

AGENDA DOCUMENT NO. 16-33-A



FEDERAL ELECTION COMMISSION
Washington, DC 20463

2016 AUG 15 PM 3: 44

AGENDA ITEM

For Meeting of 8-16-16

MEMORANDUM

SUBMITTED LATE

TO: The Commission

FROM: Steven T. Walther *STW*
Vice Chairman

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

DATE: August 12, 2016

Attached is a memorandum containing a fourth motion to follow up on motions I made at the Open Meetings of July 16, September 17, and November 10, 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 July 31, 2016, 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 August 16, 2016.

Attachment



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: The Commission

FROM: Steven T. Walther
Vice Chairman

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

DATE: August 12, 2016

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 action¹ 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

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

website²), again seeking adoption by the Commission of a similar policy as described above. Priorities Motion II related to matters that were pending as of August 31, 2015, adding to the list all matters with substantive recommendations submitted to the Commissioners by OGC between July 1 and August 31, 2015. Priorities Motion II deadlocked with a 3-3 vote.

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

The motion set forth below (“Priorities Motion IV”) seeks adoption of a similar policy with respect to those matters pending as of July 31, 2016.

Background – Recent Events

Priorities Motions I, II and III were each 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 came before the Commission during the 2015 calendar year.⁴ Priorities Motions I-IV 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”).⁵

Priorities Motions I, II and III sought, and Priorities Motion IV 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

² See Second Motion to Set Priorities and Scheduling on Pending Enforcement Matters Awaiting Reason-to-Believe Consideration, *available at* http://www.fec.gov/agenda/2015/documents/mtgdoc_15-48-a.pdf.

³ See Motion to Set Priorities and Scheduling on Pending Enforcement Matters Awaiting Reason-to-Believe Consideration, *available at* http://www.fec.gov/agenda/2015/documents/mtgdoc_15-63-a.pdf.

⁴ 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.

⁵ The term “matters” shall hereinafter refer only to such items.

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 in these matters are entitled to be advised of the decision of the Commissioners with 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;⁶
- (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 proposed 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 supporting Commission approval as stated in Priorities Motion I are as valid now as they were then, if not more so.

⁶ 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."

Current Data Regarding Enforcement of Pending Matters Following Submission

There have been several changes in the enforcement data during the last nine months following the period covered by Priorities Motion III through July 31, 2016, 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 III, as of October 31, 2015, there were 72 matters pending before the Commission without a substantive vote; of those matters, six had been pending for three years or more (approximately 8% of the total); one matter had been pending for two years or more but less than three years (approximately 1% of the total), 25 matters had been pending for one year or more but less than two years (approximately 35% of the total), and 40 matters had been pending for less than one year (approximately 56% of the total).
2. As set forth in the chart attached to this motion, as of July 31, 2016, there are 28 matters pending before the Commission without a substantive vote; of those matters, two have been pending for two years or more but less than three years (approximately 7% of the total), seven matters have been pending for one year or more but less than two years (25% of the total), and 19 matters have been pending for less than one year (approximately 68% of the total).⁷
3. In summary, in the nine months following October 31, 2015, 63 matters have been removed from the list based on actions taken by the Commission, and 19 new matters have been added based on recommendations received from OGC between October 31, 2015 and July 31, 2016, a net reduction of 44 matters during that 274-day period.

Based on the figures above, there has been a 61% decrease (44 / 72) in the number of matters pending before the Commission during the past nine months. Although this represents a substantial reduction in pending matters, there is still much work to be done to improve our efficiency in processing enforcement matters.

⁷ Comparing the information in the current chart with information provided in the chart attached to Priorities Motion III, there is a net decrease of six matters pending for three years or more, a net increase of one matter pending for two years but less than three years, a net decrease of 18 matters pending for one year or more but less than two years, and a net decrease of 21 matters pending for less than one year.

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

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

Although this information has been redacted from the chart in order to prevent identification of the actual cases, the following information is provided to allow an assessment of this set of periods:

- Of the 28 active cases with recommendations presently pending before the Commission as of July 31, 2016, 22 have taken 200 days or more from the date of receipt to the date of submittal of the recommendation.
- Of the 28 active cases, 12 have taken 200 days or more but less than 300 days.
- Of the 28 active cases, four have taken 300 days or more but less than 400 days.
- Of the 28 active cases, two have taken 400 days or more but less than 500 days.
- Of the 28 active cases, three have taken 600 days or more but less than 700 days.
- Of the 28 active cases, one has taken 700 days or more but less than 800 days.
- Of the 28 active cases, six have taken less than 200 days.⁸

