

AGENDA DOCUMENT NO. 15-41-A



FEDERAL ELECTION COMMISSION
Washington, DC 20463

FEDERAL ELECTION
COMMISSION
SECRETARIAT

2015 JUL 14 P 3:20

AGENDA ITEM

MEMORANDUM

For Meeting of 7-16-15

TO: The Commission
FROM: Steven T. Walther
Commissioner *STW*
DATE: July 14, 2015
RE: Motion to Set Priorities and Scheduling on Pending Enforcement Matters
Awaiting Reason-to-Believe Consideration

SUBMITTED LATE

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

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

Attachment



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: The Commission

FROM: Steven T. Walther
Commissioner

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

DATE: July 14, 2015

Motion Objective

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

Background

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

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

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

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

Data on Delays

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

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

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

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

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

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

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

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

Those Directly Prejudiced by Commission Delays

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

Respondents

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

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

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

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

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

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

Complainants

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

The matter may languish for years, and the delay of time can be frustrating, time-consuming and, sometimes, expensive for complainants; this is especially so if the complainant believes the only way to find out if the Commission has taken action is to file suit against the Commission alleging unreasonable delay, which a complainant has the right to do under the FECA at 52 U.S.C. § 30109(a)(8)(A).² As previously mentioned, the language in this provision seems to suggest a matter could generally be acted upon at the RTB stage within 120 days of the date of the filing of a complaint, a time period seldom reached by the Commission. The complainant in such a lawsuit, however, may not have any information from the Commission as to whether any action has been taken, thus in some instances making such effort spurious at best.

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

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

Commission Staff

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

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

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

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

The Public

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

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

The Need for Accelerated Scheduling and Prioritization

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

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

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

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

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

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

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

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

Attachments

MOTION

Based upon the forgoing, I move:

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

Relevant Dates for Initial Substantive Recommendations

Submitted by OGC to the Commissioners

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

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

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

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17.	X	X	1/21/14	5/16/14; resubmitted 5/21/14	X	115	X	525	410	Not yet scheduled for an executive session.
18.	X	X	2/03/14	5/28/14	X	114	X	512	398	Not yet scheduled for an executive session.
19.	X	X	2/03/14	5/28/14	X	114	X	512	398	Not yet scheduled for an executive session.
20.	X	X	2/03/14	5/28/14	X	114	X	512	398	Not yet scheduled for an executive session.
21.	X	X	7/30/13	6/18/14	X	323	X	700	377	Not yet scheduled for an executive session.
22.	X	X	12/03/13	6/20/14	X	199	X	574	375	Not yet scheduled for an executive session.
23.	X	X	10/03/13	6/30/14	X	270	X	635	365	Not yet scheduled for an executive session.
24.	X	X	7/24/12	7/01/14	X	707	X	1,071	364	Not yet scheduled for an executive session.
25.	X	X	8/13/13	7/01/14	X	322	X	686	364	Not yet scheduled for an executive session.
26.	X	X	4/15/14	7/09/14	X	85	X	441	356	Not yet scheduled for an executive session.
27.	X	X	3/25/14	7/23/14	X	120	X	462	342	Not yet scheduled for an executive session.
28.	X	X	1/15/13	8/04/14	X	566	X	896	330	Not yet scheduled for an executive session.
29.	X	X	9/13/12	8/22/14	X	708	X	1,020	312	Not yet scheduled for an executive session.
30.	X	X	8/19/13	8/27/14	X	373	X	680	307	Not yet scheduled for an executive session.
31.	X	X	8/19/13	8/27/14	X	373	X	680	307	Not yet scheduled for an executive session.
32.	X	X	5/14/13	9/04/14	X	478	X	777	299	Not yet scheduled for an executive session.
33.	X	X	6/10/14	9/09/14	X	91	X	385	294	Not yet scheduled for an executive session.

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34.	X	X	7/09/14	9/09/14	X	62	X	356	294	Not yet scheduled for an executive session.
35.	X	X	6/17/14	9/10/14	X	85	X	378	293	Not yet scheduled for an executive session.
36.	X	X	5/20/14	9/11/14	X	114	X	406	292	Not yet scheduled for an executive session.
37.	X	X	6/17/14	9/16/14	X	91	X	378	287	Not yet scheduled for an executive session.
38.	X	X	5/28/14	9/25/14	X	120	X	398	278	Not yet scheduled for an executive session.
39.	X	X	6/12/14	10/08/14	X	118	X	383	265	Not yet scheduled for an executive session.
40.	X	X	7/16/14	10/14/14	X	90	X	349	259	Not yet scheduled for an executive session.
41.	X	X	7/18/14	10/16/14	X	90	X	347	257	Tentatively scheduled for an upcoming executive session.
42.	X	X	6/19/14	10/17/14	X	120	X	376	256	Not yet scheduled for an executive session.
43.	X	X	7/02/14	10/29/14	X	119	X	363	244	Not yet scheduled for an executive session.
44.	X	X	7/02/14	10/29/14	X	119	X	363	244	Not yet scheduled for an executive session.
45.	X	X	7/02/14	10/29/14	X	119	X	363	244	Not yet scheduled for an executive session.
46.	X	X	8/07/14	11/03/14	X	88	X	327	239	Not yet scheduled for an executive session.
47.	X	X	7/08/14	11/06/14	X	121	X	357	236	Not yet scheduled for an executive session.
48.	X	X	7/08/14	11/07/14	X	122	X	357	235	Not yet scheduled for an executive session.
49.	X	X	7/08/14	11/07/14	X	122	X	357	235	Not yet scheduled for an executive session.
50.	X	X	7/21/14	11/18/14	X	120	X	344	224	Not yet scheduled for an executive session.
51.	X	X	8/27/14	11/25/14	X	90	X	307	217	Not yet scheduled for an executive session.

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

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

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

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

I. STATUS REPORTS TO RESPONDENTS

A. General.

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

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

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

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

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

II. STATUS OF ENFORCEMENT REPORTS TO THE COMMISSION

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

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

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

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

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

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

V. AGREEMENTS TO TOLL THE STATUTE OF LIMITATIONS

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

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



Alec Palmer
Acting Staff Director