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FEDERAL ELECTION COMMISSION

11 CFR Part 111

[Notice 2011–15]

Agency Procedure Following the Submission of Probable Cause Briefs by the Office of General Counsel

AGENCY: Federal Election Commission.

ACTION: Notice of agency procedure.

SUMMARY: The Federal Election Commission is establishing an agency procedure to formalize the agency's practice in the latter stages of Probable Cause process in enforcement matters brought under the Federal Election Campaign Act of 1971, as amended (FECA).

DATES: Effective October 28, 2011.

FOR FURTHER INFORMATION CONTACT: Kathleen Guith, Acting Associate General Counsel, or Joshua Smith, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Election Commission (Commission) is establishing an agency procedure to formalize the agency's practice in the latter stages of the Probable Cause process when, pursuant to 11 CFR 111.16(d) of the Commission's regulations, the Office of General Counsel (OGC) advises the Commission in writing as to whether or not it intends to proceed with a Probable Cause recommendation.

In matters that proceed beyond the stage in which the Commission has determined there is reason to believe that a violation has occurred or is about to occur, and after the completion of any investigation, both the FECA, 2 U.S.C. 437g(a)(3), and the Commission's regulations, 11 CFR 111.16(a), require OGC to make a recommendation to the Commission on whether or not to find probable cause to believe that a violation has occurred or is about to occur.

When OGC makes its recommendation on whether or not the Commission should find probable cause, such recommendation is accompanied by a brief (Probable Cause Brief) supporting the recommendation. A copy of the Probable Cause Brief is provided to each respondent. 11 CFR 111.16(b). The Probable Cause Brief must comport with the disclosure procedures adopted by the Commission on June 2, 2011. *See* Agency Procedure for Disclosure of Documents and Information in the Enforcement Process, 76 FR 34986 (June 15, 2011).

Once the Probable Cause Brief is received by a respondent, the respondent has the opportunity to file, *within 15 days, a brief (Reply Brief)* responding to the Probable Cause Brief. 11 CFR 111.16(c). Additionally, pursuant to a procedural rule adopted by the Commission in 2007, a respondent may, as part of the Reply Brief, request a probable cause hearing (Probable Cause Hearing) before the Commission. *See* Procedural Rules for Probable Cause Hearings, 72 FR 64919 (Nov. 19, 2007). The Commission will grant a request for a Probable Cause Hearing if any two Commissioners agree that a hearing would help resolve significant or novel legal issues, or significant questions about the application of the law to the facts.

Following the filing of the Reply Brief and the Probable Cause Hearing, if there is one, OGC must, pursuant to 11 CFR 111.16(d), then advise the Commission, by a written notice (OGC Notice), as to whether OGC intends to proceed with its recommendation or to withdraw the recommendation from Commission consideration.

The Commission hereby adopts the following procedures with respect to the following issues: (a) Whether or not OGC must provide a copy of the OGC Notice to the respondent and (b) if the OGC Notice contains any new argument, statement, or facts, or contains new replies to all or any of the arguments contained in the Reply Brief, and, if a Probable Cause Hearing was conducted, those occurring at the hearing, whether the respondent should have an opportunity to reply.

II. Procedure Following the Submission of Probable Cause Briefs by the Office of General Counsel

1. The OGC Notice provided to the Commission by OGC following the Reply Brief (or if there was a Probable Cause Hearing, following the hearing), *see* 11 CFR 111.16(d), shall contemporaneously be provided to the respondent.

2. The OGC Notice may include information that replies to, or argues facts or law in response to, the respondent's Reply Brief, or arising out of the Probable Cause Hearing, if any.

3. If the OGC Notice contains new facts or new legal arguments raised by OGC and not contained in the Probable Cause Brief, or raised at the Probable Cause Hearing, if any, the respondent may submit a written request to address the new points raised by OGC. Any such written request must specify the new points that the respondent seeks to address and must be submitted to the Secretary of the Commission within five business days of the respondent's receipt of the OGC Notice.

4. Within five business days of receipt of a written request from a respondent, the Commission may, in its sole discretion, exercised by four affirmative votes, allow the respondent to address in writing the new points raised by the OGC Notice. If the Commission approves the request, the Commission shall provide the respondent with a date by which the Supplemental Reply Brief must be filed, which shall in no event exceed 10 calendar days from notification to the respondent of the Commission's approval. Where necessary, the Commission reserves the right to request from a Respondent an agreement tolling any deadline, including any statutory or other deadline found in 11 CFR part 111. Any request that is not approved by the Commission within five business days of the Commission's receipt of the request shall be deemed denied without further action by the Commission.

5. All requests and Supplemental Reply Briefs should be directed to the Commission Secretary via e-mail (*secretary@fec.gov*) or fax (202–208–3333). Upon receipt of a request, the Commission Secretary shall forward the request or brief to each Commissioner and the General Counsel. Absent good cause, to be determined at the sole discretion of the Commission, exercised by four affirmative votes, late requests will not be accepted.

III. Conclusion

Failure to adhere to this procedure does not create a jurisdictional bar for the Commission to pursue all remedies to correct or prevent a violation of the Act.

This notice establishes agency practices or procedures. This procedure sets forth the Commission's intentions concerning the exercise of its discretion in its enforcement program. However, the Commission retains that sole discretion and may or may not exercise it as appropriate with respect to the facts and circumstances of each enforcement matter it considers, with or without notice. Consequently, this procedure does not bind the Commission or any member of the general public, nor does it create any rights for respondents or third parties. As such, this notice does not constitute an agency regulation requiring notice of proposed rulemaking, opportunities for public participation, prior publication, and delay of effective date under 5 U.S.C. 553 of the Administrative Procedure Act (APA). The provisions of the Regulatory Flexibility Act, 5 U.S.C. 605(b), which apply when notice and

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comment are required by the APA or another statute, are not applicable.

Dated: October 6, 2011.

On behalf of the Commission.

Cynthia L. Bauerly,

Chair, Federal Election Commission.

[FR Doc. 2011–26415 Filed 10–12–11; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0199; Directorate Identifier 2011–CE–005–AD]

RIN 2120–AA64

Airworthiness Directives; Eclipse Aerospace, Inc. Airplanes Equipped With Pratt & Whitney Canada, Corp. PW610F–A Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to revise an existing airworthiness directive (AD) that applies to all Eclipse Aerospace, Inc. Model EA500 airplanes equipped with Pratt & Whitney Canada, Corp. (P&WC) Model PW610F–A engines. The existing AD currently requires incorporating an operating limitation of a maximum operating altitude of 30,000 feet into Section 2, Limitations, of the airplane flight manual (AFM). Since we issued that AD, P&WC has developed a design change for the combustion chamber liner assembly. This proposed AD would retain the requirements of the current AD, clarify the engine applicability, and allow the option of incorporating the design change to terminate the current operating limitation and restore the original certificated maximum operating altitude of 41,000 feet. We are proposing this AD to correct the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by November 28, 2011.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Pratt & Whitney Canada, 1000 Marie-Victorin Blvd., Longueuil, Quebec, J4G 1A1 Canada; *telephone:* (800) 268–8000; *Internet: http://www.P&WC.ca.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (*phone:* 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Eric Kinney, Aerospace Engineer, FAA, Fort Worth Aircraft Certification Office, 2601 Meacham Blvd., Fort Worth, Texas 76137; *telephone:* (817) 222–5459; *fax:* (817) 222–5960; *e-mail: eric.kinney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2011–0199; Directorate Identifier 2011–CE–005–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

On March 3, 2011, we issued AD 2011–06–06, amendment 39–16631 (76 FR 13078, March 10, 2011), for all Eclipse Aerospace, Inc. Model EA500 airplanes equipped with Pratt & Whitney Canada, Corp. (P&WC) Model PW610F–A engines. That AD superseded AD 2008–24–07, amendment 39–15747 (73 FR 70866, November 24, 2008) and requires incorporating an operating limitation of a maximum operating altitude of 30,000 feet into Section 2, Limitations, of the AFM. That AD resulted from several incidents of engine surge due to hard carbon build up blocking the static vanes at maximum operating altitude of 37,000 feet. We issued that AD to prevent hard carbon buildup on the static vane, which could result in engine surges. Engine surges may result in a necessary reduction in thrust and decreased power for the affected engine. In some cases, this could result in flight and landing under single-engine conditions.

Actions Since Existing AD Was Issued

Since we issued AD 2011–06–06, amendment 39–16631 (76 FR 13078, March 10, 2011), P&WC has issued a new service bulletin that incorporates a design change to the combustion chamber liner assembly. The current design of the combustion chamber liner assembly is a one-piece configuration. The new design change involves replacing the combustion chamber liner assembly with one that has inner and outer liner assemblies that are held by cast heat shields.

Upon replacing the combustion chamber liner assembly on both engines with the new design combustion chamber assemblies, the operating limits of the airplane can be restored to the original certificated maximum operating altitude of 41,000 feet.

We have been informed that all new P&WC Model PW610F–A engines manufactured for new production Eclipse Aerospace, Inc. Model EA500 airplanes will incorporate the new combustion chamber liner assembly. The serial numbers for these new engines will start after PCE–LA0583. Therefore, to make it clear that this proposed AD will not be applicable to the new production airplanes, we need to clarify the engine applicability to include an end serial number.

Relevant Service Information

We reviewed Pratt & Whitney Canada Service Bulletin P&WC S.B. No. 60077, dated June 1, 2011. The service information describes procedures for

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accredited free. Based on the findings of a review of the tuberculosis eradication program in Minnesota conducted during June and July 2011, APHIS has determined that the zone meets the criteria for advancement of status contained in the regulations.

State animal health officials in Minnesota have demonstrated that the State enforces and complies with the provisions of the UMR. The State of Minnesota has demonstrated that the modified accredited advanced zone has zero percent prevalence of cattle and bison herds affected with tuberculosis and has had no findings of tuberculosis in any cattle or bison in the zone since the last affected herd in the zone was depopulated in January 2009. Therefore, Minnesota has demonstrated that the zone within the State previously classified as modified accredited advanced meets the criteria for accredited-free status as set forth in the definition of *accredited-free State or zone* in § 77.5 of the regulations.

Based on our evaluation of Minnesota's request, we are classifying the zone consisting of portions of Lake of the Woods, Roseau, Marshall, and Beltrami Counties as accredited free, which results in the entire State of Minnesota having an accredited-free classification.

Immediate Action

Immediate action is warranted to relieve restrictions on the interstate movement of cattle and bison from portions of Lake of the Woods, Roseau, Marshall, and Beltrami Counties in Minnesota. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This interim rule is subject to Executive Order 12866. However, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. The full analysis may be viewed on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov) or obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**.

Advancing the status of the former modified accredited advanced zone in Minnesota will reduce the interstate movement restrictions for cattle and bison originating from portions of Lake of the Woods, Roseau, Marshall, and Beltrami Counties. Herd owners in the area will no longer have to test their cattle and bison for bovine tuberculosis in order to move them interstate. Tuberculosis testing, including veterinary fees, costs about $10 to $15 per head. The annual cost savings associated with the removal of those tests for the 254 herds in the affected area is expected to be between $110,280 and $165,420, or from $434 to $651 per herd on average. In addition, tuberculosis testing costs represent no more than about 1.7 percent of the average value of the cattle tested, which was $870 per head on January 1, 2010.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule has no retroactive effect and does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 77

Animal diseases, Bison, Cattle, Reporting and recordkeeping requirements, Transportation, Tuberculosis.

Accordingly, we are amending 9 CFR part 77 as follows:

PART 77—TUBERCULOSIS

■ 1. The authority citation for part 77 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

§ 77.7 [Amended]

■ 2. Section 77.7 is amended as follows:

■ a. In paragraph (a), by adding the word "Minnesota," after the word "Massachusetts,".

■ b. By removing paragraph (b)(3).

§ 77.9 [Amended]

■ 3. In § 77.9, paragraph (b)(2) is removed and reserved.

Done in Washington, DC, this 30th day of September 2011.

Gregory L. Parham,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–25688 Filed 10–3–11; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL ELECTION COMMISSION

11 CFR Parts 104 and 109

[Notice 2011–13]

Interpretive Rule on When Certain Independent Expenditures Are "Publicly Disseminated" for Reporting Purposes

AGENCY: Federal Election Commission.

ACTION: Notice of interpretive rule.

SUMMARY: The Federal Election Commission is issuing guidance on when independent expenditure communications that take the form of yard signs, mini-billboards, handbills, t-shirts, hats, buttons, and similar items are "publicly disseminated" for purposes of certain reporting requirements in Commission regulations.

DATES: Effective October 4, 2011.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Rothstein, Assistant General Counsel, Ms. Cheryl A.F. Hemsley or Mr. Theodore M. Lutz, Attorneys, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: An independent expenditure is "an expenditure by a person for a communication expressly advocating the election or defeat of a clearly identified candidate that is not made in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or their agents, or a political party committee or its agents." 11 CFR

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100.16; *see also* 2 U.S.C. 431(17). Political committees and other persons making independent expenditures ("Filers") must file reports disclosing their independent expenditures at certain regular intervals. *See* 2 U.S.C. 434(a)(4) and (c); 11 CFR 104.4 and 109.10(b). In addition, Filers must report all independent expenditures that aggregate more than certain dollar amounts during certain reporting periods within either 24 hours or 48 hours of the date on which the person makes or contracts to make independent expenditures. 2 U.S.C. 434(g). The Commission's regulation requires that Filers "ensure that the Commission receives these reports by [either 24 hours or 48 hours] following the date on which a communication that constitutes an independent expenditure is publicly distributed or otherwise publicly disseminated." 11 CFR 104.4(b)(2); *see also* 11 CFR 104.4(c), and (f), and 109.10(c) and (d).

The actual public dissemination date of independent expenditure communications that take the form of items such as yard signs, mini-billboards, handbills, t-shirts, hats, and buttons may be difficult to ascertain, however, particularly where the items are disseminated in stages or where the Filer is an organization that purchases the items from a vendor, and then retains the items for a period of time before distributing them to affiliate or member organizations or to individuals, such as the organization's employees, members or customers, to wear or display in public. For this reason, the Commission is issuing this notice to clarify that a range of acceptable dates may be used as the public dissemination date [1] for these forms of independent expenditure communications for both individual and organizational Filers.

