prior to [REDACTED] exit. On April 29, 2014, [REDACTED] emailed [REDACTED] [REDACTED] informing him that [REDACTED] was going to move to California so [REDACTED] ill (b) (6) could be close to [REDACTED] family. On May 20, 2014, Palmer advised the FEC Commissioners via email that [REDACTED] would be moving to California with [REDACTED] ill (b) (6) and wanted to telework until [REDACTED] retired in June 2015. During interviews with Commissioners Petersen and Weintraub, they both stated that they were advised [REDACTED] wanted to move to provide assistance in taking care of [REDACTED] (b) (6)

The FEC policy is not clear as when an employee must provide notice to their employee regarding their wish to take FMLA only that they must complete OPM Form-71. The OIG found that [REDACTED] did not comply with FEC policy and complete OPM Form-71 prior to taking FMLA leave. The OIG interviewed former Human Resource Benefits Specialist,

Sandra Labissiere (Labissiere), regarding FMLA requirements and [REDACTED] use of FMLA leave. Labissiere stated she was not notified that [REDACTED] had begun taking FMLA leave until February 2015.

According to Labissiere, prior to taking FMLA leave, staff is supposed to notify the Office of Human Resources (OHR) Office. Once notified, HR will provide the staff member with the OPM Form-71 and advise the staff member what Department of Labor documentation is needed. Labissiere stated that the documentation that is required includes a medical certification from a doctor. Once the paperwork is completed, the staff member's supervisor is notified that the staff member wishes to take FMLA leave. Labissiere admitted that although the OHR's FMLA practices have been in effect since 2013, some FEC supervisors are not following the OHR procedures regarding FMLA and allowing staff to take FMLA without notifying OHR and not requesting documentation such as the medical certifications.² The current FMLA policy does not require employees or their supervisor to notify OHR prior to the employee taking FMLA leave. However, OHR is responsible for reporting FMLA data to OPM yearly as required by 5 CFR 630(1211(a)).

Labissiere acknowledged that she was asked to provide [REDACTED] with leave options to get [REDACTED] to retirement. Labissiere was told that [REDACTED] (b) (6) was ill. Emails evidence that Palmer sent an email to former Office of Human Resource Director Roger Cotton (Cotton), requesting that he research [REDACTED] options to reach retirement and possible early retirement. Cotton forwarded the request to Labissiere, and on June 18, 2014, she forwarded her results in an Excel spreadsheet to [REDACTED], Palmer, and Cotton. One of the options Labissiere charted was to take FMLA leave with a combination of other leave. When interviewed, Labissiere stated she did not know that [REDACTED] started taking FMLA leave until February 2015, when [REDACTED] contacted [REDACTED] regarding a retirement matter. Labissiere acknowledged that she never asked [REDACTED] to submit a medical certification or the OPM Form-71 after she made aware of [REDACTED] use of FMLA leave.

Interviews with Palmer and Labissiere revealed that neither the [REDACTED] nor the OHR attempted to coordinate with one another regarding [REDACTED] taking FMLA leave. The issue appears to be a systematic. The OIG investigation revealed that although WebTA records indicated that [REDACTED] was taking FMLA leave, the Human Resources office did not

² The OIG found OHR procedures have not been incorporated in FEC's FMLA policy. The FEC FMLA policy has not has been revised since 2011. The OIG discussed the above FMLA issues with Staff Director Palmer and he stated that he would work with HR to amend FMLA policy to incorporate all of the requirements. As of the date of this report, FEC's FMLA policies have not been revised.

have a record of [REDACTED] and several other employees that were taking FMLA leave. When interviewed, Palmer stated he assumed [REDACTED] had taken care of the requirements for FMLA and had worked with Labissiere. Palmer stated he did not ask [REDACTED] for any medical documentation. Palmer stated he granted the request after [REDACTED] consulted with Labissiere. However, emails and interviews conducted by OIG evidence that Palmer only requested information regarding [REDACTED] retirement options but never inquired regarding FMLA requirements or if [REDACTED] met the requirements. The OIG obtained evidence that Palmer was reminded on February 6, 2015 via email by his former assistant, Ryan, that [REDACTED] needed to formally invoke FMLA and needed to notify the OHR.

The OIG also did not find evidence as to why the criteria for FMLA was never discussed with [REDACTED] prior to [REDACTED] taking leave. During [REDACTED] tenure as [REDACTED], [REDACTED] supervised the HR office. Evidence provided to the OIG revealed that [REDACTED] communicated with Cotton and Labissiere several times prior to and after [REDACTED] demotion to [REDACTED]. Email documentation evidenced that during the span of June 2014 through June 2015, [REDACTED] emailed former HR Director Cotton and Labissiere several times regarding: [REDACTED] retirement, [REDACTED] loss of annual leave after [REDACTED] was demoted to GS-15, and issues regarding the accumulation of FMLA hours. In many of the emails, [REDACTED] forwarded OPM regulations that supported [REDACTED] arguments. However, the OIG found no evidence that [REDACTED] mentioned or inquired about FMLA requirements prior to taking FMLA leave. Further, neither Cotton nor Labissiere mentioned the requirements and/or procedures.

The OIG found that the current FEC policies do not reflect all the OPM FMLA requirements and do not reflect the procedures conducted by the Office of Human Resources. As a result, Office of Human Resources does not have accurate records regarding employee use of FMLA. Per 5 CFR 630.1211(a), all agencies are required to maintain records on employees who take leave under [FMLA] and submit to OPM such records and reports as OPM may require. Under the regulations, FEC is required to maintain, at a minimum, the following information regarding each employee who takes FMLA leave:

1. The employee's rate of basic pay,
2. The occupational series for the employee's position,
3. The number of hours of leave taken pursuant to FMLA, including any paid leave substituted for leave without pay, and
4. The reason the leave was taken (e.g. the birth of a child, placement of a child with the employee for adoption or foster care, care of an employee's spouse, child, or parent with a serious health condition, or a serious health condition of the employee).

The issues regarding FEC's FMLA policy and its lack of accurate reporting are outlined in a memorandum to the Commissioners and is attached to this report.

Since [REDACTED] was not asked to complete a medical certification form, there is no evidence that [REDACTED] satisfied the requirements for FMLA. Specifically, the OIG did not find evidence that documented [REDACTED] need to provide care, and the OIG did not find evidence that the Staff

Director's or Human Resources' offices requested such information. [REDACTED] never stated in [REDACTED] April 29, 2014 email to Palmer that [REDACTED] needed to stay home and take care of [REDACTED] (b) (6). Instead, [REDACTED] stated [REDACTED] wanted to move to have [REDACTED] (b) (6) close to [REDACTED] family. Emails obtained by the OIG evidence that when [REDACTED] first moved to California and [REDACTED] (b) (6) came home from rehab, [REDACTED] did not initially request FMLA, but requested telework. Emails and interviews conducted revealed that [REDACTED] need for FMLA only materialized after the Commission denied [REDACTED] request to telework exclusively from California from June 2014 through June 2015. WebTA records evidence that [REDACTED] did not invoke FMLA until [REDACTED] three month temporary position was not extended along with Ed Holder's and Kim Humphries' temporary positions.

The OIG obtained one piece of information that indicated that [REDACTED] (b) (6) needed assistance while staying with [REDACTED] and that [REDACTED] may have needed to stay home to take care of [REDACTED] (b) (6). A June 10, 2014 email sent from [REDACTED] to the former HR Director, Roger Cotton, evidenced that [REDACTED] (b) (6) was staying at [REDACTED] house, and [REDACTED] was hiring assistance to take care of [REDACTED] (b) (6). email states that [REDACTED] (b) (6) was coming home from rehab and indicated that [REDACTED] (b) (6) was going to make sure [REDACTED] had help when [REDACTED] (b) (6) came home. However, there was no information submitted that evidenced that, on December 14, 2014, [REDACTED] need for FMLA changed from when [REDACTED] moved to California in June 2014. Lastly, the evidence obtained by the OIG raises the issue of whether [REDACTED] was eligible to telework while [REDACTED] was in California if [REDACTED] was taking care of [REDACTED] (b) (6) for the six months (June 1, through December 12, 2014). Under FEC telework policy, telework is not to be used to take care of sick family members (*See* section C of this report).

When interviewed, Commissioners Petersen and Weintraub both stated they were not aware that [REDACTED] had not notified the OHR regarding FMLA. Weintraub stated that the Personnel Committee is not involved in those matters that the Commission leaves the matter to the individual supervisor, in this case Alec Palmer, and HR.

- C. [REDACTED] was allowed to telework from California as the [REDACTED]. [REDACTED] and after [REDACTED] temporary position concluded. Prior to allowing [REDACTED] to telework from California, the issue of several possible violations of the FEC Telework policy and procedures were never addressed.

Public Law 106-346§ 359 (Telework Enhancement Act) provides government agencies with guidance for developing telework policies. At the time of [REDACTED] employment, FEC 2011 Telework Policy was active. The FEC telework policy at the time of [REDACTED] employment allowed non-bargaining unit employees the ability to telework one to two days from home.

Episodic Telework was allowed on a case-by-case basis for specific projects or assignments as determined by the supervisor. The 2011 Policy stated that “.....Employees are required to fill out a telework agreement that is to be certified each year. The 2011 policy also stated that telework could not be used for child and/or elder care during work hours.”