Decision Rate in Calendar Years 2015 and 2016

During calendar year 2015, there were 15 executive sessions during which one or more substantive actions were taken, and there were a total of 87 substantive actions

⁸ There may be various reasons for delay during this pre-submission period that are outside of the control of the Commission and Office of General Counsel, but this time period, in my view, should rarely extend beyond 9 months (approx. 270 days). By statute, a respondent is entitled to notice of a complaint and opportunity to respond, and the Commission has further afforded that right to respondents with respect to supplements to complaints, and substantive action on a complaint is generally deferred during the response period. Delays can occur, for example, when a complainant submits periodic supplements to the initial complaint after filing the complaint; the respondent(s) is then sent a copy of each supplement and provided with an opportunity to respond. As the attached chart reflects, OGC completed its review and drafted comprehensive analyses and recommendations in all but 4 of the 28 matters within approximately four months.

taken at those meetings regarding OGC's enforcement recommendations, for an average of six (rounded) actions per executive session. In addition, and separate from actions taken at Commission meetings, there were 34 substantive actions taken through tally votes, for an average of three (rounded) actions taken per month during calendar year 2015.

During the first seven months of calendar year 2016 (January 1 – July 31, 2016), there have been 11 executive sessions during which one or more substantive actions were taken, and there were a total of 67 substantive actions taken at those meetings regarding OGC's enforcement recommendations, for an average of six (rounded) actions per executive session. In addition, and separate from actions taken at Commission meetings, there were 31 substantive actions taken through tally votes, for an average of four actions taken per month so far during calendar year 2016.

This efficiency rate should serve as a reasonably accurate guide as to the number of executive sessions that will likely be needed to take substantive actions as to all matters pending before the Commission for one year or more (which at present is nine 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.

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. There are currently five matters on the attached list that are potentially statutorily imperiled; i.e., the statute of limitations is either currently expiring or will begin to expire within the next 12 months.

Matters Held in Abeyance or Subject to Informal Holds

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.⁹ As noted in the chart attached to Priorities Motion III, there were four matters being held in abeyance as of October 31, 2015. However, as of July 31, 2016, there are no listed matters being held in abeyance.

In addition, on occasion, one or more Commissioners or OGC may place an informal hold on a pending enforcement matter. As of July 31, 2016, there are four such matters in the attached chart subject to such holds (three requested by OGC, one requested by one or more Commissioners), as indicated with an asterisk. As stated in the motion, any such matter will be voted on at the next executive session after the informal hold is lifted.

⁹ 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 July 31, 2016:

1. That the two (2) matters identified in the attached chart as numbers one (1) and (2), which have been awaiting Commission action for over two years but less than three years *since the date OGC circulated its recommendations* as of July 31, 2016, be subject to a *substantive* vote at the September 13, 2016 executive session of the Commission;
2. That the seven (7) matters identified in the attached chart as numbers three (3) through nine (9), 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 July 31, 2016, be placed on the September 13, 2016 executive session of the Commission and every consecutive session thereafter until substantive action has been taken on each of them;
3. That the eight (8) matters following number nine (9) 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 September 13, 2016 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.
4. 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;
5. That for the 30 days following September 13, 2016, 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;

6. That all matters identified in paragraphs 1-3, 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)¹⁰ is followed;
7. 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 1-3, to be voted on with substantive action taken as of November 15, 2016;
8. That all matters identified in paragraphs 1, 2, 3, and 7, if being held in abeyance at the time of the substantive vote or subject to an informal hold by one or more Commissioners or by the Office of General Counsel, be voted on at the next executive session following the expiration of the period of abatement or the lifting of the informal hold; and
9. That any statute-of-limitations imperiled matters shall be substantively acted on in a timely matter with all due speed, pursuant to Directive 68,¹¹ and may interrupt at any time the order otherwise sought in this motion.

Attachments

Chart of Enforcement Matters (current as of July 31, 2016)
Priorities Motion I, dated July 14, 2015

¹⁰ 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. . . .”