For purposes of the reporting requirements in 11 CFR 104.4(b)(2), (c), and (f), and 109.10(c) and (d), the Commission hereby clarifies that the Filer may report independent expenditure communications that take the form of items such as yard signs, mini-billboards, handbills, t-shirts, hats, buttons, as "publicly disseminated" on any reasonable date starting with the date the Filer receives or exercises control over the items in the usual and normal course of dissemination, up to and including the date that the communications are actually disseminated to the public.[2] Reasonable dates that may be treated as the date of public dissemination include, but are not limited to (1) The date that a Filer receives delivery of the communication, (2) the date that a Filer distributes the communication to its members or employees for later public dissemination, (3) the date that a Filer distributes the communications to its affiliate or member organizations for later public dissemination, (4) the date as of which the Filer authorizes its members or employees to display the communication, or (5) the date of actual public dissemination, if that date is known to the Filer.[3] In no event, however, may a Filer choose a date that is later than the actual date of dissemination. Similarly, in no event may a Filer choose a date that is subsequent to the date of the election to which the independent expenditure communication pertains.

The Commission believes that this interpretation of its regulations provides Filers with an administratively workable method for determining the date of dissemination for these types of independent expenditure communications, consistent with the "[c]ongressional intent to emphasize and ensure timely disclosure" of independent expenditures. Explanation and Justification for Final Rules on Independent Expenditure Reporting, 67 FR 12834, 12837 (Mar. 20, 2002).

This document is an interpretive rule announcing the general course of action that the Commission intends to follow. This interpretive rule does not constitute an agency action requiring notice of proposed rulemaking, opportunities for public participation, prior publication, or delay in effective date under 5 U.S.C. 553 of the Administrative Procedures Act. It does not bind the Commission or any members of the general public, nor does it create or remove any rights, duties, or obligations. The provisions of the Regulatory Flexibility Act, which apply when notice and comment are required by the Administrative Procedures Act or another statute, do not apply. *See* 5 U.S.C. 603(a).

Dated: September 29, 2011.

On behalf of the Commission.

Cynthia L. Bauerly,

Chair, Federal Election Commission.

[FR Doc. 2011–25568 Filed 10–3–11; 8:45 am]

BILLING CODE 6715–01–P

[1] This notice focuses on the date on which independent expenditures are "publicly disseminated," rather than the date on which they are "publicly distributed." Generally, independent expenditures that are made public by broadcast, cable or satellite are "publicly distributed." *See* 11 CFR 100.29(b)(2); *see also* Explanation and Justification for Final Rules on Bipartisan Campaign Reform Act of 2002 Reporting, 68 FR 404, 407 (Jan. 3, 2003). In contrast, all other forms of independent expenditure communications, such as those made public in newspapers, magazines, or via handbills are considered to be "publicly disseminated." *See* Explanation and Justification for Final Rules on Bipartisan Campaign Reform Act of 2002 Reporting, 68 FR 404, 407 (Jan. 3, 2003). This particular rule interprets "publicly disseminated" for those items that do not have an inherent date certain for public dissemination, such as yard signs, mini-billboards, handbills, t-shirts, hats, and buttons.

[2] Once the public dissemination date is established, independent expenditure communications must be reported pursuant to 11 CFR 104.4(b)(2), (c), and (f), and 109.10(c) and (d).

[3] The Commission notes that, for any given independent expenditure communication, Filers should list the same date of dissemination on their regularly scheduled FEC reports as the date they listed on their 24- and 48-Hour Independent Expenditure reports.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0935; Directorate Identifier 2011–NE–28–AD; Amendment 39–16813; AD 2011–18–51R1]

RIN 2120–AA64

Airworthiness Directives; Honeywell International Inc. TPE331 Model Turboprop Engines With Certain Dixie Aerospace, LLC Main Shaft Bearings

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are revising an existing emergency airworthiness directive (AD) for all Honeywell International Inc. TPE331 model turboprop engines with a part manufacturer approval (PMA) replacement Dixie Aerospace, LLC main shaft bearing part number (P/N) 3108098–1WD, installed. That emergency AD was not published in the **Federal Register**, but was sent to all known U.S. owners and operators of these engines. That AD currently requires an inspection of the airplane records to determine if a Dixie Aerospace, LLC main shaft bearing, P/N 3108098–1WD, is installed in the engine, and if installed, removal of that bearing from service, before further flight. This AD requires the same actions. This AD revision was prompted by the need to list the affected bearings by serial number (S/N) in the AD for clarification. We are issuing this AD to correct the unsafe condition on these products.

DATES: This AD is effective October 19, 2011.

We must receive comments on this AD by November 18, 2011.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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Jeff Jordan/FEC/US
09/06/2011 03:54 PM

To Enforcement Staff
cc Gregory Baker/FEC/US@FEC, Charnika Miles/FEC/US@FEC
bcc
Subject Livelink Documents - Saving to Your MUR Folder

Enforcement Staff:

As a friendly Reminder: All documents intended for the Enf folder found in Livelink should be placed in a specific Enf Matter subfolder (e.g., MUR 5000 subfolder structure). You should not randomly place documents in the general Matter folder structure. We will remind you if you mistakenly place a document in the Matter folder structure, but note that misplaced documents could be deleted when we clean up the folder structure.

[See the example below of documents placed at random towards the bottom of the slide. These documents should be in their appropriate subfolder for the MUR.]

If you have any questions, please call me (X1552) or Charnika (X1520).

Thanks

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RR 08L-22 NATIONAL REPUBLICAN CONGRESSIONAL COMMITTEE

RR 08L-26 PROSPERITY HELPS INSPIRE LIBERTY POLITICAL ACTION COMMITTEE (PHILPAC)

RR 08L-27 SAFEGUARDING AMERICA BY EXPANDING NATIONAL SECURITY PAC (SAXPAC)

RR 09L-19 TITLE INDUSTRY POLITICAL ACTION COMMITTEE

RR 09L-23 COMMITTEE TO RE-ELECT VITO FOSSELLA

RR 10L-03 MARYLAND REPUBLICAN STATE CENTRAL COMMITTEE

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2011-2

FEDERAL ELECTION COMMISSION

[Notice 2011-06]

Agency Procedure for Disclosure of Documents and Information in the Enforcement Process

AGENCY: Federal Election Commission.

ACTION: Notice of Agency Procedure.

SUMMARY: The Federal Election Commission ("Commission") is establishing an agency procedure to formally define the scope of documents that will be provided to respondents by the agency, and to formalize the agency's process of disclosing such documents, during the Commission's investigation in enforcement matters brought under the Federal Election Campaign Act of 1971, as amended (the Act).

DATES: Effective June 30, 2011.

FOR FURTHER INFORMATION CONTACT: William A. Powers or Ana J. Pena-Wallace, Attorneys, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION:

I. Recent Changes to the Commission's Enforcement Procedures

The Commission has, in recent years, adopted several changes to its enforcement process in an effort to provide complainants, respondents and the public with greater transparency with respect to the Commission's process.

On May 1, 2003, the Commission published a Notice of Public Hearing and Request for Public Comment concerning its enforcement procedures.[1] The Commission received written comments from the public, many of which urged increased transparency in Commission procedures and expanded opportunities to contest allegations.[2] On June 11, 2003, the Commission held an open hearing on its enforcement procedures during which the Commission considered written comments received and oral testimony from several witnesses. In response to issues raised in written comments and at the hearing, the Commission issued several new agency procedures.[3]

On December 8, 2008, the Commission issued a Notice of Public Hearing and Request for Public Comment regarding the compliance and enforcement aspects of its agency procedures.[4] There were numerous written comments filed in response to the Notice and on January 14–15, 2009, the Commission received testimony at a public hearing.[5]

Some commenters proposed alternative procedures with respect to information and documents in the possession of the Commission. One commenter recommended instituting a program whereby potential respondents in internally generated matters[6] would be given a written summary of the matter and an opportunity to respond in writing before the Commission makes a reason to believe (RTB) finding and to provide earlier notice to respondents about the Office of General Counsel's (OGC) recommendation to the Commission.[7] Other commenters urged the Commission to adopt procedures to provide respondents with the opportunity to review and respond to any adverse course of action recommended by the Commission's Office of General Counsel before the Commission considers such recommendation.[8] Still others requested even more general access by respondents to documents and information held by the Commission.[9]

The Commission has since updated and augmented several of its procedures including the adoption of: (1) A pilot program providing opportunity to persons requesting an advisory opinion to appear before the Commission to answer questions,[10] (2) a pilot program providing audited committees with an opportunity to request a hearing before the Commission prior to the Commission's adoption of a Final Audit Report,[11] and (3) a procedure providing respondents with notice of a non-complaint generated referral[12] and an opportunity to respond prior to the Commission's consideration of whether it has reason to believe that a violation has occurred.[13] Further, in December 2009, the Commission issued a Guidebook for Complainants and Respondents on the FEC Enforcement Process, which provides a step-by-step guide to assist and educate complainants, respondents and the public concerning the Commission enforcement process.[14]

The procedure set forth herein formalizes the Commission's policy on disclosure to respondents of relevant information gathered by the Commission in the investigative stage of its enforcement proceedings.

II. Disclosure of Exculpatory Information

A. Criminal Proceedings: The Constitutional Obligation Under Brady—the Government's Duty To Disclose

One issue that must inform the Commission in its consideration of any procedure regarding the disclosure of documents and information to respondents in the enforcement process is whether, and to what extent, there are relevant requirements or constraints imposed by the United States Constitution. The seminal Supreme Court case involving the Constitutional

[1] *See Enforcement Procedures*, 68 FR 23311 (May 1, 2003), available at *http://www.fec.gov/agenda/agendas2003/notice2003-09/fr68n084p23311.pdf.*

[2] Comments and statements for the record are available at *http://www.fec.gov/agenda/agendas2003/notice2003-09/comments.shtml.*

[3] *See Statement of Policy Regarding Deposition Transcripts in Nonpublic Investigations*, 68 FR 50688 (Aug. 22, 2003), available at *http://www.fec.gov/agenda/agendas2003/notice2003-15/fr68n163p50688.pdf; Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings*, 70 FR 3 (Jan. 3, 2005), available at *http://www.fec.gov/law/policy/2004/notice2004-20.pdf; Procedural Rules for Probable Cause Hearings*, 72 FR 64919 (Nov. 19, 2007), available at *http://www.fec.gov/law/cfr/ej_compilation/2007/notice_2007-21.pdf.*

[4] *See Agency Procedures*, 73 FR 74495 (Dec. 8, 2008), available at *http://www.fec.gov/law/policy/enforcement/notice_2008-13.pdf.*

[5] The comments received by the Commission, as well as the transcript of the hearing are available at *http://www.fec.gov/law/policy/enforcement/publichearing011409.shtml.*

[6] Enforcement matters may be internally generated based on information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities. See 2 U.S.C. 437g. These non-complaint generated matters can arise from internal referrals to the Office of General Counsel from the Commission's Reports Analysis Division or Audit Division.

[7] *See* Comment of Scott E. Thomas dated January 5, 2009, available at *http://www.fec.gov/law/policy/enforcement/2009/comments/comm15.pdf.*

[8] *See* Comments of Perkins Coie LLP Political Law Group dated January 5, 2009, available at *http://www.fec.gov/law/policy/enforcement/2009/comments/comm25.pdf.*

[9] *See* Comments of Election Law and Government Ethics Practice Group of Wiley Rein LLP dated January 5, 2009, available at *http://www.fec.gov/law/policy/enforcement/2009/comments/comm33.pdf;* Comments of Perkins Coie LLP Political Law Group dated January 5, 2009, available at *http://www.fec.gov/law/policy/enforcement/2009/comments/comm25.pdf;* Comments of Laurence E. Gold dated January 5, 2009, available at *http://www.fec.gov/law/policy/enforcement/2009/comments/comm20.pdf;* Comments of Robert K, Kelner dated January 5, 2009, available at *http://www.fec.gov/law/policy/enforcement/2009/comments/comm10.pdf.*

[10] *See Advisory Opinion Procedures*, 74 FR 32160 (July 7, 2009), available at *http://www.fec.gov/law/cfr/ej_compilation/2009/notice_2009-11.pdf.*

[11] *See Procedural Rules for Audit Hearings*, 74 FR 33140 (July 10, 2009), available at *http://www.fec.gov/law/cfr/ej_compilation/2009/notice_2009-12.pdf.*

[12] Non-complaint generated referrals, also referred to as "internally generated matters," are based on information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities. *See* 2 U.S.C. 437g and note 6 above.

[13] *See Procedural Rule for Notice to Respondents in Non-Complaint Generated Matters*, 74 FR 38617 (August 4, 2009), available at *http://www.fec.gov/law/cfr/ej_compilation/2009/notice_2009-18.pdf.*

[14] This Guidebook is available at *http://www.fec.gov/em/respondent_guide.pdf.*

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parameters required by, and imposed upon, the government, in the context of criminal proceedings, is *Brady* v. *Maryland*.[15] *Brady* held that the Due Process Clause of the Fifth Amendment to the United States Constitution requires the government to provide criminal defendants with exculpatory evidence—*i.e.*, "evidence favorable to an accused," that is "material to guilt or punishment"—known to the government but unknown to the defendant.