As [REDACTED] was not allowed to telework on a consistent basis but was allowed occasionally to take episodic telework. WebTA records evidenced that [REDACTED] allowed take leave and episodic telework privileges as [REDACTED] from June 2014 to August 2014. After receiving the Commission’s approval [REDACTED] teleworked exclusively from August 18, 2014 through December 12, 2014 as a [REDACTED] (GS-15). While occupying each position, [REDACTED] teleworked from California and did not execute or revise [REDACTED] current telework agreement prior to working from California. The OIG found that [REDACTED] moved permanently to California and took [REDACTED] FEC issued cell phone, computer, and badge without notifying the CIO office. This was evidence by emails that document the fact that the CIO office did not know [REDACTED] had [REDACTED] laptop in California when they conducted an inventory check in 2014.

When interviewed, Commissioners Peterson and Weintraub stated that usually the Personnel Committee does not get involved in the day to day personnel functions of the FEC. Their role is usually limited to approving the hiring of staff and the creation of new positions.

Commissioners Petersen and Weintraub advised that [REDACTED] was allowed to telework from California so that [REDACTED] could take care of [REDACTED] (b) (6). The OIG found that Commissioners Petersen and Weintraub had conflicting accounts of the Personnel Committee’s involvement in granting [REDACTED] request to telework from California as [REDACTED] [REDACTED] (GS-15). During an interview with Commissioner Petersen, he acknowledged that he and Commissioner Weintraub met with Alec Palmer (Palmer) regarding [REDACTED]. According to Commissioner Petersen, Palmer’s first request was to allow [REDACTED] to telework for a year from California, and the request was denied because of fear of an employee working as far as California with no supervision. Commissioner Petersen stated that Palmer came back later and asked for three months, and the Personnel Committee agreed and mandated that oversight and updates of [REDACTED] work would be conducted by Palmer. Commissioner Petersen stated that updates of [REDACTED] work were provided by Palmer, via email, during Commission meetings and in passing.

During the interview with Commissioner Weintraub, she advised that she did not recall the Personnel Committee working with Palmer regarding [REDACTED] teleworking and there was no agreement made and no updates were provided by Palmer. According to Commissioner Weintraub, Palmer sent her a request for [REDACTED] to work a year from California. Commissioner Weintraub stated that she informed Palmer to figure it out and only voted on

the matter when the full Commission voted.

The OIG was able to confirm Commissioner Petersen's statement that he and Commissioner Weintraub did meet and negotiate [REDACTED] teleworking from California. Evidence obtained by the OIG revealed that, as members of the Personnel Committee, Petersen and Weintraub were involved in negotiations with Palmer on how to accommodate [REDACTED]. Palmer contacted the Personnel Committee via email on May 9, 2014 to discuss [REDACTED] request to be given a GS-15 to telework for 13 months from California until [REDACTED] retirement. Palmer followed up by email on May 19, 2014, outlining [REDACTED] request, along with a draft of the new staff position, to the Committee and "cc" then Chair Lee Goodman and Vice Chair Ann Ravel. The email was forwarded later that day to Commissioners Caroline Hunter and Steven Walther. On May 20, 2014 Palmer submitted a memorandum for full vote to the Commission requesting that they accommodate [REDACTED] request to telework from California as a GS-15. The request was objected on May 21 by Commissioners Walther and Weintraub with Walther asking if the matter went to the Personnel Committee. On June 11, 2014, Palmer sent an email to Commissioners Petersen and Weintraub advising that Chair Goodman mentioned that Commissioners Petersen and Weintraub would be providing guidance to changes to the May 20th Memorandum. On August, 14, 2014, during Executive Session, the FEC Commission voted to allow Ed Holder and Kim Humphries to assume Acting Duties as Deputy Staff Director and Deputy Chief Information Officer after it was stated that the Personnel Committee had reached an agreement with the [REDACTED] to allow [REDACTED] to telework from California.

Evidence provided to the OIG revealed that on December 11, 2014, [REDACTED] sent an email to Palmer, Ryan, and Holder advising that December 12, 2014 would be [REDACTED] last working day at the FEC. However, the OIG also found that [REDACTED] teleworked twice in 2015 after [REDACTED] temporary 120 day position had concluded. The first was in February 2015 when [REDACTED] teleworked one day to complete [REDACTED] mid-year accomplishment review. The second was for four days, June 8-11, 2015. Palmer advised the OIG that [REDACTED] did not have any assignments in June 2015, instead [REDACTED] was allowed to clean up [REDACTED] files, but it raises the question of why, if this was something required of [REDACTED], that this was not accomplished prior to the end of [REDACTED] known end date of December 12, 2014. [REDACTED] email activity evidenced that [REDACTED] had very little email exchanges after December 14, 2014 and [REDACTED] had deleted most if not all of [REDACTED] emails.

In addition, emails by Palmer and [REDACTED] raised questions as to why [REDACTED] was allowed to telework in 2015 after [REDACTED] three-month temporary position had expired. Evidence obtained by the OIG reveals that in February 2015, [REDACTED] realized [REDACTED] had exhausted [REDACTED] leave without pay allowance for the year and would have to come back to DC to work to earn full retirement

benefits. [REDACTED] later informed Palmer that an error had been made regarding [REDACTED] FMLA use and [REDACTED] had additional FMLA hours and now [REDACTED] was left [REDACTED] short a week instead of two weeks needed to retire. It was after these emails that [REDACTED] was allowed to work for five days.

[REDACTED] was allowed to telework after Palmer advised the Commission via email, on February 27, 2015, that he would not be granting [REDACTED] two additional weeks of leave without pay to make up the difference of time needed to retire. Palmer stated that [REDACTED] had the choice to either come back to DC for two weeks or retire early. [REDACTED] never returned to DC and was allowed to telework episodically from California June 8 -11, 2015. However, WebTA records document that [REDACTED] worked a regular schedule and did not report telework hours during the period of June 8-11, 2015. [REDACTED] validated the WebTA record in question and it was certified by Palmer, [REDACTED].

The OIG found that the Commission's decision to allow [REDACTED] to telework from California was a special allowance that had never been bestowed on any other FEC employee. [REDACTED] was the first employee to be given permission to telework outside the tri-state area. The OIG was advised that other employees in the past had requested arrangements to be allowed to work outside the tri-state area but were denied. When asked why [REDACTED] was the exception, Palmer and Commissioners Petersen and Weintraub all stated that this was different because this need was for a medical issue. However, the FEC Telework Policy does not allow FEC staff to telework while caring for a child or elder unless caregiver is present.

The OIG found evidence that [REDACTED] may have been allowed to telework and care for [REDACTED] (b) (6) in violation of FEC's Telework Policy. The FEC Telework Policy for non-bargaining employees (2011) section (B)(11)(a) stated that "Duty time at the ADS may not be used as a substitute for dependent care such as child care or elder care and may not be used to provide dependent care during working hours. Section (B) (11) (c) states that Employees may have a caregiver working in the home to provide care to dependents while he/she works from home. Initially after moving to California, [REDACTED] teleworked sporadically from June 1, 2014 through August 18, 2014. [REDACTED] teleworked exclusively from California from August 19, 2014 through December 12, 2014. WebTA records evidenced that [REDACTED] teleworked June 8 through June 11, 2015. The OIG notes that since [REDACTED] was not required to abide by the FMLA policy and fill-out Department of Labor FMLA forms, it is inconclusive if [REDACTED] (b) (6) was in [REDACTED] home during the entire time [REDACTED] teleworked and if a medical provider was present the entire time to assist [REDACTED] (b) (6). The only evidence showing that [REDACTED] (b) (6) was living with [REDACTED] was a June 10, 2014 email sent from [REDACTED] to the former HR Director, Roger Cotton, stating that [REDACTED] (b) (6) was to come home from rehab and [REDACTED] was going to get help. It also does not appear that either Palmer, [REDACTED] supervisor, or the HR office discussed this issue with [REDACTED] ensure that [REDACTED] (b) (6) care was covered while [REDACTED]

was working. The OIG was not provided or obtained evidence that reflected that this potential telework violation was discussed with [REDACTED] prior to allowing [REDACTED] to telework five days a week from home in California.

The FEC telework agreement, as written, does not prevent the FEC Commissioners from overriding the FEC's telework policy and its parameters. The FEC Telework Agreement for Non-Bargaining Unit staff states that "Exception to the policy must be submitted to the Staff Director in writing with full justification and supervisor approval. The Staff Director will then submit a recommendation to the Commission for approval. In this instance [REDACTED] was the Staff Director and the Staff Director did follow procedure and submit the recommendation to the Commissioners for approval. However, the OIG found no evidence that prior to approving [REDACTED] telework schedule, the Staff Director's office addressed the issue with the Commissioners, informing them that accommodating [REDACTED] was not in agreement with FEC's telework policy (teleworking exclusively, living out of the tri-state area, taking care of a sick relative while teleworking) and that they would be setting a new precedent. The unprecedented approval of teleworking cross-country appears to have been made without the Commission being made aware that the decision was not in conformity with FEC policy.

D. The OIG found that additional costs to the agency were incurred in allowing [REDACTED] to remain on the payroll after [REDACTED] three month temporary position expired on December 14, 2014.

On December 14, 2014, [REDACTED] temporary position of [REDACTED] expired. The Commission did not vote to renew the position. After December 14, 2014, [REDACTED] did not resume [REDACTED] former position of [REDACTED]; instead, Ed Holder remained as Acting Deputy Staff Director and Kim Humphries as Acting Deputy CIO. Holder and Humphries remain in their acting positions as of the issuance of this report. [REDACTED] remained on the FEC staffing report as [REDACTED] in a permanent capacity until [REDACTED] retirement on June 22, 2015.

