

2015 NOV -9 PM 4: 47



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

**AGENDA ITEM**

MEMORANDUM

For Meeting of 11-10-15

TO: The Commission

**SUBMITTED LATE**

FROM: Steven T. Walther *Stu gTW*  
Commissioner

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

DATE: November 9, 2015

Attached is a memorandum containing a third motion to follow up on motions I made at the Open Meetings of July 16 and September 17, 2015, which establishes a priority and a timetable for the Commissioners to take immediate substantive action on initial enforcement recommendations by the Office of General Counsel that, as of October 31, 2015, have been pending for one year or more from the date of receipt by the Commissioners, as well as on matters for which no substantive action has been taken for one year or more since the date of receipt of the complaint or referral.

I have asked to place this document on the agenda for the Open Meeting scheduled for November 10, 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: November 9, 2015

### **Motion Objective**

On July 16, 2015 the Commission considered a motion dated July 14, 2015 (“Priorities Motion I,” see attached), seeking adoption by the Commission of a policy to act on enforcement matters by setting a priority and schedule for taking immediate substantive action<sup>1</sup> on initial enforcement recommendations by the Office of General Counsel (“OGC”) that had been pending before the Commissioners for one year or more (as of June 30, 2015) from the date of receipt by the Commissioners, as well as on matters for which no substantive action had been taken for one year or more since the date of receipt of the complaint or referral. Priorities Motion I was defeated by a 2-4 vote.

Two months later, on September 17, 2015, the Commission considered a motion dated September 15, 2015 (“Priorities Motion II,” available on the Commission’s

---

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

website<sup>2</sup>), again seeking adoption by the Commission of a similar policy as described above. Priorities Motion II related to matters that were pending as of August 31, 2015, adding to the list all matters with substantive recommendations submitted to the Commissioners by OGC during the two months between June 30 and August 31, 2015. Priorities Motion II deadlocked with a 3-3 vote. The motion set forth below (“Priorities Motion III”) seeks adoption of a similar policy with respect to those matters pending as of October 31, 2015.

### **Background – Recent Events**

Priorities Motions I & II were preceded by introductory language that contained the statistics on enforcement matters that were pending before the Commission at the time of those motions. The focus was solely on enforcement matters handled by OGC; those motions did not contain statistics with respect to other matters that have come before the Commission during the 2015 calendar year.<sup>3</sup> Priorities Motions I, II & III relate to matters as to which the Commission must take substantive action as to whether there is reason to believe, no reason to believe, or some other action with respect to matters pending before the Commission alleging violations of the Federal Election Campaign Act (“FECA”).

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

The comments in Priorities Motion I set forth the various reasons why it is important for the Commissioners to take immediate action on these pending matters, including: (a) it is the responsibility of the Commissioners generally to act on matters before them with reasonable dispatch; (b) it is important to act on such matters because each respondent ensnared in the FEC enforcement process is entitled to a just, fair and timely resolution; (c) it is important because those who filed the complaints to initiate enforcement action, are entitled to be advised of the decision of the Commissioners with

---

<sup>2</sup> See Second Motion to Set Priorities and Scheduling on Pending Enforcement Matters Awaiting Reason-to-Believe Consideration, *available at* [http://www.fec.gov/agenda/2015/documents/mtgdoc\\_15-48-a.pdf](http://www.fec.gov/agenda/2015/documents/mtgdoc_15-48-a.pdf).

<sup>3</sup> These matters would include certain audits, alternate dispute resolution recommendations for which the Commission has little discretion, and administrative fine recommendations for which the Commission has even less discretion.

due promptness, which will provide them with the opportunity to file suit under section 52 U.S.C. 30109(a)(8)(A) in the event of a Commission dismissal;<sup>4</sup> (d) it is important for the general public to be made aware of the Commission's disposition of cases as soon as possible, and particularly in sufficient time for voters to consider such information in advance of an election; (e) it is important because this prioritization, which is based solely on the length of time these matters have been pending before the Commissioners, eliminates any suggestion that politics or partisanship was a factor in the selection of matters to be considered; and (f) it is important because there is no extrinsic reason that can support a delay of more than a few months after the recommendation at the "reason to believe" stage has been made to the Commissioners by OGC. These reasons will not be reiterated in more detail here, since a copy of Priorities Motion I is attached. However, the reasons stated in Priorities Motion I are as valid now as they were then, if not more so.