As noted, the Supreme Court in *Brady* held that the Due Process Clause requires the government to provide criminal defendants with exculpatory or potentially exculpatory evidence that is "material to guilt or punishment." "The rationale underlying *Brady* is not to supply a defendant with all the evidence in the Government's possession which might conceivably assist in the preparation of his defense, but to assure that the defendant will not be denied access to exculpatory evidence known only to the Government." [16] *Brady* is a rule of disclosure, not of discovery.[17] Therefore, *Brady* obligations apply even when a defendant does not request the evidence.[18] The obligations also apply regardless of the good faith of the prosecutor.[19] However, no constitutional duty exists under *Brady* to provide evidence already in the defendant's possession or which can be obtained with reasonable diligence.[20]

In *Giglio* v. *United States*, 405 U.S. 150, the Supreme Court went one step further by requiring disclosure in criminal proceedings "[w]hen the 'reliability of a particular witness may well be determinative of guilt or innocence,'" and the prosecution has evidence that impeaches that witness' testimony.[21] "Such [impeachment] evidence is 'evidence favorable to an accused' so that if disclosed and used effectively, it may make the difference between conviction and acquittal." [22] For example, courts have held that impeachment evidence for a key testifying witness includes but is not limited to the following: Prior statements by a witness that are materially inconsistent with the witness's trial testimony; [23] a conviction of perjury; [24] prosecutorial intimidation of a witness; [25] and plea bargains and informal statements by the prosecution that a witness would not be prosecuted in exchange for his testimony.[26]

Because *Brady* disclosure in criminal proceedings is required under the Due Process Clause, legal privileges against discovery such as attorney-client, work-product, or deliberative process do not allow the government in criminal proceedings to avoid disclosure on these grounds.[27] However, courts have recognized that *Brady* does not apply to attorney strategies, legal theories, and evaluations of evidence because they are not "evidence." [28]

B. The Legal, Professional, and Ethical Duties To Disclose—the Lawyer's Independent Obligations in Criminal Proceeding

In addition to, and quite separate from, the Constitutional requirements in criminal cases, there is broad acceptance in the legal and judicial professions that there is also an ethical obligation to provide exculpatory or incriminating information to respondents and litigants that, if not provided, may negatively impact the ability of a respondent or litigant to obtain a just result through a fair and impartial proceeding with the government.

For example, Rule 3.8(d) of the American Bar Association's Model Rules of Professional Conduct (ABA Model Rules), imposes an ethical duty on criminal prosecutors that is separate and independent from the Constitutional disclosure obligations addressed in *Brady*. The ABA Model Rules are in force in most State courts and many Federal Courts. Specifically, Rule 3.8(d) requires that a criminal prosecutor "make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense" so that the defense can make meaningful use of the evidence and information in making such decisions as whether to plead guilty and how to conduct its defense.[29]

The Supreme Court has also referred to the status of a U.S. Attorney in the "Federal system" as "the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done."[30] Therefore, both Constitutional issues and ethical issues must be considered when a procedure such as the one enunciated here today is formulated and adopted.

C. Disclosure in Governmental Civil Proceedings

Courts have held that the Due Process Clause does not require application of *Brady* in administrative proceedings.[31] Nevertheless, some Federal agencies recently have applied *Brady* principles to their civil administrative enforcement proceedings. For example, the Federal Energy Regulatory Commission (FERC) recently issued a policy statement that provides respondents with access to certain exculpatory evidence during that agency's investigations and adjudications.[32] Under FERC's regulations, FERC can conduct either an informal or formal investigation. The new FERC Policy Statement provides, in relevant part that "[d]uring the course of an investigation * * *, Enforcement staff will scrutinize materials it receives

[15] *Brady* v. *Maryland*, 373 U.S. 83, 87–88 (1963) (*Brady*).

[16] *United States* v. *LeRoy*, 687 F.2d 610, 619 (2d Cir. 1983) (citations omitted).

[17] *See United States* v. *Bagley*, 473 U.S. 667, 675 n.7 (1985) (*Bagley*).

[18] *See United States* v. *Agurs*, 427 U.S. 97, 107–10 (1976).

[19] *Brady*, 373 U.S. at 87.

[20] *See, e.g., United States* v. *Meros*, 866 F.2d 1304, 1308 (11th Cir 1989); *Hoke* v. *Netherland*, 92 F.3d 1350, 1355–56 (4th Cir. 1996); *United States* v. *Beaver*, 524 F.2d 963, 966 (5th Cir. 1975).

[21] *Giglio* v. *United States*, 405 U.S. 150, 154–55 (1972) (*Giglio*).

[22] *Bagley*, 473 U.S. at 676 (quoting *Brady*, 373 U.S. at 87).

[23] *Id.* at 677.

[24] *United States* v. *Cuffie*, 80 F.3d 514, 517–19 (D.C. Cir. 1996).

[25] *Simmons* v. *Beard*, 581 F.3d 158, 169 (3rd Cir. 2009).

[26] *Giglio*, 405 U.S. at 154–55; *United States* v. *Edwards*, 191 F. Supp. 2d 88, 90 (D.D.C. 2002); *United States* v. *Buettner-Janusch*, 500 F. Supp. 1287, 1288 (S.D.N.Y. 1980).

[27] *See* Charles Alan Wright & Arthur R. Miller, Federal Practice & Procedure 254 (4th ed. 2009); *United States* v. *Goldman*, 439 F. Supp. 337, 350 (S.D.N.Y. 1977).

[28] *Morris* v. *Ylst*, 447 F.3d 735, 742 (9th Cir. 2006); *U.S.* v. *NYNEX Corp.*, 781 F. Supp. 19, 25–26 (D.D.C. 1991); *see Williamson* v. *Moore*, 221 F.3d 1177, 1182 (11th Cir. 2000).

[29] *See* American Bar Association, Model Rules of Professional Conduct, Rule 3.8, Special Responsibilities of a Prosecutor, available at *http://www.abanet.org/cpr/mrpc/rule_3_8.html. See also* Formal Opinion 09–454, Prosecutor's Duty to Disclose Evidence and Information Favorable to the Defense, American Bar Association, Standing Committee on Ethics and Professional Responsibility, available at *http://www.nacdl.org/public.nsf/whitecollar/ProsecutorialMisconduct/$FILE/09-454.pdf.*

[30] *Berger* v *United States*, 295 U.S. 78, 88 (1935); *see also* Statement of Attorney General Eric Holder Regarding *United States* v. *Theodore F. Stevens*, available at *http://www.justice.gov/opa/pr/2009/April/09-ag-288.html.*

[31] *Mister Discount Stockbrokers* v. *SEC*, 768 F.2d 875, 878 (7th Cir. 1985) (no right to exculpatory evidence in National Association of Securities Dealers (NASD) proceedings which are treated the same as administrative agency action); *Sanford* v. *NASD*, 30 F. Supp. 2d 1, 22 n.12 (D.D.C. 1998) (same); *NLRB* v. *Nueva Eng'g, Inc.*, 761 F.2d 961, 969 (4th Cir. 1985) ("[W] e find *Brady* inapposite and hold that the ALJ properly denied Nueva's demand for exculpatory materials.").

[32] *See* FERC Policy Statement on Disclosure of Exculpatory Materials, Docket No. PL10–1–000, 129 FERC 61,248 (Dec. 17, 2009) (FERC Policy Statement), available at *http://www.ferc.gov/whats-new/comm-meet/2009/121709/M-2.pdf.*

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from sources other than the investigative subject(s) for material that would be required to be disclosed under *Brady*. Any such materials or information that are not known to be in the subject's possession shall be provided to the subject." [33]

Similarly, the Securities and Exchange Commission (SEC) adopted a rule of practice in 1995 for its civil enforcement proceedings whereby its Division of Enforcement shall make available for inspection and copying "documents obtained by the Division prior to the institution of proceedings, in connection with the investigation leading to the Division's recommendation to institute proceedings." [34] The SEC rule permits certain documents to be withheld by the agency, including those documents that are privileged, pre-decisional or work product, a document that would identify a confidential source, or documents identified to a hearing officer as being properly withheld for good cause.[35]

However, SEC rule 201.230(b)(2) specifically states that nothing in the rule "authorizes the [SEC's] Division of Enforcement in connection with an enforcement or disciplinary proceeding to withhold, contrary to the doctrine of *Brady*, * * * documents that contain material exculpatory evidence." [36] Although the SEC has limited the application of rule 201.230 to require the "production of examination and inspection reports to circumstances where the Division of Enforcement intends to introduce the report into evidence, either in reliance on the report to prove its case, or to refresh the recollection of any witness," this limitation "does not alter the requirement that the Division produce documents containing material exculpatory evidence as required by *Brady* v. *Maryland*." [37]

As with FERC and the SEC, the Commodity Futures Trading Commission (CFTC) also provides for disclosure of certain information during the "discovery" phase of its formal adjudications.[38] In addition to a prehearing exchange of documents, identities of witnesses, and an outline of its case, the CFTC's Division of Enforcement "shall make available for inspection and copying by the respondents" certain documents.[39] These documents include all documents subpoenaed by the CFTC and all transcripts of investigative testimony and exhibits to those transcripts.[40] However, the Division of Enforcement may withhold, for example, the identity of a confidential source, confidential investigatory techniques, and other confidential information, such as trade secrets.[41] Privileged documents and information may also be withheld by CFTC's Division of Enforcement.[42]

In the case of this Commission, as a Federal agency engaged in proceedings to find liability of persons under Federal laws, whose conduct can lead to civil penalties and potentially has the reach of the criminal system, it has been the Commission's practice to provide certain types of information to respondents. The Commission is formalizing its practice to ensure effective and fair enforcement of the Act.

The Commission recognizes that *Brady* was decided in the context of a criminal proceeding and that its holding, therefore, does not extend, by its own terms, to a Federal agency civil enforcement agency proceeding. However, the Commission is empowered (a) To civilly pursue matters that may have potential criminal consequences, and (b) to engage respondents in the enforcement process, and possibly in litigation if the Commission and respondents are unable to reach a mutually acceptable voluntary conciliation agreement, where a Court may impose a civil monetary penalty, injunctive, or other relief. *See* 2 U.S.C. 437g(a)(6)(A).

The Commission has also entered into a Memorandum of Understanding with the Department of Justice (DOJ) whereby the Commission will refer certain matters to the DOJ for criminal prosecution review and whereby DOJ will refer matters to the Commission.[43] Nothing in the procedure adopted herein is intended to impact in anyway the Commission's conduct with respect to, and relationship with, the DOJ, including any agreement between the Commission and the DOJ whereby the Commission agrees not to disclose information obtained from the DOJ. The procedure adopted herein provides for mandatory withholding of information by the Office of General Counsel of any documents or information submitted to the Commission by the DOJ either pursuant to an agreement between the Commission and the DOJ or simply upon request from the DOJ not to disclose the information.[44] Moreover, the procedure adopted herein protects from disclosure not only the information submitted by the DOJ but also any information that was derived from such information, including all separate documents quoting, summarizing, or otherwise using information provided by the DOJ.[45]

Accordingly, the Constitutional and ethical principles of fairness and due process in *Brady*, as well as the procedures adopted by other Federal agencies, inform the Commission's adoption of the procedure announced today in its civil administrative enforcement process.

In summary, while the Commission does not believe that the Constitution requires the agency to institute a procedure requiring disclosure of documents and information, including exculpatory information, to respondents in its civil enforcement process, the Commission's enforcement proceedings may, in some instances, inform potential or concurrent criminal proceedings. Accordingly, adopting a formal internal procedure requiring disclosure of information to respondents will (1) Eliminate uncertainty regarding the Commission's position on this issue, (2) serve the Commission's goal of providing fairness to respondents, and (3) set forth a written procedural framework within which disclosures are made.

III. Current Disclosure Process

Before the Commission may determine that there is probable cause to believe a violation of the Act has occurred or is about to occur, the Act permits respondents to present directly to the Commission their interests and positions on the matter under review.

[33] *See* FERC Policy Statement at paragraph 9.

[34] *See* 17 CFR 201.230(a)(1) (2010), available at *http://edocket.access.gpo.gov/cfr_2010/aprqtr/pdf/17cfr201.230.pdf*.

[35] 17 CFR 201.230(b)(1).

[36] 17 CFR 201.230(b)(2).

[37] *See* Securities and Exchange Commission, Explanation and Justification: Adoption of Amendments to the Rules of Practice and Delegations of Authority of the Commission, 69 FR 13166, 13170 (Mar. 19, 2004), available at *http://www.sec.gov/rules/final/34-49412.htm*.

[38] *See* 17 CFR 10.42 (2010), available at *http://edocket.access.gpo.gov/cfr_2010/aprqtr/pdf/17cfr10.42.pdf*.

[39] *See* 17 CFR 10.42(a)(1) & (2); 17 CFR 10.42(b)(1).

[40] *Id. See also In re First National Monetary Corp.*, Opinion and Order, CFTC No. 79-56, CFTC No. 79-57 (Nov. 13, 1981) (Any material * * * known to the Division of Enforcement, or which by the exercise of due diligence may become known to the Division, that is arguably exculpatory and material to guilt or punishment within the meaning of *Brady* [and its progeny] should be either provided to respondent directly, or provided to the [ALJ], for his determination as to whether it is productible [sic] or not).

[41] 17 CFR 10.42(b)(2).

[42] 17 CFR 10.42(b)(3).

[43] *See* Department of Justice and Federal Election Commission, *Memorandum of Understanding*, 43 F 5441 (Feb. 8, 1978).

[44] *See* Updated Formal Procedure at paragraph (b)(1)(v), below.

[45] *Id.*

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The Commission's General Counsel shall notify respondents prior to any recommendation to the Commission by the General Counsel to proceed to a vote on probable cause.[46] Included in this notification is a written brief stating the position of the General Counsel on the legal and factual issues of the case to which respondents may reply.[47] This allows the Commission to be informed not only by the recommendations of its General Counsel, but also by the factual presentations and legal arguments of respondents. By requirement of the Act, or by its discretion, the Commission has similar procedures at various stages of the enforcement process to keep the Commissioners informed both by its staff and by respondents.

In addition, while the Commission may attempt to conciliate matters with respondents at any time, the Act requires the Commission to attempt conciliation after it finds probable cause.[48] If the Commission determines that there is probable cause, the Act requires that, for a period of at least 30 day (or at least 15 days, if the probable cause determination occurs within 45 days of an election), the Commission must attempt to correct or prevent the violation through conference, conciliation, and persuasion.[49]

The General Counsel provides a probable cause brief to respondents presenting OGC's analysis of the information and may address any available exculpatory evidence. The Commission's current practice at the probable cause stage has generally been to provide respondents, upon request, with information cited or relied upon (whether or not cited) in the General Counsel's probable cause brief. Where possible, this has included documents containing the information upon which OGC is relying to support its recommendation to the Commission that there is probable cause to believe a violation of the Act has occurred. This production of documents is subject to all applicable privileges and confidentiality considerations, including the confidentiality provisions of the Act. Where such considerations apply, OGC has generally provided only the relevant information derived from the document, and not the document itself. Examples of the types of documents OGC has provided at this stage are deposition transcripts, responses to formal discovery, and documents obtained in response to requests for documents. In instances where OGC obtains factual information from a source other than the respondent that tends to exculpate the respondent, OGC may note the existence of the information in its brief, particularly if OGC does not know whether a respondent is already aware of the information.[50] In instances where OGC provides mitigating or exculpatory information, OGC provides any documents cited to in connection with that information, such production is also subject to the same privilege and confidentiality concerns noted above.