Although not working, [REDACTED] was still on the FEC payroll, accruing a salary, annual and sick leave, retirement benefits, life insurance benefits, TSP benefits, and FICA. In addition, the FEC paid higher salaries to Holder and Humphries in their acting capacities. Holder's and Humphries' grade and salary increases began pay period 17 - September 6, 2014. Holder's 2014 promotion included a grade increase from a GS-15 (Step 9) to SL with a salary increase of \$351.00 per pay period or \$8,432 yearly (\$165,432.00 - \$157,100.00). Holder's salary increased again in April 2015 to \$167,086 for an increase of \$416.00 per pay period from his

GS-15 salary or \$9,986.00 yearly. Holder's salary as Acting Deputy Staff Director for Management was higher than [REDACTED] when [REDACTED] held the same position. [REDACTED] salary as Deputy Staff Director was \$157,055.00, a difference of \$8,377.00 yearly or \$322.00 per pay period.

Humphries' grade increased from a GS 14 (Step 9) to a GS-15 (Step 6) and a salary increase of \$468.00 per pay period or \$11,232.00 yearly (\$145,827.00 - \$134,595.00). Humphries' salary increased again in April 2015 to \$147,288 for an increase of \$528.00 per pay period from her GS-14 salary or \$12,693.00 yearly. In total, the FEC paid a sum \$15,492 of additional salaries to Holder and Humphries while still paying [REDACTED] salary from September 2014 through June 2015.

The OIG calculated the expenses in allowing [REDACTED] to stay on an additional 6 months as a permanent employee after [REDACTED] 3 month temporary position had expired (December 14, 2014 through June 22, 2015). The agency expended an average of \$11,349.97 per month. In total, the FEC spent a sum of \$68,099.83 in 6 months to allow [REDACTED] to stay on the FEC staff until [REDACTED] retired. When asked if the Personnel Committee considered the cost of allowing [REDACTED] to remain on staff after the 120 days had expired, the OIG was told the issue was never discussed. (See accompanying chart).

Pay Periods 12/15/2014 to 06/27/2015	[REDACTED]	Ed Holder	Kim Humphries	Total
Salary	\$44,334.40	\$5,304*	\$6,832*	\$56,470.40
Retirement	\$5,852.12			
Life Insurance	\$168.96			
TSP	\$2,216.81			
Total	55,963.83	\$5,304	\$6,832	\$68,099.83

*Amount is the cumulative difference of the salary after the August 19 promotion minus the salary prior to promotion.

IV. Conclusion

The OIG found several examples of violations of the FEC's FMLA policy, telework policy, and OPM requirements that resulted in accommodating ██████ request to change ██████ position and telework exclusively from California. The OIG also found that the Staff Director's office failed to advise the Commissioners that ██████ temporary demotion was not allowable under OPM guidelines and that a permanent position was created instead. The Staff Directors Office also failed to ensure that FEC's FMLA policy and telework policy were followed prior to and during ██████ tenure as ██████

The preferential treatment given to ██████ allowing ██████ to stay on the FEC payroll for additional six months, allowed ██████ to retire with full benefits and cost the agency an additional \$68,099 in salaries and benefits. The Commission's action is labeled as preferential because no other employee has been given permission to telework exclusively outside the tri-state area, and there is no record of the Commission using its authority to assist an employee in retiring with full benefits once they have decided to move out of the tri-state area.

A. Scope of the Investigation

The investigation was limited to an overview of accommodations given to ██████ to change positions, telework from California, use FMLA, and remain on the payroll as an active staff person. This report is limited to the purported preferential treatment given to ██████ the cost associated with the alleged favoritism, and the possible violations of FEC policy and OPM requirements.

ATTACHMENTS

Attachment	Description
1	April 29, 2014 email from [REDACTED] to Palmer requesting GS-15 position
2	May 16-19, 2014 email with attached PDF for GS-15, from Palmer to Commissioners Petersen and Weintraub "cc" Chair Goodman Vice Chair Ravel forwarded on the 19 th to Commissioners Hunter and Walther
3	May 20, 2014 memorandum to full Commission requesting to accommodate [REDACTED] request to a GS-15 and Holder's and Humphries' promotions
4	May 20, 2014 email from [REDACTED] to Palmer and others advising of California address and phone number
5	June 11, 2014 email to Commissioners Petersen and Weintraub regarding conversation with Chair Goodman and additional information
6	June 18- August 19, 2014 emails from Labissiere to Cotton with attached excel spreadsheet regarding [REDACTED] option for retirement and leave
7	June 10, 2014 email from [REDACTED] to Cotton advising that (b) (6) is coming home from rehab and that [REDACTED] is getting help for when [REDACTED] comes home
8	August 18, 2014 updated version of May 20, 2014 Ballot with certification that on August 14, 2014, the Commission voted 4-2 to appoint Holder and Humphries as Acting Deputy Chief of Staff and Acting Deputy Chief Information Officer/Operations

9.	August 20 and September 30, 2014 emails between Ryan and Brown regarding entering [REDACTED] new position into the NTE system and the decision to enter it as permanent
10	Copy of S-52 for permanent position
11	December 8, 2014 email from Palmer to all Commissioners regarding update of [REDACTED] accomplishments and the completion of [REDACTED] during [REDACTED] 3 month
12	February 27, 2015 email to from Palmer to all Commissioners, Katie Higgenbothom, Gregory Baker and Roger Cotton. Update to December 8, 2014 email advising that no further LWOP will be granted to [REDACTED]
13	[REDACTED] WebTA records to indicate [REDACTED] worked on June 8-11, 2014
14	U.S. Department of Labor FMLA Certification of Health Care Provider forms

**FEDERAL ELECTION COMMISSION
OFFICE OF INSPECTOR GENERAL**



Report of Investigation

(b) (7)(C)

Case Number INV-16-02

June 14, 2018

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I. Executive Summary

On November 10, 2015, the Federal Election Commission (FEC) Office of Inspector General (OIG) was contacted by Postal Inspector Ray Campbell with the United States Postal Inspection Service (USPIS) regarding a case he was handling that involved a FEC employee. The USPIS received a referral from the Federal Bureau of Investigation (FBI) regarding a forged letter and envelope purporting to be from the District of Columbia (DC) Bar. The forged five page letter was mailed July 9, 2015, to the Inter-American Investment Corporation, a merging company with Inter-American Development Bank, the employer of attorney [REDACTED]. The letter appeared to be printed on DC Bar letterhead and falsely stated that [REDACTED] Bar privileges were suspended. [REDACTED]s employers contacted the DC Bar. The DC Bar filed a complaint with the FBI, who then referred the case to the USPIS.

Using the United States Postal Service's (USPS) purchasing logs, the USPIS tracked the source of payment used to purchase the forged letter's postage to a Navy Federal Credit Union bank card belonging to FEC Employee [REDACTED]. On November 5, 2015, [REDACTED] a [REDACTED], was interviewed by Campbell. Confronted with the letter and stamped envelope, [REDACTED] denied composing the letter and purchasing the stamp, and later provided Campbell a copy of [REDACTED] bank statements. [REDACTED] bank statements confirmed that [REDACTED] Navy Federal Credit Union bank card was used on July 9, 2015, to purchase postage of \$1.20 from the 1200 Pennsylvania Ave NW, Washington, DC, post office. Navy Federal posted the July 9, 2015, purchase to [REDACTED] account on July 10, 2015. The transaction code on [REDACTED] statement matched the postage and USPS purchasing log codes. The transaction was matched by the purchased account number, site ID (location of purchase), transaction date, and transaction amount.

Campbell stated to the OIG that [REDACTED] never disputed any other bank charges before and after the July 9, 2015, postage stamp purchase. [REDACTED] affirmed that when [REDACTED] visits the post office, [REDACTED] uses the self-service kiosk on Pennsylvania Avenue in Washington, DC. On November 9, 2015, via email, [REDACTED] contradicted [REDACTED] statements from [REDACTED] November 5th interview with Campbell. [REDACTED] explained [REDACTED] did visit the post office on the day in question and [REDACTED] purchased a stamp to mail to another recipient, [REDACTED] at the Sorensen Institute. [REDACTED] alleged the post office must have mistakenly charged [REDACTED] card to the postage used to mail the fraudulent letter. In addition, on November 9, 2015, [REDACTED] also advised Campbell that [REDACTED] was going to contact an attorney. Campbell advised [REDACTED] he would no longer contact [REDACTED] and would wait until he heard from [REDACTED] attorney. No other contact was made between the two parties.

Campbell advised the OIG on November 10, 2015, that he had notified the DC U.S. Attorney's Office (USAO) of the case details. The USAO requested additional information, in particular, [REDACTED] motive for apparently mailing the letter. In an attempt to determine a motive for determining why [REDACTED] purchased the stamp and apparently mailed the forged DC Bar letter, Campbell requested the assistance of the FEC OIG. The OIG opened an investigation to determine if [REDACTED] made false statements to Campbell, if [REDACTED] misused FEC property by using [REDACTED] FEC issued computer to generate or print the forged letter, and obtain evidence as to a possible motive for [REDACTED]r sending the forged letter.