### **Current Data Regarding Enforcement of Pending Matters**

There have been several changes in the enforcement data during the last two months following the period covered by Priorities Motion II through October 31, 2015, which are reflected in an updated chart (attached) delineating the status of pending matters through that date. Those changes are as follows:

1. As set forth in Priorities Motion II, as of August 31, 2015, there were a total of 76 such matters pending before the Commission without a substantive vote; of those, six had been pending for three years or more; one matter had been pending for two years or more but less than three years, 15 matters had been pending for one year or more but less than two years, and 54 matters had been pending for less than one year.
2. As set forth in the chart attached to this motion, as of October 31, 2015, there is a total of 72 such matters pending before the Commission without a substantive vote; of those, six have been pending for three years or more, one has been pending for two years or more but less than three years, 25 matters have been pending for one year or more but less than two years, and 40 matters had been pending for less than one year.<sup>5</sup>

---

<sup>4</sup> Section 30109(a)(8)(A) provides that "[a]ny 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."

<sup>5</sup> Comparing the information in the current chart with information provided in the chart attached to Priorities Motion II, there is a net change of zero for matters pending for three years or more, a net change of zero for matters pending for two years but less than three years, a net gain of ten matters that have been pending for one year or more but less than two years, and net decrease of fourteen matters that had been pending for less than one year.

3. Ten matters have been considered for a potential substantive vote, but still remain open without any substantive action taken – whether to find reason to believe, no reason to believe, or dismiss.
4. In summary, in the two months following August 31, 2015, ten matters have been removed from the list based on actions taken by the Commission, and six new matters have been added based on recommendations received from OGC between August 31 and October 31, 2015, a net reduction of four matters during that 61-day period.

### **Decision Rate in Calendar Year 2015**

Through October 31 of this calendar year, there have been 13 executive sessions during which one or more substantive actions were taken, and there have been a total of 57 substantive actions taken at those meetings regarding OGC's enforcement recommendations, for an average of four actions per executive session. In addition, there have been 28 substantive actions taken through tally votes, for an average of three (rounded) actions taken per month from January 1 through October 31, 2015. This efficiency rate should serve as reasonably accurate guide as to the number of executive sessions that will likely be needed to clear the calendar as to all matters pending before the Commission for one year or more (which at present is 32 such matters), a goal which this motion below seeks (at least minimally) to accomplish.

Based on the rate that the Commission has taken substantive actions on such matters at previous executive sessions, the executive sessions called for in the motion should easily suffice to quickly eliminate the current backlog of those pending enforcement matters. Given that there are already four executive sessions scheduled between the date of this motion and the end of the calendar year, the additional executive sessions called for in the motion below would not seem to place a large burden on the Commissioners and Commission staff. However, reasonable allowances in the scheduling of executive sessions may be made in consideration of the upcoming holidays.

### **Potential Exceptions for Voting on Matters**

#### **Statute of Limitations Imperiled Matters**

The priority for pending matters suggested in the motion below is subject to any such statutorily imperiled matters taking precedence in any such appropriate time, with the approval of four Commissioners, and may interrupt at any time the order otherwise established in this motion. At this time, there are several matters listed in the attached chart (over 20%) in which it is estimated that the applicable statute of limitations is either currently expiring or will begin to expire within the next 12 months.

### Matters Held in Abeyance

On occasion, the Commission may vote to hold a particular matter in abeyance for a set period of time based on various reasons; for example, another law enforcement agency may request that the Commission not take substantive action on that matter due to a pending criminal investigation or trial. In that regard, a written agreement exists between the Commission and the Department of Justice (“DOJ”) that guides both the Commission and DOJ in the discharge of their respective statutory responsibilities under the FECA.<sup>6</sup> As noted in the attached chart, the Commission is currently holding four of the listed matters in abeyance; accordingly, as set forth in the language of the motion below, any substantive vote on a matter in abeyance will be deferred until after the period of abatement has expired.

---

<sup>6</sup> See Department of Justice and Federal Election Commission, *Memorandum of Understanding*, 43 Fed. Reg. 5441 (Feb.8, 1978).