In two limited instances, OGC may provide information to respondents earlier than the probable cause stage in the enforcement process. First, pursuant to the Commission's Statement of Policy Regarding Deposition Transcriptions in Nonpublic Investigations, all deponents, including respondent deponents, may obtain a copy of the transcript of their own deposition, including any exhibits that may have been obtained from sources other than the respondent, provided there is no good cause to limit the deponent's access to the transcript.[51] Second, OGC may share information, including documents, with respondents during the post-investigative pre-probable cause conciliation process to assist in explaining the factual basis for a violation. That information may include documents not already in the respondent's possession. This practice is used solely for the purpose of facilitating conciliation.

As the current practice has demonstrated, the Commission's probable cause considerations and subsequent conciliation efforts are furthered when, in presenting their respective positions, respondents have the greatest practicable access to documents and information gathered by the agency, including certain information that might be favorable to the respondent. This allows both the Commission's Office of General Counsel and the respondents that are under investigation to present fully informed submissions and frame legal issues for the Commission's consideration.

At the same time, however, the Act and other laws restrict information that the Commission may make public without the consent of persons under investigation.[52] Investigations that involve multiple respondents, each of whom may be at different stages of the enforcement process, raise questions as to what documents and information the Commission may disclose to any given respondent before determining probable cause.

The procedure adopted herein is not intended to expand the disclosure of information regarding a co-respondent as to any such information that is subject to existing confidentiality requirements under the Act. In order to reconcile the Commission's interests in permitting respondents to present fully their positions without compromising the Commission's confidentiality obligations, the Commission is formalizing its procedure. This agency procedure clarifies how the Commission will, consistent with the confidentiality provisions of 2 U.S.C. 437g(A)(12), enhance its enforcement process by permitting increased access to documents and information held by the Commission.

This procedure will allow efficient, fair and just resolution of issues regarding disclosure of exculpatory information and avoid unnecessary consumption of respondent and Commission staff resources in future proceedings.

IV. The Updated Formal Procedure

The Commission is formalizing its agency procedure to provide respondents in enforcement proceedings with relevant information ascertained by the Commission as the result of an investigation. The Commission believes that, while not mandated by the Constitution, the principle of *Brady*, and its judicial progeny, should apply following investigations conducted under Section 437g of the Act and Subpart A of Part 111 of the Commission's regulations.[53]

The Commission believes that formalizing the procedure will promote fairness in the Commission's Section 437g enforcement process. The Commission also believes the procedure articulated in this Notice will promote administrative efficiency and certainty, and will contribute to the Commission's goal of open, fair and just investigations and enforcement proceedings.

For purposes of this procedure, the term "documents" includes writings, drawings, graphs, charts, photographs, recordings and other data compilations, including data stored by computer, from which information can be obtained.

[46] *See* 2 U.S.C. 437g(a)(3).

[47] *See* 2 U.S.C. 437g(a)(3); *see also* 11 CFR 111.16.

[48] *See* 2 U.S.C. 437g(a)(4).

[49] *Id.*

[50] When advising the Commission on whether OGC intends either to proceed with its probable cause recommendation or to withdraw the recommendation, OGC will also provide and discuss the potentially exculpatory evidence, as well as any available mitigating evidence. *See* 11 CFR 111.16(d).

[51] *See Statement of Policy Regarding Deposition Transcriptions in Nonpublic Investigations*, 68 FR 50688 (Aug. 22, 2003), available at *http://www.fec.gov/agenda/agendas2003/notice2003-15/fr68n163p50688.pdf.*

[52] *See, e.g.*, 2 U.S.C. 437g(a)(4)(B)(i) and (a)(12).

[53] *See generally* 2 U.S.C. 437g and 11 CFR part 111.

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For purposes of this procedure, the term "exculpatory information" means information gathered by the Office of General Counsel in its investigation, not reasonably knowable by the respondent, that is relevant to a possible violation of the Act or the Commission's regulations, under investigation by the Commission and that may tend to favor the respondent in defense of violations alleged or which would be relevant to the mitigation of the amount of any civil penalty resulting from a finding of such a violation by a court.

The procedure is as follows:

(a) Documents To Be Produced or Made Available

(1) Subject to paragraphs (b) through (e) of this procedure, and unless otherwise directed by the Commission, by an affirmative vote of four or more Commissioners,[54] the Office of General Counsel shall make available to a respondent all relevant documents gathered by the Office of General Counsel in its investigation, not publicly available and not already in the possession of the respondent, in connection with its investigation of allegations against the respondent. This includes any documents that contain exculpatory information, as defined herein. This shall not include any documents created internally by a Commissioner or by a member of a Commissioner's staff. This shall be done either by producing copies in electronic format or permitting inspection and copying of such documents. The documents covered by this procedure shall include:

(i) Documents, not in possession of a respondent, turned over in response to any subpoenas or other requests, written or otherwise;

(ii) All deposition transcripts and deposition transcript exhibits; and

(iii) Any other documents, not otherwise publicly available and not in possession of a respondent, gathered by the Commission from sources outside the Commission.

(2) Nothing in this paragraph (a) shall limit the authority of the Commission, by an affirmative vote of four or more Commissioners, to make available or withhold any other document, or shall limit the capacity of a respondent to seek access to, or production of, a document through timely written requests to the Commission subsequent to the production of documents pursuant to paragraph (d) below. If respondent submits such a written request, respondent must, if requested to do so by the Commission, sign a tolling agreement for the time necessary to resolve the request.

(3) Nothing in this procedure requires the Office of General Counsel to conduct any search for materials other than those it receives in the course of its investigatory activities. This procedure does not require staff to conduct any search for exculpatory materials that may be found in the offices of other agencies or elsewhere.

(b) Documents That May Be Withheld

(1) Unless otherwise determined by the Commission, as provided in subparagraph (2) below, the Office of General Counsel shall withhold a document or a category of documents from a respondent if:

(i) The document contains privileged information, such as, but not limited to, attorney-client communications, attorney-work product, staff-work product or work product subject to the deliberative process privilege; provided, however, if the document contains only a portion of material that should not be disclosed, if possible to do so effectively, the Office of General Counsel shall excise or redact from such document any information that prevents disclosure if the remaining portion is informative and otherwise qualifies for disclosure as provided herein, prior to disclosing the document or information contained therein;

(ii) The document or category of documents is determined by the General Counsel to be not relevant to the subject matter of the proceeding;

(iii) The Commission is prevented by law or regulation from disclosing the information or documents, including, under certain circumstances, information obtained from, or regarding, co-respondents;[55]

(iv) The document contains information only a portion of which prevents disclosure as provided herein, and that portion cannot be excised or redacted without affecting the main import of the document; or

(v) The Commission obtained the information or documents from the Department of Justice or another government entity, either pursuant to a written agreement with the Department of Justice, or the other government entity, not to disclose the information, documents or category of documents or upon written request from the Department of Justice, or the other government entity. Withholding any such information obtained from the Department of Justice also includes withholding any information that was derived from such information, including all separate documents quoting, summarizing, or otherwise using information provided by the other government entity.

(2) For any document withheld by the General Counsel pursuant to subparagraphs (1)(i)–(1)(iv) above, the Commission may, pursuant to a timely written request by the respondent or otherwise, consider whether to make available such document and, after consideration of relevant law and regulation, by an affirmative vote of four or more Commissioners, may determine, consistent with relevant law and regulation, whether or not it is appropriate to produce such document. If respondent submits such a written request, it must be within 15 days of the Commission's production of documents and respondent must, if requested to do so by the Commission, sign a tolling agreement for the time necessary to resolve the request.

(3) For any document withheld by the General Counsel pursuant to a written agreement with, or written request from, the Department of Justice or the other government entity under subparagraph (1)(v) above, the General Counsel shall provide a report to the Commission identifying the documents and information that has been withheld and providing the Commission with a copy of the written agreement with, or request from, the Department of Justice or the other government entity.

(c) Withheld Document List

(1) Within ten business days of receipt of documents disclosed pursuant to paragraph (d) below, a respondent may request in writing that the Commission direct the General Counsel to produce to the respondent a list of documents or categories of documents withheld pursuant to paragraph (b)(1) of this procedure. If respondent submits such a written request, respondent must sign a tolling agreement for the time necessary, not to exceed 60 days, for the General Counsel to provide the list of documents, unless the Commission, by an affirmative vote of four or more Commissioners, determines that a tolling agreement is not required. Requests for a list of documents or categories of documents shall be granted, unless the Commission, by an

[54] In any instance in which the Office of General Counsel has concerns that disclosure of information pursuant to this procedure would lead to a result that is materially inconsistent with either the Commission's administrative responsibilities or with the promotion of fairness and efficiency in the Commission's enforcement process, the Office of General Counsel may seek formal guidance from the Commission on how it should proceed.

[55] *See* paragraph (e) of this procedure addresses issues regarding documents and information that may be subject to confidentiality pursuant to sections 437g(a)(4)(B)(i) and 437g(a)(12) of the Act. 2 U.S.C. 437g(a)(4)(B)(i) and 437g(a)(12).

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affirmative vote of four or more Commissioners, denies the request, in whole or in part. Once the Commission has voted upon the written request, respondent may not seek reconsideration of that decision.

(2) When similar documents are withheld pursuant to paragraph (b)(1), those documents may be identified by category instead of by individual document.

(d) Timing of Production or Inspection and Copying

(1) The disclosure of documents and information referenced herein shall be made pursuant to a timely written request by the respondent filed within fifteen days of the dates specified in subparagraphs (i) and (ii) below, and subject to paragraph (e), or unless otherwise determined by the Commission by an affirmative vote of four or more Commissioners. The General Counsel shall produce in electronic format, or commence making documents available to a respondent for inspection and copying pursuant to this procedure, at the earlier of the following:

(i) The date of the General Counsel's notification to a respondent of a recommendation to the Commission to proceed to a vote on probable cause; or

(ii) No later than seven days after certification of a vote by the Commission to conciliate with a respondent.

(e) Issues Respecting Documents Provided by, or Relating to, Co-respondents

(1) If there is more than one respondent that is under investigation in the same matter, or in related matters, before the General Counsel may produce documents, other than exculpatory information or documents cited or relied on in the General Counsel's brief that accompanies its notice of a recommendation to vote on probable cause, to one co-respondent that either (a) have been provided to the Commission by another co-respondent or (b) that relate to another co-respondent, the General Counsel must obtain a confidentiality waiver from the co-respondent who provided the document or about whom the document relates. Additionally, the respondent receiving such documents may be required to sign a nondisclosure agreement to keep confidential any document or information it obtains from the Commission.

(2) If the co-respondent who provided the document or about whom the document relates does not agree to provide a confidentiality waiver, the General Counsel shall, if it is possible to do so effectively, in accordance with 2 U.S.C. 437g(a)(4)(B)(i) and 437g(a)(12), summarize or redact those portions of the document or documents that are subject to confidentiality under the Act, or are determined to be in the category of documents to be withheld under paragraph (b) in order to remove that portion of material that may not be disclosed.

(3) If the co-respondent who provided the document or about whom the document relates does not agree to provide a confidentiality waiver and it is not possible to effectively summarize or redact those portions of the document or documents that are subject to confidentiality, the General Counsel shall seek direction from the Commission, by an affirmative vote of four or more Commissioners, regarding how to balance the competing concerns of disclosure and confidentiality. In any event, the General Counsel shall produce complete or appropriately redacted copies of those documents cited or relied on in the brief that accompanies its notice of a recommendation to vote on probable cause, whether or not the documents have been specifically identified in the brief.

(4) If the confidentiality issue cannot be resolved with respect to a co-respondent (*e.g.*, lack of waiver, ineffective redaction, *etc.*), the General Counsel may, in an appropriate case make a recommendation to the Commission for segregation of the matters under review.

(5) If any document or information provided to the Commission by a one co-respondent contains exculpatory information, or is cited or relied on in the General Counsel's brief that accompanies its notice of a recommendation to vote on probable cause for another co-respondent, that information or document will be provided to the other co-respondent, which shall be subject to the same redactions described in paragraph (b)(1)(i).

(6) Before disclosing any portion of the document that raises an unresolved confidentiality issue, the General Counsel shall seek a determination by the Commission, by an affirmative vote of four or more Commissioners, that disclosure of a document containing exculpatory information (redacted, summarized, or in any other way altered) conforms to the confidentiality provisions of 2 U.S.C. 437g(a)(4)(B)(i) and 437g(a)(12).

(f) Place of Inspection and Copying Costs and Procedures

(1) Documents subject to inspection and copying pursuant to this procedure shall be made available to the respondent for inspection and copying at the Commission's office, or at such other place as the Commission, in writing, may agree. A respondent shall not be given custody of the documents or leave to remove the documents from the Commission's offices pursuant to the requirements of this procedure unless formal written approval is provided by an affirmative vote of four or more Commissioners.

(2) The respondent may obtain a photocopy of any documents made available for inspection. The respondent is responsible for all costs related to photocopying of any documents.

(g) Continuing Obligation To Produce During Conciliation

(1) If, prior to the completion of an investigation, the Commission votes to enter into conciliation, the General Counsel shall take reasonable and appropriate steps to limit any further formal investigation related to that respondent, so long as the respondent enters into a tolling agreement of the applicable statute of limitation. If there is no such tolling agreement, the formal investigation and conciliation may take place simultaneously. The tolling agreement must have a specific time for its duration approved by the Commission, by an affirmative vote of four or more Commissioners, and shall not be open-ended. If there is more than one respondent under investigation in the same matter, or in related matters, and the Commission votes to enter into conciliation with one or more respondents prior to the completion of a formal investigation, the General Counsel shall take reasonable and appropriate steps to limit any further formal investigation as to those respondents in conciliation, so long as the respondents enter into a tolling agreement of the applicable statute of limitation. If the Commission receives documents in the course of the formal investigation as to respondents not in conciliation that would otherwise be required to be produced under this procedure during such investigation, the Commission shall promptly produce them to the respondent in conciliation pursuant to this procedure.