On November 24, 2015, the OIG requested a copy of ██████ FEC hard drive, which was confiscated by the FEC's Office of the Chief Information Officer (OCIO) the same day. On November 25, 2015, the OCIO copied an encrypted image of ██████ hard drive, which was released to the OIG on December 1, 2015. The OIG released ██████ encrypted hard drive image to Campbell on December 11, 2015, for forensic examination by the USPIS in order to uncover evidence regarding the forged letter and purchased stamp. Campbell contacted the OIG on March 21, 2016, and explained he was reassigned to the Department of Justice Fraud Division, but would continue to oversee the investigation. Campbell further advised that the USPIS forensic department was unsuccessful in decrypting ██████ hard drive image. On April 7, 2016, Campbell returned the hard drive image to the OIG and obtained the decrypted hard drive for his forensic department's analysis.

On June 28, 2016, per the OIG's request, OCIO conducted an analysis of ██████ hard drive. The examination of the hard drive uncovered communication between ██████ and Campbell via emails prior to and after ██████ interview on November 5, 2015. The emails retrieved entailed conversations of Campbell and ██████ first meeting, ██████ alibi regarding how the stamp purchase ended up on ██████ bank card, and ██████ announcement that ██████ was seeking an attorney. However, the OIG was unable to obtain any evidence that ██████ used ██████ FEC issued laptop to draft the fraudulent DC Bar letter.

The OIG made many attempts between March 2016 and May 2017 to contact Campbell and his supervisor for an update on the case and the return of ██████ decrypted hard drive. On May 10, 2017, Campbell confirmed he was still in possession of the hard drive and that his forensic department would not analyze the hard drive due to case inactivity, management not approving the case to be formally opened, and lack of personnel. As a result, the OIG based all of their findings on information they obtained through Campbell (██████ bank records, emails, and USPS transaction records), online research, analysis of ██████ hard drive, and interviews conducted with ██████ supervisors and ██████.

The OIG reviewed ██████ social media accounts and bank records. The OIG could not find a nexus between ██████ and ██████. The OIG did find that ██████ had been misrepresenting (b) (7) as a law student on ██████ social media accounts since 2015. The OIG contacted ██████ on June 26, 2017, and requested an interview with ██████ while informing ██████ that ██████ had a right to have a Union Representative present. ██████ agreed to meet the same day. ██████ arrived at the meeting with Union Representative Marianne Abely. ██████ was given a Kalkines warning. Abely advised ██████ not to continue the interview without an attorney. On June 30, 2017, the OIG was advised that Union Steward, Benjamin Streeter III would be representing ██████ but not as counsel. On July 7, 2017, Streeter emailed the OIG and advised that ██████ would not be speaking to the OIG for fear of self-incrimination. Streeter advised that ██████ would only speak if the OIG ensured that there would be no criminal charges brought against ██████.

On July 6, 2017, the OIG conducted a phone interview with ██████. ██████ explained ██████ and ██████ were not acquaintances of ██████ nor her friends. ██████ explained three copies of the letter were sent: two letters to ██████ employer's Director of Human Resources and General Counsel at ██████, and one letter to ██████ General Counsel and merging subgroup. Only one envelope was saved and the postage on

the envelope was traced to ██████ bank card. When asked why ██████ thought ██████ sent the letter, ██████ stated ██████ and (b) ██████ boss thought maybe it had to do with ██████ job. According to ██████ when the letter was sent ██████ had just began ██████ current job, which required ██████ to compete with 300 applicants. ██████ proposed one of those applicants may have been friends with ██████. ██████ felt that ██████ should be punished since ██████ almost got ██████ fired and during the time ██████ was pregnant along with a ██████ at home and the ordeal created additional stress.

With all information obtained, the OIG discussed facts surrounding the case with FEC Staff Director Alec Palmer on July 10, 2017. Another meeting took place on July 13, 2017 with the OIG, Palmer, Deputy General Counsel for Administration Greg Baker, and Assistant General Counsel Kate Higginbotham. At the meeting, Palmer, Baker and Higginbotham agreed Administrative action should be taken. However, on August, 7, 2017, the OIG received an email from Palmer that after careful consideration, the lapse in time would make it difficult to discipline ██████ based on the conditions of the Labor Management Agreement with the FEC and the Union, thus no administrative action would be taken against ██████

Conclusion: The OIG was not able to obtain a statement from ██████ because ██████ refused. The FEC does not have a policy to require employees to cooperate with the OIG during investigations. The OIG was unable to obtain any information that refuted the USPS logs that ██████ purchased the postage stamp. There is also evidence that ██████ provided misleading information to the USPIS Federal Agent. ██████ statements to Campbell that ██████ did not purchase the postage is not supported by ██████ emails, USPIS MOI, USPS purchase logs, and ██████ bank statement.

A review of ██████ hard drive revealed no evidence that ██████ used ██████ FEC issued computer to draft, print, or save the letters sent to ██████ employer. However, the examination of the hard drive is not conclusive as to whether an external drive was used. The USPIS contacted the DC Office of the United States Attorney, which requested evidence of motive before making a decision to prosecute. The USPIS and the OIG could not find evidence to support a motive as to why ██████ mailed the letters.

II. Background

On November 10, 2015, the FEC OIG received a complaint from Postal Inspector Campbell via email. Campbell advised that the USPIS received a referral from the FBI regarding a complaint from the DC Bar. The DC Bar had received a query from Inter-American Investment Corporation, a merging subgroup to Inter-American Development Bank, the employer of attorney [REDACTED]. The employer explained the company received a letter on DC Bar letterhead stating that [REDACTED] Bar privileges were suspended due to disbarment. [REDACTED] employers contacted the DC Bar, which stated [REDACTED] status was in good standing and the letter in question was not sent by the DC Bar. The DC Bar filed a complaint with the FBI, which then referred the case to the USPIS.

Campbell explained to the OIG that the USPIS was able to track the purchased stamp used on the packaging to a bank card owned by [REDACTED]. Campbell advised that a review of [REDACTED] bank statements uncovered a \$1.20 stamp purchased from United States Post Office at 1200 Pennsylvania Ave NW, Washington, DC on July 9, 2015. Campbell informed the OIG that he interviewed [REDACTED] and [REDACTED]. He stated that during his communication with [REDACTED], [REDACTED] denied purchasing the stamp and Campbell stated he ceased all communication after [REDACTED] advised [REDACTED] was contacting counsel. [REDACTED] denied having any knowledge of [REDACTED] when interviewed by Campbell. Campbell attempted to obtain USPS video surveillance records of the July 9, 2015, purchase at the Washington, DC post office, but by the time the case was opened by USPIS, the camera surveillance had been deleted.

Campbell stated the United States Attorney's Office for the District of Columbia was briefed on the investigation and requested additional information regarding motive prior to accepting or denying the case for prosecution. In order to identify [REDACTED] motive, Campbell requested the OIG's assistance in searching [REDACTED] work emails. Based on material presented by Campbell, the OIG agreed to work with the USPIS.

It was determined an OIG investigation would be opened to determine specifically:

1. [REDACTED] motivation to send the letter;
2. If improper use of FEC property occurred; and
3. If [REDACTED] composed the letter and purchased the stamp during official government time.

A. Relevant Statutes, Regulations, and Policies

5 U.S.C. § 1001, Statements or Entries Generally
5 CFR 2635.704, Use of Government Property
5 CFR 2635.705, Use of Official Time

III. Investigation Findings

a. The OIG was unable to assist the USPS in determining █████ possible motive for mailing the letter.

On November 10, 2015, the FEC OIG was advised by Postal Inspector Campbell that his office had received a referral from the FBI of a forged letter that impersonated the DC Bar. The forged, five page DC Bar letter was mailed on July 9, 2015, to the employer of █████ an attorney employed at Inter-American Development Bank (IDB). The letter copied the DC Bar letterhead without authorization and falsely stated that █████ bar privileges were suspended. █████ employers contacted the DC Bar, who filed an FBI complaint, which was referred to the USPS.

The USPS was able to track the forged letter's postage stamp purchase to July 9, 2015, in Washington, DC, to a bank card belonging to █████. Campbell provided the OIG a copy of the USPS logs that tracked the purchase to the Post Office at 1200 Pennsylvania Ave NW, Washington, DC. According to the log, the postage was purchased on July 9, 2015, with █████ bank card at 1:19 pm. The post office's location is an 8 minute, 0.4 mile walk from the former FEC headquarters building at 999 E Street NW, Washington, DC. Campbell also received a copy of █████ Navy Federal Credit Union bank card statement that confirmed █████ card was used to purchase the postage that was used to mail the forged letter.

On November 5, 2015, █████, a █████, was interviewed by Campbell. On November 10, 2015, Campbell requested the OIG's assistance in obtaining █████'s FEC emails. According to Campbell's Memorandum of Interview (MOI) and emails provided to the OIG, █████ denied purchasing the stamp during █████ interview on November 5, 2015, with Campbell and in subsequent emails.

Communications between █████ and Campbell revealed █████ provided various theories to Campbell as to how the transaction for the stamp appeared on █████ statement and █████ denied █████ involvement. █████ first stated that █████ did not go to the post office and did not purchase the stamp, but when █████ goes, █████ uses the self-service kiosk on Pennsylvania Avenue in Washington, DC. █████ also stated █████ sometimes gives █████ card to █████ sisters, that █████ leaves █████ card in █████ pocket when █████ walks around the city, and █████ leaves █████ card at █████ desk along with envelopes, stamps, and supplies. █████ alleged at any time █████ card could have been taken. Campbell's MOI reveals he asked █████ the names of individuals at work that may have taken █████ card. █████ never provided the information to Campbell. During █████ and Campbell's last email communication on November 9, 2015, █████ admitted that █████ did purchase a stamp July 9, 2015, but it was to mail an envelope to █████ at the Sorensen Institute for Political Leadership in Charlottesville, Virginia. █████ also told Campbell that █████ was going to contact an attorney.