## MOTION

I move that the Commission adopt the following policy with respect to matters pending exclusively before the Commission for more than one year as of October 31, 2015:

1. That the six (6) matters identified in the attached chart as numbers one (1) through six (6), all of which have been awaiting Commission action for at least three years *since the date OGC circulated its recommendations* as of October 31, 2015, be subject to a *substantive* vote at the next executive session of the Commission;
2. That the matter identified in the attached chart as number seven (7), which has been awaiting Commission action for over two years but less than three years *since the date OGC circulated its recommendations* as of October 31, 2015, be subject to a *substantive* vote at the next executive session of the Commission;
3. That the twenty-five (25) matters identified in the attached chart as numbers eight (8) through thirty-two (32), all of which have been awaiting Commission action for at least one year, but less than two years, *since the date OGC circulated its recommendations* as of October 31, 2015, be placed on the next executive session of the Commission and every consecutive session thereafter until substantive action has been taken on each of them;
4. That the forty (40) matters following number thirty-two (32) in the attached chart that have been awaiting Commission action for more than one year *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 in paragraphs 1-3) and every consecutive session thereafter until substantive action has been taken on each one of them. These matters are listed by age as of October 31, 2015, and identified in the attached chart by item number as follows: 52, 69, 37, 35, 40, 36, 33, 70, 38, 41, 43, 39, 44, 42, 34, 46, 47, 62, 45, 50, 56, 48, 54, 49, 51, 58, 57, 55, 53, 59, 65, 64, 60, 61, 63, 66, 67, 72, 71, and 68.
5. That the Chair call, and the Chair elect or the Commissioners agree to call, a number of executive sessions sufficient to complete substantive action by formal vote on all matters based upon the priority set forth in the attached chart;
6. That initially for the next 60 days there shall be one executive session per week consisting of two meetings each week; following these executive

sessions the Commissioners will set additional executive sessions to complete substantive action on all enforcement matters that have been pending one year or more;

7. That all matters identified in paragraphs 1-4, 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)<sup>7</sup> is followed;
8. 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 1-4, to be voted on with substantive action taken as of March 1, 2016;
9. That all matters identified in paragraphs 1, 2, 3, 4 and 8, if being held in abeyance at the time of the substantive vote, be voted on at the next executive session following the expiration of the period of abatement; and
10. That any statute-of-limitations imperiled matters shall be substantively acted on in a timely matter with all due speed, pursuant to Directive 68,<sup>8</sup> and may interrupt at any time the order otherwise established in this motion.

#### Attachments

Chart of Enforcement Matters (current as of October 31, 2015)  
Priorities Motion I, dated July 14, 2015

---

<sup>7</sup> Directive 10, Section E.7(e), which discusses motions “to lay a matter over,” states:

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. . . .”

<sup>8</sup> Directive 68, which provides for the processing of statute-of-limitations sensitive enforcement matters, is attached to Priorities Motion I, which is appended to this document.

**Relevant Dates for Initial Substantive Recommendations  
Submitted by OGC to the Commissioners**

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

1	2	3	4	5	6	7	8	9	10	11
#			Date Assigned to OGC Attorney	Date of OGC's Recommendations to Comm'n		Days Between Assignment and OGC's Recommendations to Comm'n		Days Between Assignment and Comm'n Inaction as of 10/31/15	Days Between OGC's Recommendations and Comm'n Inaction as of 10/31/15	Holdovers and Other Relevant Information
1.	X	X	8/30/11	11/29/11 resubmitted 4/29/14	X	91	X	1,523	1,432	FGCR submitted to Comm'rs Nov. 29, 2011, and withdrawn Jan. 31, 2012. Resubmitted Apr. 29, 2014. Held over meetings of July 14, 16, Aug. 10, 11, 13, Sept. 15, 17, 29, Oct. 1, 27, 29, 2015. Tentatively scheduled for an upcoming executive session.
2.	X	X	8/30/11	11/29/11 resubmitted 4/29/14	X	91	X	1,523	1,432	FGCR submitted to Comm'rs Nov. 29, 2011, and withdrawn Jan. 31, 2012. Resubmitted Apr. 29, 2014. Held over meetings of July 14, 16, Aug. 10, 11, 13, Sept. 15, 17, 29, Oct. 1, 27, 29, 2015. Tentatively scheduled for an upcoming executive session.
3.	X	X	8/30/11	11/29/11 resubmitted 4/29/14	X	91	X	1,523	1,432	FGCR submitted to Comm'rs Nov. 29, 2011, and withdrawn Jan. 31, 2012. Resubmitted Apr. 29, 2014. Held over meetings of July 14, 16, Aug. 10, 11, 13, Sept. 15, 17, 29, Oct. 1, 27, 29, 2015. Tentatively scheduled for an upcoming executive session.
4.	X	X	11/16/11	6/06/12	X	203	X	1,445	1,242	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, Aug. 10, 11, 13, Sept. 15, 17, 29, Oct. 1, 27, 29, 2015. Tentatively scheduled for an upcoming executive session.
5.	X	X	11/16/11	6/06/12	X	203	X	1,445	1,242	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, Aug. 10, 11, 13, Sept. 15, 17,