(2) If the Commission receives documents during such conciliation, from whatever source, the General Counsel shall within a reasonable period of time inform the respondent of any documents obtained that would

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otherwise be required to be produced under this procedure, and as to such documents, the General Counsel shall timely produce them to the respondent, consistent with the statutory confidentiality provision preventing disclosure of any information derived in connection with conciliation attempts. 2 U.S.C. 437g(a)(4)(B).

V. Failure To Produce Documents as Required Herein—Remedies and Consequences

In the event that a document required to be made available to a respondent pursuant to this procedure is not made available, no reconsideration by the Commission is required, unless the Commission concludes, by an affirmative vote of four or more Commissioners, that there is a reasonable likelihood that the decision of the Commission or result of the conciliation would have been different than the one made had such disclosure taken place. Any failure by the Commission to make a document available does not create any rights for a respondent to seek judicial review, nor any right for a defendant in litigation to request or receive a dismissal or remand or any other judicial remedy. A respondent may not request reconsideration by the Commission more than ten days after the conclusion of conciliation.

VI. Consequences of Disclosure

Disclosure of documents pursuant to this procedure is not an admission by the Commission that the information or document exculpates or mitigates respondent's liability for potential violations of the Act.

VII. Applicability During Civil Litigation

In any civil litigation with the respondent, the discovery rules of the court in which the matter is pending, and any order made by that court, shall govern the obligations of the Commission. The intention of the Commission is for this procedure to serve as internal guidance only and the procedure adopted herein does not create any rights that are reviewable or enforceable in any court.

VIII. Annual Review

No later than June 1 of each year, the General Counsel shall prepare and distribute to the Commission a report describing the application of the procedure adopted herein over the previous year. This annual report shall include the General Counsel's assessment of whether, and to what extent, the procedure has provided an appropriate balance between the Commission's interest in providing respondents with relevant documents and information and the confidentiality provisions of the Act, consistent with the Commission's goal of maintaining open, fair and just investigations and enforcement proceedings, along with any recommendations from the General Counsel regarding how the Commission could better accomplish that goal.

IX. Conclusion

Failure to adhere to this procedure does not create a jurisdictional bar for the Commission to pursue all remedies to correct or prevent a violation of the Act.

This notice establishes an internal agency procedure for disclosing to respondents documents and information acquired by the agency during its investigations in the enforcement process. This procedure sets forth the Commission's intentions concerning the exercise of its discretion in its enforcement program. However, the Commission retains that discretion and will exercise it as appropriate with respect to the facts and circumstances of each enforcement matter it considers. Consequently, this procedure does not bind the Commission or any member of the general public, not does it create any rights for respondents or third parties. As such, this notice does not constitute an agency regulation requiring notice of proposed rulemaking, opportunities for public participation, prior publication, and delay effective under 5 U.S.C. 553 of the Administrative Procedure Act (APA). The provisions of the Regulatory Flexibility Act, 5 U.S.C. 605(b), which apply when notice and comment are required by the APA or another statute, are not applicable.

On behalf of the Commission.

Dated: June 2, 2011.

Caroline C. Hunter,

Vice Chair, Federal Election Commission.

[FR Doc. 2011–14096 Filed 6–14–11; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*http://www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov*.

Agreement No.: 012093–001.

Title: CSAV/K-Line Space Charter and Sailing Agreement.

Parties: Compania Sud Americana de Vapores and Kawasaki Kisen Kaisha, Ltd.

Filing Parties: Walter H. Lion, Esq.; McLaughlin & Stern, LLP; 260 Madison Avenue; New York, NY 10016.

Synopsis: The amendment adds Greece to the geographic scope of the Agreement and changes the Agreement's name.

Agreement No.: 201211.

Title: Marine Terminal Lease and Operating Agreement between Broward County and H.T. Shipping, Inc., and Hybur Ltd.

Parties: Broward County; H.T. Shipping, Inc.; and Hybur Ltd.

Filing Party: Candace J. Running; Broward County Board of County Commissioners; Office of the County Attorney; 1850 Eller Drive, Suite 502; Fort Lauderdale, FL 33316.

Synopsis: The agreement provides for the lease and operation of terminal facilities at Port Everglades, Florida.

By Order of the Federal Maritime Commission.

Dated: June 10, 2011.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2011–14836 Filed 6–14–11; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for a license as a Non-Vessel-Operating Common Carrier (NVO) and/or Ocean Freight Forwarder (OFF)—Ocean Transportation Intermediary (OTI) pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. chapter 409 and 46 CFR 515). Notice is also hereby given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a license.

Interested persons may contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573, by telephone at (202) 523–5843 or by e-mail at *OTI@fmc.gov*.

Allround Forwarding Co., Inc. (NVO & OFF), 134 West 26th Street, New

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National (Overseas) (BN(O)) passport with a Hong Kong identification card.

(B) *Taiwan.* To be eligible to participate in the program as a result of a connection to Taiwan, one must be a resident of Taiwan who begins his or her travel in Taiwan and who travels on direct flights from Taiwan to Guam or the CNMI without an intermediate layover or stop, except that the flights may stop in a territory of the United States en route.

* * * * *

Dated: March 16, 2011.

Janet Napolitano,

Secretary.

[FR Doc. 2011–6555 Filed 3–22–11; 8:45 am]

BILLING CODE 9111–14–P

FEDERAL ELECTION COMMISSION

11 CFR Part 110

[Notice 2011–02]

Interpretive Rule Regarding Electronic Contributor Redesignations

AGENCY: Federal Election Commission.

ACTION: Notice of interpretive rule.

SUMMARY: Commission regulations require that a contributor's redesignation of a contribution for another election be in writing and signed by the contributor. The Commission construes the requirements of 11 CFR 110.1(b)(5) and 110.2(b)(5) to encompass a certain method of electronic redesignation. The method of electronic redesignation is described in the supplementary information below.

DATES: This Interpretive Rule is effective March 23, 2011.

FOR FURTHER INFORMATION CONTACT: Allison T. Steinle, Attorney, Office of General Counsel, 999 E Street, NW., Washington, DC 20463 (202) 694–1000 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: Commission regulations require that a contributor's redesignation of a contribution for another election be in writing and be signed by the contributor. 11 CFR 110.1(b)(5) and 110.2(b)(5). The Commission, however, recognizes that it should interpret the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. 431 *et seq.* ("the Act") and its regulations "consistent with contemporary technological innovations * * * where such technology would not compromise the intent of the Act and regulations." Advisory Opinion 1999–09 (Bradley for President); *see also* Advisory Opinions 2007–30 (Dodd); 2007–17 (DSCC); 1999–36 (Campaign Advantage); 1999–03 (Microsoft PAC); 1995–09 (NewtWatch).

During the course of an audit, the Commission recently determined that a specific redesignation practice provided the same degree of assurance of the contributor's identity and the contributor's intent to redesignate the contribution as a handwritten signature. Accordingly, the Commission determined that the practice met the *requirements of 11 CFR 110.1(b)(5).* The Commission believes it is important to inform the public, including political committees and their treasurers, of this determination.

The specific method approved by the Commission worked in the following manner: The political committee informed contributors through postal mail, with a follow-up e-mail, that, by visiting a Web site printed in the letter or by clicking on a link in the e-mail message that directed contributors to the Web site, they could redesignate their contributions to the candidate's other authorized committee if they wished to do so. Contributors were also informed that if they did not redesignate their contributions, they would then receive refunds automatically. Contributors who visited the Web site were asked to fill out an electronic form affirmatively authorizing the redesignation and verifying their identity by entering their personal information, including first and last name, address, phone number, e-mail address, occupation, and name of employer. Upon completing the form, contributors received a "receipt record," thanking them for their redesignation. The political committee also retained a record of each electronic redesignation in a database, including the personal information provided by each contributor making a redesignation, in a manner consistent with the recordkeeping requirements for signed written redesignations under 11 CFR 110.1(l). The Commission concluded that this process provided assurance of contributor identity and intent equivalent to a written signature.

Accordingly, the Commission construes the written signature requirements of 11 CFR 110.1(b)(5) and 110.2(b)(5) to encompass the method of electronic redesignation described above. Because the specific method approved by the Commission requires the contributor to provide personal information that can be verified against a committee's records, it provides a level of assurance as to the contributor's identity and intent comparable to that of a written signature. *See* Explanation and Justification for Final Rules on Contribution Limitations and Prohibitions, 67 FR 69928, 69934 (Nov. 19, 2002) (*Commission declined to* eliminate the written signature requirement for contributor redesignations).

The Commission encourages the use of innovations in technology to effectuate electronic redesignations. In that light, committees are advised that the Commission will consider other methods of electronic redesignation not explicitly addressed in this interpretive rule, provided that they offer a sufficient degree of assurance of the contributor's identity and the contributor's intent to redesignate. Unless and until the Commission initiates a rulemaking on this issue, such consideration may be provided on a case-by-case basis, including but not limited to the Commission's advisory opinion process or requests for Commission consideration of legal questions. *See* 2 U.S.C. 437f; 11 CFR part 112; Policy Statement Establishing a Pilot Program for Requesting Consideration of Legal Questions by the Commission, 75 FR 42088 (July 20, 2010). Committees are also advised that this interpretive rule does not alter or affect the timing or recordkeeping requirements of 11 CFR 110.1 or 110.2.

This **Federal Register** notice represents an interpretive rule announcing the general course of action that the Commission intends to follow. This interpretive rule does not constitute an agency rule requiring notice of proposed rulemaking, opportunities for public participation, prior publication, and delay in effective date under 5 U.S.C. 553 of the Administrative Procedure Act ("APA"). As such, it does not bind the Commission or any members of the general public, or create or remove any rights, duties, etc. The provisions of the Regulatory Flexibility Act, which apply when notice and comment are required by the APA or another statute, are not applicable. *See* 5 U.S.C. 603(a).

Dated: March 16, 2011.

On behalf of the Commission.

Cynthia L. Bauerly,

Chair, Federal Election Commission.

[FR Doc. 2011–6756 Filed 3–22–11; 8:45 am]

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Jeff Jordan/FEC/US
03/14/2011 03:00 PM

To Enforcement Staff
cc Cynthia Myers/FEC/US@FEC, Kathryn Ross/FEC/US@FEC, Nora Wheatley-Mejia/FEC/US@FEC, Donna Doy/FEC/US@FEC, Leroy Rhinehart/FEC/US@FEC,
bcc
Subject Very Important - Sunshine Forms

Hello All:

Please note that some of the circulations to the Commission Secretary's Office have had portions of the **Sunshine** form either not filled out or filled out incorrectly. Please remember to place the proper MUR number on the form and check the appropriate blank on the form (generally this will be the first one dealing with "confidential" compliance matters under 437g).

If you have any questions, please see your team's secretary or contact me.

Thanks,

Jeff
X1552

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ENFORCEMENT PROCEDURE 2011-1

Link to WIKIPAGE:
http://fecas049/FECLiveprd/llisapi.dll?func=ll&objId=954229&objAction=WikiView&vernum=16

Witness Travel Arrangements and Expense Reimbursement

The FEC is obligated to pay certain expenses of, and fees to, witnesses subpoenaed to testify in FEC depositions. Below is a list of the categories that the FEC must pay, followed by the process for arranging the payment of these items, and a link to a template letter to a witness or their attorney that explains the covered expenses, process, and forms the witness must complete. This letter would ideally be sent with the subpoena. Doing so may help to avoid the witness assuming that they must pay the costs of compliance with the subpoena and, for that reason, being more hostile. If the information is provided too late, the witness may already have made their own airline reservations, thereby incurring cancellation fees when those reservations are cancelled to allow the FEC to pay the costs using approved airlines. Regardless of whether the witness is cooperative or antagonistic, they should be treated appropriately, and neglecting any witness's interests is unlikely to further the goals of the deposition.

I. Categories of Expenses and Fees

A. Airfare: FEC arranges on government contracted carriers

B. Lodging: Witness is responsible for making arrangements. FEC will reimburse up to the maximum government rate which varies by city and season.
http://www.gsa.gov/portal/category/100120

C. Meals and Incidental Expenses: Reimbursement per diem set by GSA for dates of stay. Individuals receive 75% of per diem for the first and last day of travel. Per diems vary per city and can be found at the GSA website
http://www.gsa.gov/portal/content/101518

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D. Witness Fee: Pursuant to 11 C.F.R. § 111.14, a witness fee that, as of April 14, 2011, is $40.00 per each days attendance as a witness.

E. Mileage: Personal vehicles may be used when advantageous to the government. The rate for privately owned vehicle (POV) reimbursement rate is $0.51. as of January 1, 2011 http://www.gsa.gov/portal/content/100715

II. Process

A. As soon as you know the date for the deposition submit the cost estimate memo to the Special Assistant to the General Counsel for the deposition. (Please submit at least 7 working days prior to deposition) [SAMPLE MEMO- to be updated]

B. Either at the time the subpoena is issued or shortly after, communicate with the witness (or counsel, if the witness is represented) about the options and what must be done. A sample letter and relevant forms can be found below.

C. The witness completes the forms and submits them to the attorney's secretary.

D. The secretary processes the travel authorization and books the air reservations, after travel authorization number given by finance department. Itinerary/confirmation sent to witness.

Travel Authorization Form GSA 87.pdf

E. After the witness testifies and incurs expenses, the witness submits supporting receipts for reimbursement to the secretary.