On June 26, 2017, the OIG contacted █████ and requested an interview concerning potential misconduct related to █████ job. During the OIG's initial contact with █████, the OIG advised █████ of █████ right to have a union representative present during the interview. █████ requested a union representative be present and Marianne Abely responded in that role. █████ signed the

Employee Notification Regarding Union Representation with Abely as a witness. The OIG explained the Kalkines Warning to ██████, at which time Abely recommended ██████ discontinue the interview and reschedule with an attorney present. Abely instructed the OIG to contact the Union Steward directly instead of ██████ and the interview was immediately concluded.

On June 29, 2017, Acting Chief Steward of the Union, Benjamin Streeter III, emailed the OIG that he would be replacing Abely and representing ██████, but not as an attorney. In response, the OIG requested a signed declaration by ██████ affirming Streeter is permitted to act as ██████ representative in order to protect ██████ rights by discussing the facts of the case. Following the OIG's conversation with Streeter, on June 30, 2017, ██████ provided the OIG with a signed declaration giving Streeter consent of representation. Following the receipt of the signed declaration, the OIG contacted Streeter. The OIG made several inquiries to Streeter regarding a second interview with ██████. Streeter advised the OIG that ██████ would not be available for a second interview.

The OIG was not able to obtain a statement from ██████ due to ██████ decision not to speak to the OIG. The FEC does not have a policy to require employees to cooperate with the OIG during investigations.

b. ██████'s hard drive resulted in no evidence that ██████ used the FEC computer to compose the fraudulent DC Bar letter nor motive as to why ██████ sent the letter.

On November 13, 2015, the OIG contacted FEC Staff Director and Chief Information Officer (CIO) Alec Palmer. Palmer confirmed ██████ does not telework and works from 8:30 am to 5:00 pm. Palmer instructed an FEC information technology (IT) employee to assist with obtaining forensic evidence for the case. On November 24, 2015, the OIG met with the FEC IT employee to discuss recovering ██████ FEC laptop, which was recovered and delivered to the OIG the same day.

After the seizure of ██████'s laptop, the FEC IT employee created an encrypted hard drive image and released it to the OIG on December 1, 2015. Once the OIG signed the Property and Document Receipt for the release of the hard drive image, the OIG released the encrypted hard drive image to Campbell on December 11, 2015, also signing a Property and Document Receipt.

On February 2, 2016, the OIG contacted Campbell for results on the hard drive image by his forensic department. Campbell explained he was still awaiting the results, but should have an update by the end of the following week. On March 21, 2016, Campbell explained he was reassigned to the Department of Justice Fraud Division, but would continue to oversee the investigation. Campbell also acknowledged his forensic department was unsuccessful in decrypting the hard drive image. Campbell suggested the OIG provide him another hard drive that was decrypted. On April 7, 2016, a decrypted drive was delivered to Campbell in exchange for the encrypted hard drive image. The OIG requested updated results from the decrypted hard drive starting June 13, 2016, through January 2017.

While waiting for Campbell to respond, the OIG requested the assistance of the FEC IT department to conduct their own analysis of ██████ hard drive. To maximize the OIG's search of ██████ hard drive, the OIG composed a list of 38 search terms and phrases on June 28, 2016, for the FEC IT employee to reduce the number of files populated by ██████ hard drive. With the 38 search terms populating too many results, the OIG used a concentrated number of terms from the original 38 generated from July 2014 to July 2016. ██████ emails were also viewed for evidence, but her emails yielded no results with terms not limited to "DC Bar," ██████, and "██████."

On June 28, 2016, the FEC IT employee provided the OIG with a complete assessment of ██████ hard drive. However, the analysis did not reveal any evidence that the forged DC Bar letter was composed or printed from ██████ computer. It should be noted that the results from ██████ hard drive are not conclusive of external drive usage. Thus, the analysis of the hard drive does not rule out a possibility that ██████ could have used an external drive to save and print the letter.

On May 10, 2017, the OIG requested ██████ decrypted hard drive from Campbell, along with accompanied documents from his investigation, and an update on the case. Campbell acknowledged his forensic department did not accept ██████ hard drive because the case was identified as inactive due to management not formally opening the case, Campbell's reassignment, and the lack of personnel. Campbell's declaration that management had not approved the opening of the case contradicted previous information provided to the OIG. On May 15, 2017, the OIG received ██████ hard drive and additional documents including: (1) ██████ hard drive; (2) a Property and Document Receipt; (3) a Memorandum of Interview detailing ██████ interview with Campbell; (4) USPS transaction data of date and time of purchase; (5) USPS transaction date pulled from ██████ bank card; (6) copy of the mailed envelope; and (7) ██████ Navy Federal bank statements. None of the documentation provided evidence that ██████ used ██████ FEC equipment to create or print the fraudulent letter.

The OIG was not able to establish evidence from ██████ hard drive or from ██████ direct supervisor, Eileen Leamon, if ██████ was at lunch or should have been working during the time the stamp was purchased. ██████ is not required to report ██████ lunch hours. The OIG interviewed Leamon on June 14, 2017. ██████ had initially stated that maybe someone had stolen ██████ card from ██████ desktop, but Leamon, who has been ██████ supervisor since 2008, stated that ██████ never informed her of a theft involving ██████ bank card from ██████ office. Leamon advised that ██████ works eight hour days, five days a week. The postage used to mail the stamp was purchased at 1:19 pm on July 9, 2015, in Washington, DC. According to Leamon, ██████ is in the office or taking lunch at that time.

To determine a possible motive for ██████ sending the letter, the OIG searched information pertaining to ██████ and ██████ based on the information provided by Campbell. The OIG searched ██████ and ██████ public Facebook and LinkedIn profiles for any posts regarding the incident in question along with pictures of ██████, but no evidence was obtained. ██████ did not share mutual friends, nor were associates through social media accounts. The search of ██████ social media pages did reveal that since November 2015, ██████ has listed ██████ occupation as a law student, but the OIG found no evidence that ██████ is a law

student.

On July 6, 2017, the OIG interviewed ██████ questioning ██████ connection with ██████. ██████ affirmed neither ██████, family, nor ██████ know ██████. ██████ explained that when the letters were first mailed, ██████ just started a position with ██████ job that required ██████ to compete against 300 other applicants. ██████ questioned whether one of those applicants who applied for the position may have been a friend of ██████. The OIG was also informed by ██████ that a total of three identical letters were sent. One letter was mailed to the General Counsel of Inter-American Development Bank (IDB). Two of the forged letters were sent to the General Counsel and Director of Human Resources at ██████ employer, Inter-American Investment Corporation, a subgroup that merged with IDB. ██████ explained not all of envelopes were saved. Only one envelope was saved and the postage was traced to ██████ Navy Federal bank card.

The OIG could not find evidence disclosing possible motive as to why ██████ may have sent the letter to ██████ employer. The search of ██████ hard drive did not provide any evidence as to ██████ motive to send the hard drive. The search resulted in one email to a ██████ regarding the issue but the contents of the email did not provide any information regarding motive. Other than ██████ correspondence with Campbell, the OIG did not recover any evidence on ██████ FEC computer showing ██████ used ██████ agency computer to compose the fraudulent DC Bar Letter in violation of 5 CFR 2635.704 or purchased the stamp during ██████ work hours in violation of 5 CFR 2635.705.

c. FEC management decided not pursue any administration action against
██████

The OIG requested a meeting with FEC Staff Director Palmer. On July 10, 2017, the OIG explained the USPIS' and the OIG's cases to Palmer. Palmer was advised that the OIG investigation had ceased due to ██████ refusal to speak with the OIG per advisement from the Union. Palmer was informed that existing evidence showed that ██████ bank card was used to purchase the postage used to mail the fraudulent letter. Palmer was advised that ██████ denied that ██████ purchased the postage and provided the Federal Agent with three different scenarios. Palmer requested a meeting with the OIG, Deputy General Counsel Administration Greg Baker, and Assistant General Counsel Kate Higginbothom to discuss how to proceed.

On July 13, 2017, the OIG attended a second meeting with Palmer, Baker, and Higginbothom present. The OIG informed Baker and Higginbothom the facts of the case and presented a copy of the mailed letter issued to Hallahan's employer. All meeting attendees agreed action was necessary. During the meeting, the OIG acknowledged ██████ motive could not be identified and that ██████ was advised by a Union Representative to discontinue communication with the OIG. However, the OIG revealed the postal code attached to the purchase stamp was connected to a transaction made by ██████'s bank card.

On August 7, 2017, the OIG received an email from Staff Director Palmer thanking the OIG for providing notification on the ██████ case. Palmer reiterated that although the FEC does not condone ██████ misconduct, after consultation with the OGC, Palmer has decided not to pursue

disciplinary action.

IV. Conclusion

The OIG investigation revealed that [REDACTED] Navy Federal Credit Union bank card was used on July 9, 2015 at the 1200 Pennsylvania Ave NW, Washington, DC post office at 1:19 pm to purchase postage. The postage was used to mail one of the three copies of a forged DC Bar letter addressed to [REDACTED] employer's General Counsel and Human Resources Office. There is no evidence that has been offered to show that [REDACTED] bank card was stolen or that [REDACTED] purchased another stamp and the stamp's identification numbers were mixed-up resulting in the wrong stamp being charged as [REDACTED] alleged.