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

**SENSITIVE – INTERNAL USE ONLY**

<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>
<b>#</b>		<b>I</b>	<b>Date Assigned to OGC Attorney</b>	<b>Date of OGC's Recommendations to Comm'n</b>		<b>Days Between Assignment and OGC's Recommendations to Comm'n</b>		<b>Days Between Assignment and Comm'n Inaction as of 10/31/15</b>	<b>Days Between OGC's Recommendations and Comm'n Inaction as of 10/31/15</b>	<b>Holdovers and Other Relevant Information</b>
										29, Oct. 1, 27, 29, 2015. Tentatively scheduled for an upcoming executive session.
<b>6.</b>	X	X	11/16/11	8/28/12	X	286	X	1,445	<b>1,159</b>	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, Aug. 10, 11, 13, Sept. 15, 17, 29, Oct. 1, 27, 29, 2015. Tentatively scheduled for an upcoming executive session.
<b>7.</b>	X	X	10/09/12	2/26/13	X	140	X	1,117	<b>977</b>	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, 19, Apr. 21, 22, May 19, 21, June 16, 18, July 14, 16, Aug. 10, 11, 13, Sept. 15, 17, 29, Oct. 1, 27, 29, 2015. Tentatively scheduled for an upcoming executive session.
<b>8.</b>	X	X	4/17/13	11/08/13	X	205	X	927	<b>722</b>	Not yet scheduled for an executive session (currently held in abeyance).
<b>9.</b>	X	X	10/09/12	3/10/14	X	517	X	1,117	<b>600</b>	Held over meetings of Feb. 10, 12, Mar. 3, 10, 17, 19, Apr. 21, 22, May 19, 21, June 16, 18, July 14, 16, Aug. 10, 11, 13, Sept. 15, 17, 29, Oct. 1, 27, 29, 2015. Tentatively scheduled for an upcoming executive session.
<b>10.</b>	X	X	4/03/13	3/11/14	X	342	X	941	<b>599</b>	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, Aug. 10, 11, 13 Sept. 15, 17, 29, Oct. 1, 27, 29, 2015. Tentatively scheduled for an upcoming executive session.
<b>11.</b>	X	X	1/16/14	5/15/14	X	119	X	653	<b>534</b>	Not yet scheduled for an executive session.
<b>12.</b>	X	X	7/30/13	6/18/14	X	323	X	823	<b>500</b>	Held over meetings of August 11, 13, Sept. 15, 17, 29, Oct. 1, 27, 29, 2015.

**SENSITIVE – INTERNAL USE ONLY**

<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>
<b>#</b>		<b>I</b>	<b>Date Assigned to OGC Attorney</b>	<b>Date of OGC's Recommendations to Comm'n</b>		<b>Days Between Assignment and OGC's Recommendations to Comm'n</b>		<b>Days Between Assignment and Comm'n Inaction as of 10/31/15</b>	<b>Days Between OGC's Recommendations and Comm'n Inaction as of 10/31/15</b>	<b>Holdovers and Other Relevant Information</b>