F. Secretary prepares travel voucher (expense report) and sends to witness for review and signature.

G. Witness reviews and signs travel voucher, which must be returned within five days of travel.

H. Witness is reimbursed for expenses and paid the witness fee by electronic funds transfer.

III. Sample Letter and Forms

A. Witness Travel Information Letter: Witness-Invitational Travel Letter 2010 revised 4-26-11.doc

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

B. Attachments to the Witness Travel Information Letter:

1. Electronic Version of Witness Travel Information Form: Witness-Invitational Travel Form.doc

2. PDF Set of Attachments to Witness Travel Expense Information Letter: Witness Documents.pdf

Witness Travel Information Form;

Automated Clearing House (ACH) Payment Enrollment Form

C. Travel Voucher Form (expense report) [Completed by Secretary/Signed by AGC (Approving Official)]: Travel Voucher form 1012 (GSA).pdf

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2010

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Jeff Jordan/FEC/US
07/14/2010 03:15 PM

To Enforcement Staff
cc Gregory Baker/FEC/US@FEC, Leroy Rhinehart/FEC/US@FEC, Kim Collins/FEC/US@FEC, Charnika Miles/FEC/US@FEC, Frankie
bcc
Subject Enforcement Staff Responsibilities - Receipt of Hand Delivery , FAX , or E-mail Documents

Friendly Reminder #2:

ALL "incoming" mail MUST be logged in with the receptionist on the 6th floor - NO EXCEPTIONS!! Thus, even if you have received a document from a respondent by "hand delivery", "e-mail" or "FAX", it must go to the receptionist before it comes to CELA for distribution. Obviously, the document must be printed out and forwarded to the receptionist if it arrives in electronic format. We have noted in previous e-mails the importance of following this procedure. We are again asking each of you to examine your cases in order to determine whether there are any documents that appear as though they have not been processed through CELA (e.g., missing an OGC received date stamp).

If you have any questions, please see Curtis or Charnika.

Thank you for your continued cooperation.

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ENFORCEMENT PROCEDURE 2010-5

Via EMAIL

FROM: Kathleen Guith
DATE: May 4, 2010
TO: Enforcement Staff
SUBJECT: REMINDER—Civil Monetary Penalties Inflation Adjustments

As we work our way through 2010, it will become more likely that the adjusted civil penalty amounts (reflecting COLA increases) that became effective last year will apply to activity in your cases. So, as a reminder, on July 1, 2009, the Commission published "Civil Monetary Penalties Inflation Adjustments" in the Federal Register. **Effective July 1, 2009**, new civil penalty amounts are applicable to **violations that occur after this effective date**, as follows:

1) 11 CFR 111.24(a)(1) Non-knowing and willful violations
The statutory maximum civil penalty amount under section 437g(a)(5)(A), (6)(A) and (6)(B) is **increased to $7,500 (non-knowing and willful)**

2) 11 CFR 111.24(a)(2)(i) Knowing and Willful Violations
The statutory maximum civil penalty amount under section 437g(a)(5)(B) and (6)(C) is **increased to $16,000 (knowing and willful).**

3) 11 CFR 111.24(a)(2)(ii) Knowing and Willful Contributions Made In the Name of Another
The statutory maximum civil penalty amount under section 437g(a)(5)(B) and (6)(C) for violations of section 441f **is increased to $60,000 (441f violations).**

4) 11 CFR 111.24(b) Violations of Confidentiality
The statutory maximum civil penalty amount under section 437g(a)(12)(B), is **increased to $7,500 for knowing and willful violations of confidentiality, and is increased to $3,200 for non-knowing and willful violations of confidentiality.**

If you have any cases that did or will include a statutory penalty amount for activity that occurred after July 1, 2009, please let your team leader know. Thanks.

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

ENFORCEMENT PROCEDURE 2010-4

SUBJECT: Statement of Reasons/Closing Letters/F&LAs

This new procedures were contained in the Memorandum to the Commission dated November 1, 2010 re: Status of Enforcement FY 2010 (10/1/2009- 9/30/2010)

We also wanted to highlight three new enforcement procedures which are designed to address recent concerns regarding the timing of the drafting of Statement of Reasons ("SORs") and the issuance of closing letters. First, when an SOR is required because a majority of Commissioners voted against adopting an OGC recommendation to take further action, OGC will complete the draft SOR and provide it to CELA for transmission to the Secretary's Office for circulation within **ten business days** of the Commission's vote. If the deadline of ten business days cannot be met due to some extraordinary circumstance, OGC will, by the tenth day, send an email to the office of the intended signatories informing them of the delay and providing a projected date of circulation to the Commission.

Second, OGC will send closing letters to Respondents and Complainants within two business days of receipt of the final certification formalizing the Commission vote. In the ordinary case, this timeframe will provide us with an opportunity to resolve any issues resulting either from the substance of the matter or staffing constraints. For matters requiring an SOR, or matters where the Commission indicates during the Executive Session that it intends to close a matter but requests modifications to the Factual &Legal Analysis ("F&LA") which require circulation of a revised F&LA, OGC will send the closing letters within the normal 2 day timeframe and forward the F&LA or SOR to the parties upon completion. In instances where the Commission, at an Executive Session, agrees to straightforward modifications to an F&LA that do not require recirculation of the F&LA, the closing letter will include the approved F&LA.

Finally, in an effort to ensure that closing packages are received by Complainants and Respondents as soon as possible, if OGC has a fax number or email address for the Complainants or Respondents, a courtesy copy of the package will be emailed as a .pdf attachment or faxed on the day the letter is mailed via First Class mail.

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

ENFORCEMENT PROCEDURE 2010-3

Ann Marie Terzaken/FEC/US
06/18/2010 11:06 AM

To Enforcement Staff
cc CELA Staff
bcc

Subject Voting Ballot Documents

After a report circulates and CELA or you imports case documents into the voting ballot folder, it would be helpful to the 9th floor if the attorney or paralegal handling the matter review the folder and reorganize or relabel the case documents so that they are easy to find. For example, it is helpful to have the documents labeled in the folder the same way they are labeled in the report. Also, it may be helpful to organize documents by type of document or, in instances where a case has had multiple reports, by report number. Thanks in advance for your cooperation.

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

ENFORCEMENT PROCEDURE 2010-2

Ann Marie Terzaken/FEC/US
03/30/2010 04:52 PM

To Enforcement Staff
cc
bcc

Subject Fw: RAD referral FGCRs

A little more guidance on FGCRs that involve RAD referrals. This guidance will also apply to Audit referrals and external complaints that allege violations that would benefit from a RAD or Audit Review, such as allegations relating to disclosure problems that have been the subject of RFAIs or violations that are the subject or were the subject of an audit.
For FGCRs that fall into these categories, it would be helpful to us and to RAD/Audit if we send our draft FGCR to our RAD/Audit colleagues before we circulate the report to the Commission in order to ensure that we have as complete and accurate a report as possible. In carrying out this protocol, please keep a few things in mind.

1) Please consult with RAD and Audit, as necessary, on the background and issues in your matter before you begin drafting the FGCR. You should try to do this early in your process to help inform your post-case activation memo and case discussions.

2) Please consult your team leader on whether (always when it's a referral) and when to send your report to RAD or Audit for review.

3) When possible, give RAD or Audit at least 3 business days prior to circulation to review the report.

4) If you provided RAD or Audit with an early draft that has since undergone significant changes, please make sure they receive a courtesy copy of the final before circulation and let them know when you expect to circulate it. If an early draft has not undergone significant changes, please nevertheless send them a courtesy copy of the final so that they are aware that the report is about to circulate.

5) When you send the report to RAD, please send it to the relevant Branch Chief (currently Madelynn Lane or Andy Dodson) and cc the head of RAD (currently Debbie Chacona).

Thank you in advance for your help on this.

----- Forwarded by Ann Marie Terzaken/FEC/US on 03/30/2010 04:29 PM -----

Ann Marie Terzaken/FEC/US
03/25/201 05:36 PM

Just a quick reminder when you have a RAD referral to send our FGCRs to RAD for review before circulation.

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

ENFORCEMENT PROCEDURE 2010-1

Ann Marie Terzaken/FEC/US
01/08/2010 04:57 PM

To Enforcement Staff
cc Gregory Baker/FEC/US@FEC, Jeff Jordan/FEC/US@FEC
bcc

Subject Complaint Summaries

To assist our acceleration of SOL-sensitive matters, it would be helpful if the attorney assigned to a particular complaint summary note the SOL-sensitive nature of the complaint (SOL within 12 months) in the summary and separately advise Jeff. CELA will do its best to flag these cases when they come in the door, but this added step will be helpful too to ensuring SOL-sensitive cases are identified timely. To help you remember this extra step, I will ask CELA to include a separate SOL sheet with the complaint they send to you.

Thank you!

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Guidebook for Complainants and Respondents on the FEC Enforcement Process

Federal Election Commission
December 2009

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ABBREVIATIONS

ADR	Alternative Dispute Resolution
ADRO	Alternative Dispute Resolution Office
CELA	(Office of) Complaints Examination and Legal Administration
DOJ	Department of Justice
FEC	Federal Election Commission
FECA	Federal Election Campaign Act
MUR	Matter Under Review
OAR	Office of Administrative Review
OGC	Office of General Counsel
PCTB	Probable Cause to Believe
RAD	Reports Analysis Division
RTB	Reason to Believe

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I. INTRODUCTION

The purpose of this guidebook is to assist complainants and respondents and educate the public concerning Federal Election Commission ("FEC" or "Commission") enforcement matters. The guidebook summarizes the Commission's general enforcement policies and procedures and provides a step-by-step guide through the Commission's enforcement process.

This publication also provides guidance on certain aspects of federal campaign finance law. It does not replace the law or change its meaning, nor does this publication create or confer any rights for or on any person or bind the Commission or the public. The reader is encouraged also to consult the Federal Election Campaign Act of 1971, as amended ("the Act" or "FECA"), Commission regulations (Title 11 of the Code of Federal Regulations), Commission advisory opinions, and applicable court decisions. All of these materials can be accessed via the Commission's website, www.fec.gov. This Guidebook is a general reference guide, is not intended to be an exhaustive list of procedures, and does not attempt to address all circumstances that may arise in any given enforcement matter.

The FEC is the independent federal regulatory agency that holds the exclusive authority and responsibility for the civil enforcement of the federal campaign finance laws that are found in the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. § 431 *et seq.*; the Presidential Election Campaign Fund Act, 26 U.S.C. § 9001 *et seq.*; the Presidential Primary Matching Payment Account Act, 26 U.S.C. § 9031 *et seq.*; and Title 11 of the Code of Federal Regulations. The FEC has jurisdiction over the financing of campaigns for the U.S. House of Representatives, the U.S. Senate, the Presidency and the Vice Presidency.

The Commission has six members, no more than three of whom may be of the same political party. Commissioners are nominated by the President and confirmed by the Senate. The Chairman and Vice Chairman of the Commission, who are not from the same political party, serve terms of one calendar year. The Commissioners serve in these capacities on a rotating basis, with the Chairmanship alternating between the two parties.

The Commission's core functions include administering the public disclosure system for campaign finance activity, providing information and policy guidance on campaign finance laws, encouraging voluntary compliance with campaign finance laws, and enforcing the campaign finance laws through audits, investigations, and civil litigation. This guidebook concerns three aspects of the Commission's enforcement function: the general enforcement process set forth in 2 U.S.C. § 437g, the Commission's Alternative Dispute Resolution program and Administrative Fine program.

As an initial matter, it is important for respondents to be aware that:

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- The fact that an entity or person has been designated a "respondent" at the outset of an enforcement matter does not mean that the Commission has made a finding or otherwise believes that a violation has occurred or is about to occur; respondents may admit or deny, in whole or in part, any allegation made against them.
- The FEC's general enforcement process, as carried out through the Commission's Office of General Counsel ("OGC") and as described below, moves in stages during which there are opportunities for respondents to respond to the allegations and present their views to General Counsel staff and to the Commission.
- A vote by at least four of the six Commissioners is needed at every stage, including whether to find reason to believe and initiate an investigation, find probable cause that a violation has occurred or is about to occur, settle a matter, or authorize filing a lawsuit. If there are not four votes at any stage, the Commission will not proceed to the next step of the enforcement process.
- With the limited exception of the Administrative Fine program discussed in Section III.B. below, the Commission does not impose fines for violations of the campaign finance laws. The Commission seeks the payment of civil penalties through voluntary settlements with the respondent. If there is no such settlement, the Commission may file suit in federal district court.

II. GENERAL ENFORCEMENT PROCESS

The enforcement process most often begins in one of the four following ways:

- The filing of a complaint by a person or entity (the "complainant"),
- A referral from another government agency,
- A referral from the Commission's Audit Division or Reports Analysis Division ("RAD"), or
- A voluntary submission made by persons or entities who believe they may have violated campaign finance laws (often referred to as a *sua sponte* submission).

The process ends when the Commission determines to take no action or reaches a settlement with the respondent. If the Commission fails to successfully conciliate differences with a respondent, it may file a civil lawsuit in U.S. District Court. In certain circumstances, the Commission may also refer a matter to the U.S. Department of Justice for criminal prosecution under the Act.

For additional information regarding the rules pertaining to the Commission's enforcement process, *see* 11 CFR Part III, Subpart A, which sets forth the rules governing enforcement procedures. These regulations are on the Commission's website at http://www.fec.gov/law/cfr/ej_citation_part111.shtml. The Commission's website also contains documents from closed enforcement matters, all the policy statements cited herein, and other information about Commission practices and procedures. The links for this material are included throughout this guidebook.

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A. Sources of Allegations

1. Complaint Generated Matters

Any person may file a complaint if he or she believes a violation of the federal election campaign laws or Commission regulations has occurred or is about to occur. The complaint must be made in writing and submitted to the Office of General Counsel, Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463. The original must be submitted, along with three copies, if possible. Upon receipt of the complaint, OGC circulates a copy to each Commissioner. Facsimile or e-mail transmissions are not acceptable. A complaint must comply with certain requirements. 2 U.S.C. § 437g(a)(1); 11 CFR 111.4(a)-(d).

A complaint must:

- Provide the full name and address of the complainant; and
- Be signed, sworn to and notarized. This means that the notary public's certificate must say "...signed and sworn to before me", or words that connote the complaint was affirmed by the complainant (such as "under penalty of perjury").

Furthermore, in order for a complaint to be considered complete and proper, it should:

- Clearly recite the facts that describe a violation of a statute or regulation under the Commission's jurisdiction (citations to the law and regulations are not necessary but helpful);
- Clearly identify each person, committee or group that is alleged to have committed a violation;
- Include any documentation supporting the alleged violations, if available; and
- Differentiate between statements based on the complainant's personal knowledge and those based on information and belief. Statements not based on personal knowledge should identify the source of the information.