In addition, interviews and time keeping records revealed that absent [REDACTED] taking leave, [REDACTED] was scheduled to work on July 9, 2015. The OIG found no evidence that [REDACTED] used [REDACTED] FEC-issued computer to create the forged DC Bar letter to [REDACTED] employer. The OIG did not recover evidence of the forged letter from [REDACTED] hard drive showing the letter was composed on [REDACTED] FEC laptop during office hours, in violation of 5 CFR 2635.704 and 5 CFR 2635.705. However, it should be noted that the OIG investigation could not confirm whether an external device was used with the FEC laptop to draft, print or copy the forged DC Bar letter.

A. Scope of the Investigation

The investigation was limited to whether or not FEC employee, [REDACTED], utilized [REDACTED] FEC laptop and government time to compose a fraudulent letter from the DC Bar and pursuant to a request from the USPIS, [REDACTED] possible motive for sending the letter.

Federal Election Commission Office of Inspector General



Fraud Hotline 202-694-1015

or toll free at 1-800-424-9530 (press 0; then dial 1015)

Fax us at 202-501-8134 or e-mail us at oig@fec.gov

Visit or write to us at 1050 First Street, N.E., Suite 1010, Washington DC 20463

Individuals including FEC and FEC contractor employees are encouraged to alert the OIG to fraud, waste, abuse, and mismanagement of agency programs and operations. Individuals who contact the OIG can remain anonymous. However, persons who report allegations are encouraged to provide their contact information in the event additional questions arise as the OIG evaluates the allegations. Allegations with limited details or merit may be held in abeyance until further specific details are reported or obtained. Pursuant to the Inspector General Act of 1978, as amended, the Inspector General will not disclose the identity of an individual who provides information without the consent of that individual, unless the Inspector General determines that such disclosure is unavoidable during the course of an investigation. To learn more about the OIG, visit our Website at: <http://www.fec.gov/fecig/fecig.shtml>

Together we can make a difference.

**FEDERAL ELECTION COMMISSION
OFFICE OF INSPECTOR GENERAL**



Report of Investigation

Hatch Act Violations

Case Number INV-17-01

September 28, 2017

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I. Executive Summary

On October 14, 2016, the Federal Election Commission (FEC) Office of Inspector General (OIG) received a complaint from FEC Acting General Counsel Lisa Stevenson regarding a possible Hatch Act violation by an FEC employee. Stevenson advised that she and Deputy General Counsel of Administration Greg Baker received the complaint via email on October 13, 2016, from a complainant outside of the FEC. The complainant expressed concern over (b) (3) (A), (b) (7)(C) involvement with the [REDACTED] County, Maryland, ballot initiative, [REDACTED]. The [REDACTED] ballot initiative was created to oppose the [REDACTED] County [REDACTED] that would impose term limits for [REDACTED] County Council members and County Executives. The complainant alleged that [REDACTED] was prohibited from engaging in the ballot initiative due to [REDACTED] position with the FEC. The complaint also voiced concern of [REDACTED] using [REDACTED] official FEC title to persuade individuals to support [REDACTED] organization. The complainant's email further stated that [REDACTED], a member of the alleged bipartisan project, sued the [REDACTED] County Board of Supervisors on the issue of term limits.

The OIG found that on July 7, 2016, [REDACTED] contacted Office of General Counsel (OGC) Attorney and Deputy Agency Ethics Official Tracey Ligon for guidance. [REDACTED] asked if there were any restrictions for government employees who participated in nonpartisan local ballot initiatives. Ligon consulted the Office of Special Counsel (OSC) regarding [REDACTED] request and received assistance from Hatch Act Unit Chief Attorneys Ana Galindo-Marrone and Erica Hamrick. On August 9, 2016, Ligon emailed [REDACTED] the OGC's Ethics opinion regarding [REDACTED] effort to Oppose Ballot Issues. The opinion advised that some of the proposed activities were prohibited under the Hatch Act. The OGC determined [REDACTED] was prohibited from having the ballot initiative endorsed by a partisan group. The OGC instructed that if a partisan group endorsed the ballot initiative on its own, [REDACTED] was restricted from stating the partisan group endorsed the ballot initiative. The OGC further restricted [REDACTED] from seeking funds and other forms of contributions from a partisan group, and [REDACTED] was precluded from partnering with a partisan group to determine the public message of the ballot initiative. Ligon advised [REDACTED] that as a further restricted federal employee, [REDACTED] was prohibited from using [REDACTED] government title and position to avoid the perception that the Government endorsed the activity. On August 24, 2016, the OGC met with [REDACTED] to ensure [REDACTED] understood the terms of the opinion.

After [REDACTED] received the OGC opinion, [REDACTED] sent a request to OSC on August 28, 2016, for further assistance. On October 14, 2016, Galindo-Marrone responded to [REDACTED] and provided [REDACTED] with permissible and restricted acts for a "further restricted" government employee. OSC's opinion stated the Hatch Act would not ban [REDACTED] from seeking opposition of the ballot initiative by speaking to a partisan group, nor would the actions of other committee members affect [REDACTED]. However, the OSC advised [REDACTED] must not actively engage in efforts with the partisan group or direct others to do so.

In contrast to the OGC opinion, the OSC advised [REDACTED] that [REDACTED] was not prohibited from soliciting funds from others, including partisan groups on behalf of the ballot initiative. The OSC further instructed that [REDACTED] would not be restricted from creating and distributing materials for the ballot initiative, [REDACTED]. However, [REDACTED] was advised the materials must list all endorsees, and partisan group endorsements should not be prominently displayed compared to other endorsements. Lastly, the OSC opinion advised that [REDACTED] materials may include [REDACTED] personal opinions, but the Hatch Act bans partnership with a partisan group during the creation and distribution of these materials.

On September 1, 2016, [REDACTED] telephonically requested an opinion from OGC asking if it was permissible to participate in “a lawsuit against the [REDACTED] County Board of Elections challenging the petition to place term limits on the ballot for the election.” Acting General Counsel Stevenson replied on September 1, 2016, that it was her understanding that [REDACTED] intent was to act as plaintiff and file the lawsuit pro se, acting on [REDACTED] own behalf. Stevenson notified [REDACTED] that OGC did not see any ethical conflicts to prohibit [REDACTED] activity and all prohibited activity was stated in OGC’s Hatch Act Advisory Opinion released August 9, 2016. Stevenson also informed [REDACTED] that her emailed response served as OGC’s informal approval prior to a formal outside activity memo which would soon follow; however, because [REDACTED] opted to hire [REDACTED] own attorney to act on [REDACTED] behalf, a formal memo was not issued.

On March 20, 2017, the OIG interviewed [REDACTED]. [REDACTED] stated [REDACTED] created [REDACTED], a nonpartisan, grassroots organization around September 1, 2016, because [REDACTED] did not believe in term limits for the [REDACTED] County Officials. [REDACTED] stated [REDACTED] was not connected to any party or candidate, but was established to oppose the [REDACTED] County [REDACTED] initiative. [REDACTED] also acknowledged that in addition to creating [REDACTED] [REDACTED] filed a lawsuit in hopes that the [REDACTED] would be removed from the November 8th ballot. [REDACTED] stated that most of [REDACTED] contributions were from individual donors, not political organizations. [REDACTED] acknowledged that [REDACTED] did receive contributions from partisan entities, but they were not actively sought and the entities were not consulted as to the creation of [REDACTED]. The OIG found that [REDACTED] raised a little over \$21,000. Despite the creation of [REDACTED], the [REDACTED] passed November 8, 2016. [REDACTED] stated that the accounts for [REDACTED] are still open and have remaining funds, but there has been little to no activity for the organization since the November 2016 election.

During the interview, [REDACTED] acknowledged [REDACTED] involvement with [REDACTED], a nonpartisan and nonprofit political group. According to [REDACTED], [REDACTED] knew of [REDACTED] association with the group prior to [REDACTED] accepting a position with the FEC in September 2015 because [REDACTED] role was listed on [REDACTED] resume when [REDACTED] applied. As a result, [REDACTED] and [REDACTED] agreed [REDACTED] should recuse [REDACTED] if a lawsuit was filed between the organization and agency. [REDACTED] stated that after [REDACTED] was hired by [REDACTED], [REDACTED] became the

President of the [REDACTED] chapter on November 9, 2016. [REDACTED] concluded that [REDACTED] saw no conflicts because the local chapter of [REDACTED] dealt with state issues and [REDACTED] FEC position involved federal election issues.

The OIG used the OSC's opinion for guidance. Based on the OSC guidelines and documentation obtained by the OIG, [REDACTED] creation and participation of [REDACTED] stayed within the confines of permissible "further restricted" government employee activities expressed by the Hatch Act. Although partisan endorsees are exhibited on [REDACTED] website, [REDACTED] does not present partisan endorsees more prominently than nonpartisan endorsees. The investigation revealed no evidence that [REDACTED] influenced partisan groups to endorse [REDACTED] stance on opposing term limits, and did not persuade [REDACTED] members to do so, or that [REDACTED] partnered with partisan groups to assist in the creation and circulation of political materials for the [REDACTED] Ballot. Lastly, the OIG found no evidence that [REDACTED] used [REDACTED] FEC title to advance the cause of [REDACTED] or the [REDACTED] organization.