										Tentatively scheduled for upcoming executive session.
13.	X	X	7/24/12	7/01/14	X	707	X	1,194	487	Held over meetings of Aug. 11, 13, Sept. 15, 17, 29, Oct. 1, 27, 29, 2015. Tentatively scheduled for an upcoming executive session.
14.	X	X	8/13/13	7/01/14	X	322	X	809	487	Held over meetings of Aug. 11, 13, Sept. 15, 17, 29, Oct. 1, 27, 29, 2015. Tentatively scheduled for an upcoming executive session.
15.	X	X	3/25/14	7/23/14	X	120	X	585	465	Not yet scheduled for an executive session.
16.	X	X	1/15/13	8/04/14	X	566	X	1,019	453	Not yet scheduled for an executive session.
17.	X	X	9/13/12	8/22/14	X	708	X	1,143	435	Not yet scheduled for an executive session. Tentatively scheduled for an upcoming executive session.
18.	X	X	8/19/13	8/27/14	X	373	X	803	430	Not yet scheduled for an executive session (currently held in abeyance).
19.	X	X	8/19/13	8/27/14	X	373	X	803	430	Not yet scheduled for an executive session (currently held in abeyance).
20.	X	X	5/14/13	9/04/14	X	478	X	900	422	Not yet scheduled for an executive session.
21.	X	X	6/10/14	9/09/14	X	91	X	508	417	Not yet scheduled for an executive session.
22.	X	X	7/09/14	9/09/14	X	62	X	479	417	Not yet scheduled for an executive session.
23.	X	X	6/17/14	9/10/14	X	85	X	501	416	Not yet scheduled for an executive session.
24.	X	X	5/20/14	9/11/14	X	114	X	529	415	Not yet scheduled for an executive session.
25.	X	X	6/17/14	9/16/14	X	91	X	501	410	Not yet scheduled for an executive session.
26.	X	X	5/28/14	9/25/14	X	120	X	521	401	Not yet scheduled for an executive session.
27.	X	X	6/12/14	10/08/14	X	118	X	506	388	Not yet scheduled for an executive session (currently held in abeyance).
28.	X	X	7/16/14	10/14/14	X	90	X	472	382	Not yet scheduled for an executive session. Tentatively scheduled for an upcoming executive session.

**SENSITIVE – INTERNAL USE ONLY**

1	2	3	4	5	6	7	8	9	10	11
#		I	Date Assigned to OGC Attorney	Date of OGC's Recommendations to Comm'n		Days Between Assignment and OGC's Recommendations to Comm'n		Days Between Assignment and Comm'n Inaction as of 10/31/15	Days Between OGC's Recommendations and Comm'n Inaction as of 10/31/15	Holdovers and Other Relevant Information

29.	X	X	6/19/14	10/17/14	X	120	X	499	379	Held over meetings of Aug. 11, 13, 2015. Not yet scheduled for an executive session.
30.	X	X	7/02/14	10/29/14	X	119	X	486	367	Not yet scheduled for an executive session.
31.	X	X	7/02/14	10/29/14	X	119	X	486	367	Not yet scheduled for an executive session.
32.	X	X	7/02/14	10/29/14	X	119	X	486	367	Not yet scheduled for an executive session.
33.	X	X	8/07/14	11/03/14	X	88	X	450	362	Not yet scheduled for an executive session. Tentatively scheduled for an upcoming executive session.
34.	X	X	7/08/14	11/06/14	X	121	X	480	359	Tentatively scheduled for an upcoming executive session.
35.	X	X	7/08/14	11/07/14	X	122	X	480	358	Not yet scheduled for an executive session. Tentatively scheduled for an upcoming executive session.
36.	X	X	7/08/14	11/07/14	X	122	X	480	358	Not yet scheduled for an executive session. Tentatively scheduled for an upcoming executive session.
37.	X	X	7/21/14	11/18/14	X	120	X	467	347	Not yet scheduled for an executive session.
38.	X	X	8/27/14	11/25/14	X	90	X	430	340	Not yet scheduled for an executive session.
39.	X	X	9/04/14	11/26/14	X	83	X	422	339	Not yet scheduled for an executive session.
40.	X	X	7/28/14	11/28/14	X	123	X	460	337	Not yet scheduled for an executive session.
41.	X	X	9/04/14	12/05/14	X	92	X	422	330	Not yet scheduled for an executive session.
42.	X	X	9/04/14	12/05/14	X	92	X	422	330	Not yet scheduled for an executive session.
43.	X	X	9/17/14	12/16/14	X	90	X	409	319	Not yet scheduled for an executive session.
44.	X	X	10/23/14	1/22/15	X	91	X	373	282	Tentatively scheduled for an upcoming executive session.
45.	X	X	10/29/14	1/29/15	X	92	X	367	275	Tentatively scheduled for an upcoming executive session.
46.	X	X	10/07/14	2/05/15	X	121	X	389	268	Not yet scheduled for an executive session.