¹¹ 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 7/31/16	Days Between OGC's Recommendations and Comm'n Inaction as of 7/31/16	Holdovers and Other Relevant Information as of 7/31/16
1.	X	X	4/17/13	11/08/13	X	205	X	1,201	996	Not yet scheduled for an executive session.**
2.	X	X	10/09/12	3/10/14	X	517	X	1,391	874	Held over meetings of Feb. 10, 12, Mar. 3, 10, 17, 19, Apr. 21, 22, May 19, 21, June 16, 18, July 14, 16, Aug. 10, 11, 13, Sept. 15, 17, 29, Oct. 1, 27, 29, Nov. 17, 19, Dec. 10, 15, 17, 2015.**
3.	X	X	6/19/14	10/17/14	X	120	X	773	653	Held over meetings of Aug. 11, 13, 2015.**
4.	X	X	7/02/14	10/29/14	X	119	X	760	641	Tentatively scheduled for an upcoming executive session.
5.	X	X	7/02/14	10/29/14	X	119	X	760	641	Tentatively scheduled for an upcoming executive session.
6.	X	X	7/02/14	10/29/14	X	119	X	760	641	Tentatively scheduled for an upcoming executive session.
7.	X	X	10/07/14	2/05/15	X	121	X	663	542	Held over meeting of June 28, 2016.
8.	X	X	2/03/15	5/27/15	X	113	X	544	431	Held over meetings of Dec. 10, 15, 17, 2015.
9.	X	X	2/05/15	6/04/15	X	119	X	542	423	Not yet scheduled for an executive session.**
10.	X	X	6/04/15	11/13/15	X	162	X	423	261	Not yet scheduled for an executive session.
11.	X	X	9/17/15	12/11/15	X	85	X	318	233	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. 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.

**Currently subject to an informal hold request by the Office of General Counsel (three matters) or one or more Commissioners (one matter).

SENSITIVE – INTERNAL USE ONLY

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 7/31/16	Days Between OGC's Recommendations and Comm'n Inaction as of 7/31/16	Holdovers and Other Relevant Information as of 7/31/16
12.	X	X	9/23/15	1/20/16	X	119	X	312	193	Not yet scheduled for an executive session.
13.	X	X	11/27/15	2/18/16	X	83	X	247	164	Not yet scheduled for an executive session.
14.	X	X	11/27/15	2/18/16	X	83	X	247	164	Not yet scheduled for an executive session.
15.	X	X	10/29/15	2/26/16	X	120	X	276	156	Not yet scheduled for an executive session.
16.	X	X	12/03/15	3/02/16	X	67	X	241	151	Tentatively scheduled for an upcoming executive session.
17.	X	X	11/03/14	3/04/16	X	487	X	636	149	Held over meetings of Apr. 12, 26, 2016
18.	X	X	12/07/15	3/07/16	X	91	X	237	146	Not yet scheduled for an executive session.
19.	X	X	12/02/15	4/04/16	X	124	X	242	118	Not yet scheduled for an executive session.
20.	X	X	12/08/15	4/13/16	X	127	X	236	109	Not yet scheduled for an executive session.
21.	X	X	1/19/16	5/27/16	X	129	X	194	65	Not yet scheduled for an executive session.
22.	X	X	9/04/14	6/03/16 (with-drawn 4/20/16)	X	638	X	696	58	Not yet scheduled for an executive session.
23.	X	X	2/24/16	6/24/16	X	121	X	158	37	Not yet scheduled for an executive session.
24.	X	X	2/26/16	6/24/16	X	119	X	156	37	Not yet scheduled for an executive session.
25.	X	X	4/06/16	6/24/16	X	79	X	116	37	Not yet scheduled for an executive session.
26.	X	X	6/08/16	6/28/16	X	20	X	53	33	Not yet scheduled for an executive session.
27.	X	X	3/03/16	7/01/16	X	120	X	150	30	Not yet scheduled for an executive session.
28.	X	X	4/20/16	7/19/16	X	90	X	102	12	Not yet scheduled for an executive session.

AGENDA DOCUMENT NO. 15-41-A



FEDERAL ELECTION COMMISSION
Washington, DC 20463

FEDERAL ELECTION
COMMISSION
SECRETARIAT

2015 JUL 14 P 3:20

AGENDA ITEM

MEMORANDUM

For Meeting of 7-16-15

TO: The Commission

FROM: Steven T. Walther
Commissioner *STW*

SUBMITTED LATE

DATE: July 14, 2015

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

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

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

Attachment



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: The Commission

FROM: Steven T. Walther
Commissioner

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

DATE: July 14, 2015

Motion Objective

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

Background

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

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

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

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

Data on Delays

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

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

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

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

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

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

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

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

Those Directly Prejudiced by Commission Delays

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

Respondents

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

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

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

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

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

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

Complainants

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

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

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

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

Commission Staff

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

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

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

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

The Public

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

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

The Need for Accelerated Scheduling and Prioritization

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

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

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

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

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

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

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

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

Attachments

MOTION

Based upon the forgoing, I move:

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

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

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

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

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

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

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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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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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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