II. Background

On October 13, 2016, Acting General Counsel, Lisa Stevenson, and Deputy General Counsel, Greg Baker, received an outside email complaint regarding a possible Hatch Act violation by [REDACTED], who serves as [REDACTED]. The complainant expressed concerns about [REDACTED] political activity with a [REDACTED] ballot initiative and the use of [REDACTED] FEC title. The complainant's email alleges [REDACTED] "sued [REDACTED] County Board of Supervisors of Election against a voter ballot initiative charter amendment on term limits. [REDACTED] is also leading a political group actively opposing term limits," which is a bipartisan project. Attached to the email, the complainant provided an article titled [REDACTED]. [REDACTED] Stevenson and Baker notified the FEC OIG of the matter on October 14, 2016.

The OIG discovered that on July 7, 2016, [REDACTED] had requested an ethics opinion on permissible and restricted activity under the Hatch Act from the FEC's Ethics Office, which is located in the OGC. OGC's response classified the ballot as a partisan election dispute and advised [REDACTED] that even though creating [REDACTED] was acceptable, fundraising efforts were prohibited under the Hatch Act. In disagreement with OGC's response, [REDACTED] contacted the Office of Special Counsel (OSC), which identified [REDACTED] as a nonpartisan ballot election issue. With approval to fundraise by OSC, [REDACTED] only restriction was that [REDACTED] not organize activities with any political party organization or political candidate.

Upon review of the complaint received by Stevenson and OGC's Hatch Act Advisory Opinion, it was determined an OIG investigation would be opened. The OIG gathered information to determine specifically:

1. If [REDACTED] activity concerning the ballot initiative was done in concert with a political party or partisan political group;
2. If [REDACTED] used [REDACTED] FEC title to advance [REDACTED] ballot initiative and;
3. If [REDACTED] violated any terms as a Federal employee under the standards of ethical conduct for employees of the executive branch, 5 CFR Part 2635, 5 CFR Part 734, 5 U.S.C. § 7321-7326, 11 CFR Part 7.

A. Scope of the Investigation

The investigation was limited to whether or not [REDACTED] activity in participation in the ballot initiative "[REDACTED] and [REDACTED] use of [REDACTED] FEC title and position, were in violation of the Hatch Act or ethics regulations.

B. Relevant Statutes, Regulations, and Policies

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5 CFR Part 2635, Standards of Ethical Conduct for Employees of the Executive Branch

5 CFR §§ 734.101, 734.401, 734.402, Political Activities of Federal Employees

5 U.S.C. §§ 7321-7326, Political Activities

11 CFR Part 7, FEC Standards of Conduct

III. Investigation Findings

A. FEC's Office of General Counsel and the Office of Special Counsel had conflicting opinions regarding [REDACTED] permitted activity and involvement with the [REDACTED] ballot initiative.

FEC's Office of General Counsel Opinion

The OIG investigation revealed, that on July 7, 2016, [REDACTED] an [REDACTED], requested ethical guidance from the Deputy Agency Ethics Official and OGC Attorney, Tracey Ligon. [REDACTED] inquired about [REDACTED] permitted level of participation concerning the [REDACTED] County, Maryland, ballot initiative, [REDACTED]. [REDACTED] acknowledged the purpose of "the effort would involve raising funds and creating an organization...raising awareness and support for the issue in the form of gathering signatures and votes...extensive outreach, including writing and speaking publicly to the general public and the press." Employees of the FEC fall into the Hatch Act category of "further restricted" employees and therefore may not actively participate in political management or political campaigns. 5 U.S.C. § 7323 (b)(2); 5 CFR § 734.401.

[REDACTED] informed Ligon that although the issue and the campaign are entirely nonpartisan, a variety of partisan and nonpartisan groups may take an official position on the issue. Therefore, [REDACTED] questioned if [REDACTED] was under any particular restrictions when discussing issues with those groups, requesting support, or determining public messaging for the nonpartisan ballot initiative. [REDACTED] explained [REDACTED] may be addressed by many titles, possibly including [REDACTED] title as an FEC attorney, but [REDACTED] primary attribution would be as a former member of the [REDACTED] City Council, board member of [REDACTED], and former candidate for [REDACTED] County Council. In closure, [REDACTED] requested Ligon provide a determination on allowable activities within legal constraints as a Federal government employee.

On July 25, 2016, Ligon contacted Office of Special Counsel (OSC) Hatch Act Unit Chief Attorneys Ana Galindo-Marrone and Erica Hamrick. Ligon's correspondence to the OSC stated [REDACTED] proposed efforts were not "political activity" as defined in 5 CFR § 734.101. However, the email further stated the activity falls under political activities outlined in 5 CFR § 734.402 that are prohibited for further restricted employees. Ligon concluded that [REDACTED] could not participate in most of the activities [REDACTED] requested based on a 2009 OSC opinion regarding when a nonpartisan campaign becomes a partisan campaign. On July 27, 2016, Galindo-Marrone and Hamrick agreed with Ligon regarding [REDACTED] activities being a prohibited activity per 5 CFR § 734.402. Galindo-Marrone also confirmed "in concert" is not outlined in Hatch Act regulations, but agreed with Ligon's interpretation of "in concert."

On August 9, 2016, Ligon sent [REDACTED] an email titled Ethics Advice on Effort to Oppose Ballot Issue (Hatch Act Advisory Opinion), stating some of the proposed activities were prohibited under the Hatch Act. The OGC's Hatch Act Advisory Opinion advised [REDACTED] that as a "further restricted" employee and under 5 CFR § 734.402, [REDACTED] could not participate in the nonpartisan ballot initiative because it would be viewed as an "in concert" activity. "In concert" activity is any activity that is paid for by, or done on behalf or at the request of, or involves the dissemination or republication of content created by or on behalf of a party, partisan political group, or candidate for partisan office. OGC confirmed the OSC did not further elaborate on "in concert" activities, but did state the activities would be seen in the context of nonpartisan elections to political office.

The OGC informed [REDACTED] that "a nonpartisan election would become partisan if, for instance, one of the candidates were to "hold [REDACTED] out as having the party's political support by advertising this in [REDACTED] speeches, flyers or mailings; seek and advertise the political party's endorsement; or receive party support in the form of funding, supplies (e.g., wooden stakes for signs, bulk mail permit), campaign volunteers, campaign publications (e.g., flyers, posters) or use of party headquarters." The OGC advised that a requester could receive funds from local partisan groups "so long as [the requester did] not act in concert with a partisan political group."

In the conclusion of the OGC's Hatch Act Advisory Opinion, it stated that [REDACTED] is prohibited from having [REDACTED] stance of the ballot initiative endorsed by a partisan group. Further clarified by OGC, if a partisan group endorses the ballot initiative on their own, [REDACTED] is restricted from stating the partisan group endorses the ballot initiative. OGC also restricted [REDACTED] from seeking monetary and other forms of contributions from a partisan group, and prohibited [REDACTED] from partnering with partisan groups to determine the public message of the ballot initiative.

OGC reminded [REDACTED] that Federal employees are prohibited from using their government title and position when engaging in fundraising efforts for activities outside the office, as the use of government titles and positions when participating in outside efforts may be misconstrued as the government endorsing personal activity. The OGC's opinion acknowledged a Federal title and position is permissible in a biographical sketch as long as the title and position are not solely used to identify the individual and not used prominently against other significant biographical details. [REDACTED] was also reminded that Federal employees are prohibited from using government property, official time, or services for outside activities during their work hours.

On August 24, 2016, Stevenson and Ligon met with [REDACTED] to ensure [REDACTED] understood the terms of their opinion. Stevenson stated that [REDACTED] indicated [REDACTED] understood and would follow the provided guidance.

Office of Special Counsel Opinion

After receiving OGC's Hatch Act Advisory Opinion, ██████ contacted the OSC for further clarification to determine if ██████ actions would be in violation of the Hatch Act. On October 14, 2016, ██████ received correspondence from Galindo-Marrone. Galindo-Marrone's Ethics Opinion included an explanation that:

5 U.S.C. § 7323(A)(1)-(4) prohibits employees from: using their official authority or influence for the purpose of affecting the result of an election; knowingly soliciting, accepting, or receiving political contributions from any person; being candidates for public office in partisan elections; and knowingly soliciting or discouraging the political activity of any individual with business before their employing office.

Galindo-Marrone further explained that as an employee of the FEC, ██████ falls under the category of a "further restricted" employee, explaining:

Such employees are prohibited from engaging in activity that is "in concert" with a political party, partisan group, or candidate for partisan political office. . . . Further restricted employees may express their individual opinion on political subjects provided they are not acting concert with a political party, partisan group, or candidate for partisan political office, 5 CFR § 734.402.

Clarifying the limitations of "further restricted" employees, Galindo-Marrone answered what activity can cause a ballot issue to become "specifically identified with a political party" pursuant to 5 CFR § 734.401. Galindo-Marrone confirmed a ballot issue is a nonpartisan election under the Hatch Act. Galindo-Marrone explained advocating for or against a ballot initiative does not change the nature of the nonpartisan election, but the issue is whether ██████ activity in support or opposition to the ballot initiative is done in concert with a political party or a partisan political group.