**SENSITIVE – INTERNAL USE ONLY**

<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>
<b>#</b>		<b>1</b>	<b>Date Assigned to OGC Attorney</b>	<b>Date of OGC's Recommendations to Comm'n</b>		<b>Days Between Assignment and OGC's Recommendations to Comm'n</b>		<b>Days Between Assignment and Comm'n Inaction as of 10/31/15</b>	<b>Days Between OGC's Recommendations and Comm'n Inaction as of 10/31/15</b>	<b>Holdovers and Other Relevant Information</b>
47.	X	X	10/14/14	2/12/15	X	121	X	382	261	Not yet scheduled for an executive session.
48.	X	X	10/28/14	2/25/15	X	120	X	368	248	Not yet scheduled for an executive session.
49.	X	X	10/28/14	2/25/15	X	120	X	368	248	Not yet scheduled for an executive session.
50.	X	X	11/05/14	3/09/15	X	124	X	360	236	Not yet scheduled for an executive session.
51.	X	X	11/05/14	3/09/15	X	124	X	360	236	Not yet scheduled for an executive session.
52.	X	X	11/20/14	3/20/15	X	120	X	345	225	Not yet scheduled for an executive session.
53.	X	X	11/20/14	3/20/15	X	120	X	345	225	Not yet scheduled for an executive session.
54.	X	X	1/13/15	3/30/15	X	76	X	291	215	Not yet scheduled for an executive session.
55.	X	X	1/14/15	5/12/15	X	118	X	290	172	Not yet scheduled for an executive session.
56.	X	X	1/13/15	5/14/15	X	121	X	291	170	Not yet scheduled for an executive session.
57.	X	X	2/03/15	5/27/15	X	113	X	270	157	Tentatively scheduled for an upcoming executive session.
58.	X	X	1/29/15	5/29/15	X	120	X	275	155	Tentatively scheduled for an upcoming executive session.
59.	X	X	2/05/15	6/04/15	X	119	X	268	149	Not yet scheduled for an executive session.
60.	X	X	3/24/15	6/22/15	X	90	X	221	131	Held over meetings of Aug. 11, 13, Sept. 15, 17, 29, Oct. 1, 27, 29, 2015. Tentatively scheduled for an upcoming executive session.
61.	X	X	3/26/15	6/24/15	X	90	X	219	129	Not yet scheduled for an upcoming executive session.
62.	X	X	5/13/15	7/07/15	X	55	X	171	116	Tentatively scheduled for an upcoming executive session.
63.	X	X	3/24/15	7/22/15	X	120	X	221	101	Tentatively scheduled for an upcoming executive session.

**SENSITIVE – INTERNAL USE ONLY**

<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>
<b>#</b>		<b>1</b>	<b>Date Assigned to OGC Attorney</b>	<b>Date of OGC's Recommendations to Comm'n</b>		<b>Days Between Assignment and OGC's Recommendations to Comm'n</b>		<b>Days Between Assignment and Comm'n Inaction as of 10/31/15</b>	<b>Days Between OGC's Recommendations and Comm'n Inaction as of 10/31/15</b>	<b>Holdovers and Other Relevant Information</b>