Complaints should be as factually specific as possible (e.g., by providing the date or approximate dates that the activities at issue occurred), and sworn affidavits from persons with first-hand knowledge of the facts alleged is encouraged. If the allegations in the complaint are based in whole or in part upon information contained in an advertisement, news article, or website, the complaint should provide a copy of the relevant advertisement, news article, or link to the website, if possible. Complaints should be filed as soon as possible after the alleged violation becomes known to the complainant in order to preserve evidence and the Commission's ability to seek civil penalties in federal district court within the five-year statutes of limitations period (measured from the time of the violation) provided by 28 U.S.C. § 2462 (civil) and 2 U.S.C. § 455 (criminal).

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The Office of Complaints Examination and Legal Administration ("CELA") within OGC is the entry point for processing the complaint. CELA reviews the complaint for compliance with the required criteria, as described above. If the complaint does not meet the criteria, CELA notifies the complainant of the deficiencies and that no action can be taken on the basis of the complaint. 11 CFR 111.5(b). If the complaint is deemed sufficient, CELA assigns the complaint a Matter Under Review ("MUR") number, informs the complainant that the complaint has been received and that the Commission will notify him or her once the entire matter has been resolved. *See* 11 CFR 111.5(a)-(b).

Until the matter is closed, the Commission is required by law to keep its actions regarding the MUR confidential. 2 U.S.C. § 437g(a)(12). Confidentiality requirements, however, do not prevent a complainant or respondent from disclosing the basis of the complaint. Information about a Commission notification of findings or about a Commission investigation may not be disclosed before the matter is made public, unless the respondent waives the right to confidentiality in writing.

2. Non-Complaint Generated Matters

The primary types of non-complaint generated matters are: (1) those based on referrals from within the Commission (internally generated from RAD or the Audit Division), (2) those based on referrals from other government agencies, and (3) those based on *sua sponte* submissions (i.e., voluntary submissions made by persons or entities who believe they may have violated the law). Before the Commission votes on OGC's recommendations as to any referral, respondents will have an opportunity to review and respond to the referral. See Section II.B.2 below.

a. Internal Referrals

- Referrals from the Commission's Reports Analysis Division

OGC receives referrals regarding apparent violations of the Act and FEC regulations from RAD and the Audit Division. RAD monitors the filing of disclosure reports filed with the Commission by federal political committees and other reporting entities, reviews their contents for compliance with the federal campaign finance laws, and, when necessary, sends written requests for further information, clarification, and sometimes correction of potential inaccuracies that appear on disclosure reports. Prior to any potential referral, RAD will contact the committee or reporting entity and give it an opportunity to take corrective action, if possible, or provide clarification. Pursuant to internal Commission thresholds, depending upon the nature and extent of the apparent violations, and any corrective actions taken, RAD may refer apparent violations to OGC for possible enforcement action.

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Referrals from the Commission's Audit Division

The Audit Division conducts audits pursuant to (1) 26 U.S.C. §§ 9007, 9008, and 9038 of all presidential candidates and nominating conventions that qualify for public financing, and (2) 2 U.S.C. § 438(b) of committees required to file reports under 2 U.S.C. § 434. During an audit, the committee will have the opportunity to review and respond to any proposed or suggested findings made by the Audit Division. Depending upon the nature and severity of apparent violations identified during an audit, and any corrective actions taken, such findings may be referred to OGC for possible additional action.

The Final Audit Report, upon which the potential referral is based, will be reviewed by the full Commission and must be approved by at least four Commissioners. The committee will receive a copy of the Audit Division's proposed Final Audit Report, after which it may request an oral hearing before the full Commission. Two Commissioners must agree to hold the hearing before the request is granted. The Commission will inform the committee whether the Commission is granting the committee's request within 30 days of receipt of the request. For more information on the audit hearing process, please refer to the Commission's Policy Statement on Procedural Rules for Audit Hearings at http://www.fec.gov/law/cfr/ej_compilation/2009/notice_2009-12.pdf.

b. External Referrals

Enforcement proceedings may also originate from other entities referring potential violations to the Commission. These entities include local and state law enforcement authorities, federal enforcement authorities, and other federal agencies. The majority of external referrals received by the Commission originate with the U.S. Department of Justice (DOJ). The fact that a person is or was the subject of a DOJ investigation or prosecution does not necessarily preclude the Commission from civilly pursuing that person for violations the Act, even when the conduct at issue is the same and similar facts are involved. Also, the FEC may elect to proceed on the civil track at the same time the DOJ is pursuing the criminal case, but will, under appropriate circumstances, hold cases in abeyance during the criminal proceedings.

c. *Sua Sponte* Submissions

Self-reported voluntary submissions (called "*sua sponte*" submissions) should include the following:

- An admission of each violation, with names and contact information as appropriate;
- A complete recitation of the facts along with all relevant documentation that explains how each violation was discovered;
- The actions that were taken in response to the violation, if any (e.g., a report of an internal investigation); and
- What other agencies, if any, are investigating the violation (or facts surrounding the violation).

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To encourage self-reporting, the Commission will often negotiate penalties that are between 25 and 75 percent lower than those for comparable matters arising by other means.

In certain circumstances, the Commission may allow persons or entities who voluntarily report their violations and make a complete report of their internal investigation to proceed directly into conciliation before the Commission makes a finding as to whether there is reason to believe the committee violated campaign finance laws or Commission regulations. Generally speaking, the more complete the submission and the greater the cooperation from a person or entity that is self-reporting, the more likely a mutually acceptable "fast track" settlement can be presented to the Commission for its approval.

For more guidance on how to prepare and file a *sua sponte* submission, please refer to the Commission's Statement Regarding Self-Reporting of Campaign Finance Violations (*Sua Sponte* Submissions), which can be found on the Commission's website at http://www.fec.gov/law/cfr/ej_compilation/2007/notice_2007-8.pdf.

B. Notice to Respondents

A "respondent" is a person or entity who is the subject of a complaint or a referral (or who files a *sua sponte* submission) that alleges that the person or entity may have violated one or more of the federal campaign finance laws within the FEC's jurisdiction.

1. Complaint Generated Matters

Within 5 days after receiving a properly filed complaint, OGC sends each respondent a copy of the complaint, a letter describing the Commission's compliance procedures and a designation of counsel form. 11 CFR 111.5(a). The Commission must provide the respondent at least 15 days from the date of receipt to respond in writing, explaining why no action should be taken. 11 CFR 111.6(a). The letter from OGC notes that respondents have a legal obligation to preserve all documents, records and materials relating to the matter until such time as they are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519 (establishing penalties for knowing destruction, alteration, or falsification of records in federal investigations).

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2. Non-Complaint Generated Matters

In RAD referrals and Audit referrals, within five days of OGC's receipt of such referrals, OGC sends notification letters to respondents, attaching the documents from RAD that set forth the basis for the referral or, in the case of Audit referrals, the relevant audit findings. The respondents have at least 15 days to respond to OGC's notification. For more information, please refer to the Commission's Procedure for Notice to Respondents in Non-Complaint Generated Matters, 74 Fed. Reg. 38617-618 (Aug. 4, 2009), also available at http://www.fec.gov/law/cfr/ej_compilation/2009/notice_2009-18.pdf.

When OGC receives referrals from other government agencies or *sua sponte* submissions, it notifies the respondents (other than the *sua sponte* submitters) of the allegations by letter containing the same types of information as discussed above. The respondents have at least 15 days to respond in writing.

The notification letters reflect no judgment about the accuracy of the allegations, but are merely a vehicle for (1) informing the respondent that the Commission has received allegations as to possible violations of the federal campaign laws by the respondent, (2) providing a copy of the complaint or referral document, or in limited circumstances, a summary thereof, and (3) giving the respondent an opportunity to respond in writing in a timely manner.

C. The Response

The response is the respondent's opportunity to demonstrate to the Commission why it should not pursue an enforcement action, or to clarify, correct, or supplement the information in the complaint or referral, including possible mitigating circumstances, and if desired, to ask for early settlement consideration. The Commission may not take any action on a complaint or referral other than a vote to dismiss, until 15 days after the date of notification. See, e.g., 2 U.S.C. § 437g(a). Respondents are not required to respond to the allegations.

There is no prescribed format for responses. While not required, documentation, including sworn affidavits from persons with first-hand knowledge of the facts, tends to be helpful. It is also helpful for a respondent to specifically address each allegation in the complaint. Upon receipt of the response, OGC circulates a copy to each Commissioner. All responses are reviewed and considered by OGC and the Commissioners.

The Act requires that, before taking any action on a complaint (except to dismiss it), the Commission must provide a respondent at least 15 days to file a response demonstrating that no action should be taken But extensions to this 15-day period may be available. To request an extension of time to respond to a complaint before the Commission considers the complaint, the respondent should submit a letter to the Commission as soon as possible after receiving notice of the complaint explaining why the respondent needs more time. If an extension is granted, the Commission will take no action on the complaint until after the new deadline.

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Respondents may contact OGC at any time to ask questions they may have about a matter, such as the current status of the case. A contact person within OGC (typically a paralegal or attorney) and phone number is identified in the first notification to the respondent.

D. Representation by Counsel

Respondents, if they so choose, have a right to be represented by counsel during all or any portion of the enforcement process, and may designate or change counsel at any point. A respondent who decides to be represented by counsel must inform the Commission by sending a "statement of designation of counsel," a copy of which is included with the notification letter. Where the respondent is a political committee, the designation of counsel also covers the treasurer in his or her official capacity unless the respondent specifies otherwise. Once the Commission receives the "statement of designation of counsel," the Agency will communicate only with the counsel unless otherwise authorized by the respondent.

E. Processing Enforcement Matters

After the 15-day response period (and any extension of time, if granted) has elapsed, OGC evaluates the complaint and response, if any, using objective criteria approved by the Commission under its Enforcement Priority System. Matters are prioritized and in some instances are referred to either the Alternative Dispute Resolution Office or the Administrative Fine Program (discussed below). In general, matters that are deemed high priority (generally those reflecting such factors as a substantial amount of activity involved, high legal complexity, the presence of possible knowing and willful intent, and potential violations in areas that the Commission has set as priorities) are preliminarily assigned to the Enforcement Division. Matters not warranting the further use of Commission resources are recommended for dismissal.

F. Initial Vote to Proceed (Reason to Believe)

With regard to each matter assigned to an attorney in the Enforcement Division, the General Counsel recommends to the Commission whether or not there is "reason to believe" the respondent has committed or is about to commit a violation of the law. This report, called the First General Counsel's Report, is circulated to the Commissioners for a vote on whether to approve the General Counsel's recommendation or to seek an alternate disposition of the matter. In casting their votes, the Commissioners consider the complaint, the respondent's reply, relevant committee reports on the public record, and the General Counsel's analyses and recommendations. If the Report receives less than four approvals, it is scheduled for a closed Executive Session, during which the full Commission considers the recommendations and votes on the disposition of the matter.

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In the initial stages of the process, the Commission will take one of the three following courses of action:

- Find Reason to Believe

The Act requires that the Commission find "reason to believe that a person has committed, or is about to commit, a violation" of the Act as a precondition to opening an investigation into the alleged violation. 2 U.S.C. § 437g(a)(2). A "reason to believe" finding is not a finding that the respondent violated the Act, but instead simply means that the Commission believes a violation may have occurred.

A reason to believe finding is generally followed by either an investigation or pre-probable cause conciliation. For example, a reason to believe finding followed by an investigation would be appropriate when there is reason to believe a violation may have occurred, but an investigation is required to determine whether a violation in fact occurred and, if so, the exact scope of the violation. However, if it appears the Commission has all of the necessary information regarding the alleged violations, the Commission may immediately authorize OGC to enter into conciliation with the respondent(s) prior to a finding of probable cause (called "pre-probable cause conciliation") and approve a proposed conciliation agreement attached to the First General Counsel's Report. *See* 11 CFR 111.18.

- Dismiss the Matter

Pursuant to the exercise of its prosecutorial discretion, the Commission may dismiss a matter when, in the opinion of at least four Commissioners, the matter does not merit further use of Commission resources. The Commission may take into account factors such as the small dollar amount at issue, the insignificance of the alleged violation, the vagueness or weakness of the evidence, or the merits of the response. For example, a dismissal would be appropriate when the seriousness of the alleged conduct is not sufficient to justify the likely cost and difficulty of an investigation to determine whether there is probable cause to believe a violation in fact occurred, or the evidence is sufficient to support a reason to believe finding but the violation is minor and not likely to be repeated. In this latter circumstance, the Commission may send a letter cautioning or reminding the respondent regarding their legal obligations under the relevant statutory and regulatory provisions.

- Find No Reason to Believe

The Commission will make a determination of "no reason to believe" a violation has occurred when the complaint, any response filed by the respondent, and any publicly available information, when taken together, fail to give rise to a reasonable inference that a violation has occurred, or even if the allegations were true, would not constitute a violation of the law. For example, a no reason to believe finding would be appropriate when a violation has been alleged, but the respondent's response or other evidence demonstrates that no violation has occurred, a complaint alleges a violation but is either

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not credible or is so vague that an investigation would be unwarranted, or a complaint fails to describe a violation of the Act.

G. *Notification of Reason to Believe Findings*

When the Commission approves a recommendation by OGC that it find reason to believe, the respondent will receive written notification (generally through a letter signed by the Chairman) of the Commission's determination shortly thereafter. In matters involving registered committees, the current treasurer is usually included as a respondent in his or her official capacity. In rare instances, however, the Commission has made findings against a treasurer in his or her personal capacity. For example, the Commission may make a determination that the treasurer acted in a personal capacity when information indicates that the treasurer knowingly and willfully violated the Act, recklessly failed to fulfill duties specifically imposed by the Act or intentionally deprived himself or herself of facts giving rise to the violation. For further information regarding the Commission's practice with respect to committee treasurers, please refer to the Commission's Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings, 70 Fed. Reg. 3 (January 3, 2005), at http://www.fec.gov/law/policy/2004/notice2004-20.pdf.

If the respondent has not already filed a designation of counsel with the Commission, the notification letter will again advise the respondent of the right to be represented by counsel. Enclosed with the notification letter is a copy of the Factual & Legal Analysis approved by the Commission that provides the basis for the Commission's decision.

