



FEDERAL ELECTION COMMISSION
Washington, DC 20463

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AGENDA ITEM
For the meeting of May 4, 2023

MEMORANDUM

TO: The Commission

FROM: Chair Dara Lindenbaum *DL*
Commissioner James E. “Trey” Trainor III *JT*

DATE: April 27, 2023

RE: Revised Audit Process Documents For Committees That Do Not Receive Public Funds

For many years, the audit process for committees that do not receive public funds has been a long, inefficient, and often opaque process. Both the Commission and committees expended too many resources to complete audits, often resulting in activity lost to the five-year statute of limitations. The delays further deprived the public of the results of the audit.

To address improving the process, the Commission issued a Notice of Hearing on January 9, 2023, received comments from the public, and held a hearing on February 14, 2023. After careful consideration of the comments and testimony from the public, as well as the insightful comments from our staff and colleagues, the attached documents set forth a new audit process for committees that do not receive public funds. The goal of the new audit process is to strike the appropriate balance between efficiency, procedural protections for audited committees, orderly development of the law, transparency, and encouraging voluntary compliance with the Act.

The principal document is the Audit Process for Committees That Do Not Receive Public Funds, which describes the new audit process in detail from start to finish. Because the old audit process was set forth in several documents, and because the new process will not take effect until the following election cycle, the Commission must also amend three other documents both to sunset old rules and maintain rules for other divisions, as set forth in more detail below.

We recommend that the Commission adopt the following documents.

DOCUMENTS:

1. Audit Process for Committees That Do Not Receive Public Funds

This document describes in detail the audit process from the initial notification all the way through the publication of the file and potential referral for enforcement. The public will now know what to expect at every stage of the process, including the scope of the audit, the Office of General Counsel's ("OGC") legal theory behind each proposed finding, how document disputes will be resolved, and all deadlines – both for audited committees and for Commission staff.

The new process is designed to be faster and save both the Commission's and committees' resources. The new process encourages Audit staff to request, and the committee to provide, all documents as early in the process as possible. Further, to expedite the resolution of legal questions arising in an audit, committees will be provided with OGC's legal analysis at the exit conference with an opportunity to meaningfully respond, and to seek resolution of the issue by the Commission. The new process also reduces the report writing burden on Audit by requiring only two reports. These efficiencies and procedural protections will benefit the Commission, committees, and the public.

The new process also promotes transparency. For example, the Commission will now publish on its website non-confidential documents related to any findings at the conclusion of audits, such as ads and independent expenditures. The public will now have the benefit of seeing the documents underpinning certain legal determinations that the Commission made during the audit process. The publication of these documents will promote transparency, help ensure consistency in results across audits raising similar legal issues under similar fact patterns, and promote the orderly development of the law.

2. Reports Analysis Division Legal Question Resolution Program

This document retains the legal question resolution program for questions arising from RAD, while terminating it for audits. Because committees may now meaningfully submit a response challenging OGC's legal theories at the exit conference stage of the new process, the legal question resolution program would be redundant and add an unnecessary step to the streamlined process. Further, committees that receive public funds may raise legal disputes as codified by the Act and Commission regulations. Therefore, the legal question resolution program will be terminated for all audits.

3. Revised Directive 69

Revised Directive 69 retains the ability of the office of compliance to seek internal legal advice from OGC. Audit retains the ability to seek legal advice from OGC; however, edits were necessary to comport with the new audit process, and to clarify that OGC must provide its legal analysis to the audited committee for each proposed audit finding.

4. Revised Directive 70

The only edit to Directive 70 is to add a sunset clause, after which Directive 70 will be revoked.

Attachments:

1. Audit Process for Committees that do not Receive Public Funds
2. Reports Analysis Division Legal Question Resolution Program
3. Revised Directive 69
4. Revised Directive 70