<b>64.</b>	X	X	3/23/15	7/24/15	X	123	X	222	<b>99</b>	Not yet scheduled for an upcoming executive session.
<b>65.</b>	X	X	3/24/15	7/28/15	X	126	X	221	<b>95</b>	Not yet scheduled for an upcoming executive session.
<b>66.</b>	X	X	3/30/15	7/28/15	X	120	X	215	<b>95</b>	Not yet scheduled for an upcoming executive session.
<b>67.</b>	X	X	6/10/15	9/04/15	X	86	X	143	<b>57</b>	Not yet scheduled for an upcoming executive session.
<b>68.</b>	X	X	6/24/15	9/25/15	X	93	X	129	<b>36</b>	Not yet scheduled for an upcoming executive session.
<b>69.</b>	X	X	12/09/14	9/30/15	X	295	X	326	<b>31</b>	Tentatively scheduled for an upcoming executive session.
<b>70.</b>	X	X	6/04/15	10/07/15	X	491	X	149	<b>24</b>	Tentatively scheduled for an upcoming executive session.
<b>71.</b>	X	X	6/07/15	10/16/15	X	131	X	146	<b>15</b>	Tentatively scheduled for an upcoming executive session.
<b>72.</b>	X	X	6/25/15	10/22/15	X	120	X	128	<b>9</b>	Not yet scheduled for an upcoming executive session.

**AGENDA DOCUMENT NO. 15-41-A**



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

FEDERAL ELECTION  
COMMISSION  
SECRETARIAT

2015 JUL 14 P 3:20

**AGENDA ITEM**

MEMORANDUM

For Meeting of 7-16-15

TO: The Commission

FROM: Steven T. Walther  
Commissioner *STW*

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.<sup>1</sup>

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.*

---

<sup>1</sup> 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).<sup>2</sup> 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

---

<sup>2</sup> 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),<sup>3</sup> 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:

---

<sup>3</sup> 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,

This chart was prepared by the office of Commissioner Walther. Commissioner Walther is responsible for the accuracy of its contents. In Column A, the case number has been redacted. In Column B, the date of receipt of complaint or referral has been redacted. In Column C, the number of days between receipt and OGC's recommendations to the Commission has been redacted. In Column D, the number of days between receipt and Commission inaction has been redacted.

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
										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.

This chart was prepared by the office of Commissioner Walther. Commissioner Walther is responsible for the accuracy of its contents. In Column A, the case number has been redacted. In Column B, the date of receipt of complaint or referral has been redacted. In Column C, the number of days between receipt and OGC's recommendations to the Commission has been redacted. In Column D, the number of days between receipt and Commission inaction has been redacted.

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
--------	---	---	-------------------------------	---	---	---	---	---	--	--

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.

This chart was prepared by the office of Commissioner Walther. Commissioner Walther is responsible for the accuracy of its contents. In Column A, the case number has been redacted. In Column B, the date of receipt of complaint or referral has been redacted. In Column C, the number of days between receipt and OGC's recommendations to the Commission has been redacted. In Column D, the number of days between receipt and Commission inaction has been redacted.

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
--------	---	---	-------------------------------	---	---	---	---	---	--	--

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.

This chart was prepared by the office of Commissioner Walther. Commissioner Walther is responsible for the accuracy of its contents. In Column A, the case number has been redacted. In Column B, the date of receipt of complaint or referral has been redacted. In Column C, the number of days between receipt and OGC's recommendations to the Commission has been redacted. In Column D, the number of days between receipt and Commission inaction has been redacted.

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
--------	---	---	-------------------------------	---	---	---	---	---	--	--

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.

This chart was prepared by the office of Commissioner Walther. Commissioner Walther is responsible for the accuracy of its contents. In Column A, the case number has been redacted. In Column B, the date of receipt of complaint or referral has been redacted. In Column C, the number of days between receipt and OGC's recommendations to the Commission has been redacted. In Column D, the number of days between receipt and Commission inaction has been redacted.

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

This chart was prepared by the office of Commissioner Walther. Commissioner Walther is responsible for the accuracy of its contents. In Column A, the case number has been redacted. In Column B, the date of receipt of complaint or referral has been redacted. In Column C, the number of days between receipt and OGC's recommendations to the Commission has been redacted. In Column D, the number of days between receipt and Commission inaction has been redacted.

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

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

**I. STATUS REPORTS TO RESPONDENTS**

**A. General.**

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

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

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

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

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

## II. STATUS OF ENFORCEMENT REPORTS TO THE COMMISSION

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

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

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

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

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

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

**V. AGREEMENTS TO TOLL THE STATUTE OF LIMITATIONS**

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

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

A handwritten signature in cursive script, appearing to read "Alec Palmer", written over a horizontal line.

Alec Palmer  
Acting Staff Director