In contrast to OGC's opinion, the OSC opinion stated the Hatch Act would not ban ██████ from seeking opposition of the ballot initiative by speaking to a partisan group, nor would the actions of other committee members affect ██████ so long as ██████ did not participate in actively engaging in efforts with the partisan group or direct others to do so. OSC's opinion stated ██████ is not prohibited from soliciting funds from others, including partisan groups on behalf of ██████ committee to defeat the ballot initiative. Within limitations of the Hatch Act, ██████ would not be restricted from creating and distributing materials for the ballot initiative, but must list all endorsees. Partisan group endorsements should not be prominently displayed compared to other endorsements. The ballot issue materials may include ██████ personal opinions, but

the Hatch Act bans partnership with a partisan group during the creation and distribution of these materials.

In response to [REDACTED] question on whether [REDACTED] may “discuss the messaging with political parties, partisan political groups, candidates for partisan political office, or officeholders who are members of a political party but not currently candidates,” OSC’s opinion stated the actions were prohibited under the Hatch Act. Even if an initiative is of a nonpartisan matter, [REDACTED] was informed by OSC that [REDACTED] “may not work with a partisan group to develop the best public messaging in opposition to the ballot initiative.”

B. The OIG found no evidence that [REDACTED] violated the Hatch Act with [REDACTED] involvement with the [REDACTED]:

The OIG used the OSC’s opinion as guidance for its evaluation. On March 20, 2017, the OIG interviewed [REDACTED] to determine whether [REDACTED] participation and role within organizations violated the Hatch Act as a further restricted employee. The OIG investigation revealed that [REDACTED] had created the [REDACTED] initiative and filed a lawsuit with the [REDACTED] County Board of Elections to prevent the [REDACTED] from going to a vote on November 8, 2016. The OIG also discovered that [REDACTED] was a board member of the non-profit [REDACTED] and that [REDACTED] FEC title was used in [REDACTED] biography on the [REDACTED] and [REDACTED] website and [REDACTED] social media accounts. Except for the [REDACTED] website, all entities were used to promote the [REDACTED] initiative.

When interviewed on March 20, 2017, [REDACTED] confirmed [REDACTED] sought ethics opinions from the OGC and OSC for guidance in [REDACTED] role with [REDACTED] and [REDACTED]. [REDACTED] confirmed that after Ligon advised [REDACTED] of the OGC’s opinion, [REDACTED] sought out the OSC for another opinion. Prior to receiving the OSC’s opinion on October 14, 2016, [REDACTED] contacted Acting General Counsel Stevenson on September 1, 2016, to ask permission to file a lawsuit as plaintiff pro se against [REDACTED] County Board of Elections concerning the [REDACTED]. On September 1, 2016, Stevenson notified [REDACTED] that the OGC could not identify any ethical issues that would prohibit [REDACTED] activity as outlined in the OGC’s previous Hatch Act Advisory Opinion. However, Stevenson explained that because the lawsuit would utilize [REDACTED] attorney abilities, a formal outside activity memo would be required, but that the email served as informal approval. [REDACTED] opted to hire [REDACTED] own lawyer who filed the lawsuit on September 2, 2016, against the [REDACTED]. With the hiring of [REDACTED] own lawyer, [REDACTED] stated the OGC did not require a formal memo. The OIG learned the case was closed and dismissed on January 5, 2017, in favor of [REDACTED] County Board of Elections.

On October 14, 2016, [REDACTED] received an opinion from Attorney Galindo-Marrone that provided [REDACTED] with permissible and prohibited acts for a “further restricted” employee. The OSC’s opinion advised that the Hatch Act did not ban [REDACTED] from seeking opposition of the [REDACTED],

but [REDACTED] must not actively engage in efforts with the partisan group or request other members do so. During the interview, [REDACTED] acknowledged [REDACTED] created and organized the nonpartisan, grassroots organization, [REDACTED], around September 1, 2016, which was not tied to any candidate or party. [REDACTED] stated that [REDACTED] motivation for the creation of [REDACTED] was that [REDACTED] believed that term limits are bad public policy, and was concerned that no one else was stepping up to fight the measure.

The OIG was able to confirm from the Maryland Board of Elections [REDACTED] establishment date was September 1, 2016. [REDACTED] stated that [REDACTED] was established to remove the [REDACTED], a [REDACTED] County, Maryland ballot that imposed term limits for County Council and Executives from going to vote. [REDACTED] stated [REDACTED] abided by OSC's opinion and did not seek assistance from any party or candidate. [REDACTED] provided the OIG a copy of [REDACTED] flyer to show [REDACTED] did not affiliate with any party or favor any organization or individual in [REDACTED] flyers.

[REDACTED] estimated [REDACTED] organization fundraised \$25,000 from various organizations with few individual donors. According to [REDACTED] a majority of the donations were made without [REDACTED] solicitation. The OIG accessed [REDACTED] contribution information through Maryland's Board of Election website and uncovered [REDACTED] had 58 contributors and a little over \$21,000 in contributions according to with the committee's expenditure records. The OIG determined out of the 58 total contributions, 31 individual contributions were under \$100, with multiple contributors donating more than once. The OIG determined [REDACTED] received 5 organization contributions and 11 candidate contributions, with a majority from Democratic [REDACTED] County General Assembly Members. The OIG reviewed the [REDACTED] website and determined a majority of organizations that supported the ballot committee were various Democratic Clubs from [REDACTED] County, Maryland. The OIG found no evidence that [REDACTED] engaged with any partisan group for fundraising. The OIG also did not find that 5 of the groups advertised on the [REDACTED] flyers were displayed prominently than others.

The [REDACTED] ballot failed and term limits were voted in by [REDACTED] County citizens on November 8, 2016. [REDACTED] notified the OIG that since the November 8th loss, [REDACTED] was not completely defunct and has engaged in a few transactions. As of March 20, 2017, [REDACTED] bank accounts held remaining funds, the organization had outstanding legal fees, and two formal letters of correspondence were issued by the organization.

During the interview, [REDACTED] also elaborated on [REDACTED] connection with [REDACTED]. According to [REDACTED] [REDACTED] is a nonpartisan, nonprofit 501(c)(3) political group. Prior to being hired in September 2015 as an [REDACTED], [REDACTED] was a member of the [REDACTED] charter. [REDACTED] explained that [REDACTED] was aware of [REDACTED] membership because [REDACTED] involvement was listed on [REDACTED] resume when [REDACTED] applied for [REDACTED] position at the FEC. [REDACTED] stated that [REDACTED] and [REDACTED]

██████ agreed ██████ should recuse ██████ if an issue involving ██████ is ever presented before the Commission.

██████ reiterated that ██████ sees no conflict of interest with ██████ position because it deals mostly with state issues and ██████ job with the FEC involves work on federal policy issues. ██████ explained that ██████ was elected the President of ██████ on November 9, 2016, after the ██████ November vote concluded. As the President and board member of ██████ and with minimal activity with ██████, ██████ nonpartisan activity has been reduced. ██████ attends meetings held every two months and fundraising events for ██████. The OIG investigation did not uncover that the use of ██████ FEC title in ██████ Maryland's newsletter and website violated any ethics regulations. The OIG also did not find any evidence that ██████ provided support to the ██████ initiative.

The OIG also reviewed the contents of ██████ social media pages, Facebook and Twitter, for any Hatch Act violations. According to the OGC's Hatch Act Advisory Opinion, federal employees engaged in political activity must not use their government title and/or position to seek financial support, or imply the government sanctions or endorses the Federal government employee's political activity. 5 CFR §§ 2635.702(b), 2635.808(c)(2). The OGC also advised that a Federal employee should not identify with their official title and/or position unless as biographical details in compliance with 5 CFR § 2635.805(b)(1).

The OIG found no evidence that ██████ improperly used ██████ FEC title and position to advance ██████ political organizations or for financial gain. Under the introduction section on ██████ Facebook page, ██████ acknowledged ██████ positions with the FEC, as ██████, and with ██████, as Board President-Elect. Displayed under "Work and Education" on ██████ Facebook page, ██████ is described as "a nonpartisan, grassroots organization dedicated to restoring the core values of American democracy, reinventing an open, honest and accountable government that works in the public interest, and empowering ordinary citizens to make their voices heard." Regarding ██████ FEC title, ██████ explained individuals knew of ██████ title and position within the FEC because it was listed on ██████ resume, of which ██████ provided a copy to the OIG. ██████ stated ██████ employment with the FEC is also known because ██████ ran for local and ██████ County offices. The OIG found that ██████ position title and ██████ information on ██████ Facebook page were not used to solicit support or advancement for the ██████ ballot or any ██████ initiatives.

The OIG discovered that ██████ also used ██████ personal Twitter account to push ██████ ballot initiative and to inform the public of ██████ stance in the group dating back as early as August 10, 2016. The OIG also found that ██████ was listed under the Board of Directors for ██████

██████████ in the ██████████ newsletter dated April 2015, but there is no mention of ██████████ FEC title and/or position. The OIG was unable to uncover any evidence of ██████████ using ██████████ FEC title and/or position in ██████████ capacity with ██████████ and ██████████ to promote ██████████ agenda.

IV. Conclusion

Based on the OSC's Ethics Opinion, the OIG found no evidence that [REDACTED] violated the Hatch Act, and [REDACTED] actions appear to have been in compliance with the OSC's Ethics Opinion. The OIG found no evidence that [REDACTED] directly persuaded individuals to convince partisan groups to endorse [REDACTED] position or collaborated with partisan groups in the creation or circulation of political materials. The OIG determined the use of [REDACTED] title falls within that allowed under regulation regarding biographical information. 5 CFR § 2635.807(b)(1).

Federal Election Commission Office of Inspector General



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