A letter notifying a respondent of a reason to believe finding will apprise the respondent of the ability to submit any factual or legal materials that the respondent believes are relevant for the Commission's consideration or resolution of the matter. Respondents should not hesitate to provide the Commission with relevant new information or present the Commission with any errors in the Commission's recitation of the facts or law. The Commission receives all responses and considers them when determining whether and how to proceed with an investigation or conciliation. Any documents or letters that are sent directly to the Commissioners should also be sent to the Office of General Counsel to ensure that the materials are properly documented and included in the files related to the matter.

Respondents or their counsel may also contact the Enforcement Division attorney handling the matter by telephone, or request a meeting to discuss any issues relating to the reason to believe findings or other developments in the matter.

Depending on whether further information is required, the Commission may follow a reason to believe finding with an investigation or proceed to attempt to settle the matter prior to a finding of probable cause to believe.

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H. Investigation

Upon finding reason to believe that a violation has occurred or is about to occur, the Commission may authorize an investigation.

Enforcement Division staff may conduct an investigation through informal and formal methods. Informal methods may include such activities as in-person or telephone interviews with persons, including respondents or third-party witnesses, and informal requests for information and documents. Staff may also examine relevant information from publicly available sources.

Formal methods (also called "compulsory process") may include subpoenas and orders for information, documents, or depositions. See 2 U.S.C. § 437d. All subpoenas are reviewed and approved by the Commission before they are served.

Responses to subpoenas are generally due within 30 days of receipt of such subpoenas, but extensions may be granted as appropriate. Persons subpoenaed may file motions to quash with the Commission within five days of receipt of the subpoenas. If a person fails to respond to a subpoena or order for documents and information, or provides insufficient grounds for declining to respond or provides an incomplete submission, the Commission may file a subpoena enforcement action in federal district court. *See* 11 CFR 111.13(b), 111.15.

A deposition in the enforcement process is subject to special rules. See 11 CFR 111.12, 111.14. A respondent or other witness deponent may have counsel present during the deposition and shall be paid the same fees and mileage as witnesses in federal courts. If the deponent lives and works a long distance from Washington, D.C., and the deposition is scheduled at the FEC's headquarters, the Commission may also pay for the deponent's air, bus, or train fare and if, necessary, overnight lodging, within certain government-approved parameters. A deponent is responsible for paying all costs for his or her attorney.

At the deposition itself, the deponent will be placed under oath by the court reporter (who is a notary public), and is required to respond to questions by the Commission's staff unless the information requested is protected from disclosure by law. Respondent's counsel may be present, take notes, consult with the deponent, object to or seek to clarify certain questions, and, generally at the end, ask questions of the deponent. The court reporter, paid for by the Commission, will make a verbatim transcript of the deposition.

A deponent has the right to review the deposition transcript, consistent with Federal Rule of Civil Procedure 30(e). 11 CFR 111.12(c). If there are any changes in form or substance to the testimony, the deponent may sign a statement listing the changes and the reasons for making them. Furthermore, the deponent may purchase a copy of the transcript of his or her own deposition from the court reporter. For further information, please refer to the Commission's Statement of Policy Regarding Deposition

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Transcriptions in Nonpublic Investigations, 68 Fed. Reg. 50688-589 (Aug. 22, 2003) at http://www.fec.gov/agenda/agendas2003/notice2003-15/fr68n163p50688.pdf.

I. Early Resolution of MUR (Pre-Probable Cause Conciliation)

Although the Act only requires the Commission to attempt to conciliate matters after a finding of probable cause, 2 U.S.C. § 437g(a)(4), the Commission has promulgated regulations for pre-probable cause conciliation to allow for early disposition of appropriate matters. *See* 11 CFR 111.18(d). Pre-probable cause conciliation is strictly voluntary; both the Commission and the respondent must be willing to participate.

If OGC believes that an investigation is not necessary before attempting conciliation, it may recommend pre-probable cause conciliation before the Commission approves an investigation. Additionally, respondents can request pre-probable cause conciliation at any time, even in matters in which the Commission has authorized an investigation. If the respondent is interested in pursuing a settlement, the respondent should so request in writing to OGC. Upon receipt of a request for settlement, OGC will make recommendations to the Commission whether pre-probable cause conciliation is appropriate at that juncture.

At the time the Commission decides to enter into pre-probable cause conciliation, it approves a proposed conciliation agreement that serves as the opening settlement offer. Among other things, the proposed agreement will generally:

- Recite the Commission's reason to believe finding(s),
- Set forth relevant facts and law,
- Contain the respondent's admission of violating specific provisions of the Act and the Commission's regulations,
- Include an agreement that the respondent will cease and desist from violating those provisions in the future, and
- Include an agreement to pay a civil penalty and/or possibly take corrective actions, such as refunding impermissible contributions, amending reports, hiring compliance specialists, or attending FEC educational seminars.

With respect to the civil penalty, the Act provides that a conciliation agreement entered into by the Commission may require that the respondent pay a civil penalty "which does not exceed the greater of $5,000 or an amount equal to any contribution or expenditure involved." 2 U.S.C. § 437g(a)(5)(A). In 2009, the statutory penalty was adjusted for inflation to $7,500. *See* 11 CFR 111.24(a)(1) (2009). If a respondent knowingly and willfully violates the Act, the Act provides for a civil penalty "which does not exceed the greater of $10,000 or an amount equal to 200 percent of any contribution or expenditure involved." 2 U.S.C. § 437g(a)(5)(B). The statutory penalty of $10,000 was adjusted for inflation in 2009 to $16,000. *See* 11 CFR 111.24(a)(2)(i) (2009). Finally, for knowing and willful violations of 2 U.S.C. § 441f— contributions made in the name of another— the Act provides for a civil penalty "which is not less than 300 percent of the amount involved in the violation and is not more than the greater of $50,000 or 1000 percent of

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the amount involved in the violation." 2 U.S.C. § 437g(a)(5)(B). The statutory penalty of $50,000 was adjusted for inflation to $60,000 in 2009. 11 CFR 111.24(a)(2)(ii). When determining the amount of a civil penalty to be included in a conciliation agreement, the Commission uses the statutory guidelines described above and considers the particular facts involved in a specific matter, including all potential mitigating and aggravating circumstances.

OGC transmits the proposed conciliation agreement to a respondent and invites the respondent to engage in negotiation concerning the proposed agreement. The respondent should reply to OGC's invitation to enter into such negotiations within seven days of the receipt of the offer.

Upon agreeing to enter into conciliation, the respondent may sign the conciliation agreement and return it to OGC, or the respondent may make a counter-offer. Negotiations may take place in writing, by telephone, in person, or any combination of these approaches. A respondent may ask OGC to present a specific counter-offer to the Commission. Respondents who claim an inability to pay an appropriate civil penalty may be asked to provide documentation as to their financial condition.

Neither the Act nor the Commission's regulations specify a time frame for pre-probable cause conciliation, but OGC attempts to limit it to no more than 60 days. Because the Commission's ability to seek civil penalties in federal district court is subject to a five-year statute of limitation, *see* 28 U.S.C. § 2462, OGC may request at any stage in the enforcement process that the respondent agree to toll the statute of limitations, including during the pendency of the pre-probable cause conciliation process.

Conciliation agreements in closed matters are available on the Commission's website for review and comparison. *See* http://www.fec.gov/em/em.shtml.

J. General Counsel's Brief

After the investigation is completed and/or no pre-probable cause conciliation agreement is reached, if the General Counsel intends to recommend that the Commission find probable cause to believe a violation has occurred or is about to occur, OGC notifies the respondent of the intent to make such a recommendation and includes with the notification a brief stating the General Counsel's position on the factual and legal issues of the matter. The respondent is sent a copy of the brief and has at least 15 days to file a reply brief explaining the respondent's position.

K. Probable Cause Hearing

Respondents are also entitled to request a hearing to present oral arguments directly to the Commission prior to any decision on whether there is probable cause to believe that a violation of the Act or the Commission's regulations has or is about to occur. Such a hearing may be requested by the respondent in his or her reply brief. The request for a

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hearing is optional, and the respondent's decision on whether to request one will not influence the Commission's decision regarding a probable cause finding.

The respondent must include a written request for a hearing as a part of the respondent's brief filed with the Commission Secretary under 11 CFR 111.16(c). Each request for a hearing must state with specificity why the hearing is being requested and what issues the respondent expects to address.

The Commission will grant a request for an oral hearing if any two Commissioners approve the request. If the request is granted, a respondent who appears before the Commission may discuss any issues presented in its brief, including potential liability and the amount of any civil penalty.

Hearings are not open to the public. Respondents and their counsel are the only people from outside the Commission who may attend. Commissioners, the General Counsel and the Staff Director may ask questions relevant to the matter of the respondent or respondent's counsel, if respondent is represented, and may request that the respondent supplement the record within a set time. The Commissioners may also ask questions designed to elicit clarification from the General Counsel and the Staff Director.

A court reporter will transcribe the proceedings, and the respondent may purchase a copy of the transcript from the court reporter. The transcript of the hearings, with possible appropriate redactions, will be made public as part of the public record when a case is closed. The Commission determines the format and time allotted for each hearing at its discretion.

For more detailed information regarding the Commission's probable cause hearings, please refer to:

- Procedural Rules for Probable Cause Hearings, 72 Fed. Reg. 64919 (Nov. 19, 2007), at http://www.fec.gov/law/cfr/ej_compilation/2007/notice_2007-21.pdf; and
- Amendment of Agency Procedures for Probable Cause Hearings, 74 Fed. Reg. 55443 (October 28, 2009), at http://www.fec.gov/law/cfr/ej_compilation/2009/notice_2009-24.pdf.

L. Vote on Alleged Violations (Probable Cause to Believe)

After reviewing the briefs of both the General Counsel and the respondent, the Commission votes on whether there is "probable cause to believe" that a violation has occurred or is about to occur. Four affirmative votes are required to make a finding of probable cause to believe. If the Commission does not find "probable cause to believe," the case is closed and the parties are notified. In complaint-generated matters where the Commission does not approve OGC's recommendation to find probable cause, the objecting Commissioners are required to issue a Statement of Reasons setting forth the basis for their rejection, which will appear on the public record and be provided to the complainant and the respondent(s).

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If the Commission determines that there is "probable cause to believe" the law has been violated, it must attempt to conciliate with the respondent for at least 30 days, but not more than 90 days. If the Commission makes a probable cause finding in the 45-day period immediately preceding any election, then the Commission must attempt to conciliate a matter for a period of at least 15 days. See 2 U.S.C. § 437g(a)(4)(A).

In order to facilitate these discussions, a Commission-approved proposed conciliation agreement is sent to the respondent, forming the basis for settlement negotiations. The provisions included in a pre-probable cause conciliation agreement, described above, are generally also included in post-probable cause conciliation agreements.

If the Commission determines that there is probable cause to believe that knowing and willful violations occurred, it may refer such violations to the DOJ for possible criminal prosecution. 2 U.S.C. § 437g(a)(5)(C).

M. Resolution of MUR (Conciliation Agreement)

If the General Counsel and the respondent enter into a conciliation agreement, the written agreement becomes effective once it is approved by the affirmative vote of four Commissioners and signed by the respondent and the General Counsel. When the Commission approves a signed conciliation agreement, the Commission closes the matter, sends a copy of the signed agreement to the complainant and respondent, and puts documents on the public record. Civil penalty payment checks, which are made payable to the United States Treasury, are transferred from the Commission to the Treasury for deposit once the Commission approves a conciliation agreement.

Unless a respondent violates the conciliation agreement, the agreement is a complete bar to any further action by the Commission based on the same facts. If the respondent violates the conciliation agreement, however, the Commission can sue to enforce the terms of the conciliation agreement in federal district court.

N. Litigation

If post-probable cause conciliation does not result in an agreement, OGC may recommend to the Commission that it authorize a civil action in federal court. The Commission may only authorize the filing of a civil action by an affirmative vote of at least four members.

If the Commission provides such authorization, the matter is transferred from OGC's Enforcement Division to its Litigation Division, which represents the Commission in all litigation. Contact information for relevant staff in the Litigation Division is provided in the letter informing respondents that suit has been authorized.

If the Commission gives such authorization, the Commission will file suit in the District Court of the United States for the district in which the person against whom such action is

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being brought is found, resides, or transacts business. 2 U.S.C. § 437g(a)(6)(A). The proceedings are then governed by the Federal Rules of Civil Procedure and the local rules of the district court.

The Commission may seek a variety of remedies, including a civil penalty that meets the appropriate statutory guidelines as set forth in 2 U.S.C. § 437g(a)(6). The federal district court will review the facts of the matter *de novo*, which means that the court will not rely exclusively on the administrative record but also on fresh fact discovery by the parties, and will review the facts anew. *See, e.g.*, American Fed'n of Labor & Congress of Indus. Orgs. v. F.E.C., 177 F. Supp.2d 48, 63 (D.D.C. 2001).

O. Complainant's Recourse

If a complainant disagrees with the Commission's dismissal of a complaint, or any allegations contain therein, he or she may file a petition in the U.S. District Court for the District of Columbia. This petition must be filed within 60 days after the date of the dismissal. 2 U.S.C. § 437g(a)(8).

In addition, if 120 days have passed since the filing of a complaint, and the Commission has not yet acted on the complaint, the complainant may file suit in district court. 2 U.S.C. § 437g(a)(8)(A). As discussed above, however, the Commission may be taking action on the allegations (e.g., finding reason to believe and conducting an investigation) that it may not disclose to the public (including the complainant) until the conclusion of the matter under 2 U.S.C. § 437g(a)(12).

In any case brought against the Commission for dismissing or failing to act on a complaint, a court may declare that the Commission acted contrary to law and direct the Commission to conform to that declaration. If the Commission fails to act on the court's order within 30 days, complainants may bring a civil action under their own name to remedy the alleged violation. 2 U.S.C. § 437g(a)(8)(C).

P. Confidentiality

To protect the interests of those involved in a complaint, the law requires that any Commission action on a MUR be kept strictly confidential until the case is resolved. These provisions do not, however, prevent a complainant or respondent from disclosing the substance of the complaint itself or the response to that complaint or from engaging in conduct that leads to the publication of information contained in the complaint.

Q. Public Disclosure Upon Termination of an Enforcement Matter

Because the public has the right to know the outcome of any enforcement proceeding, a redacted file is made available to the public in the Press Office and the Office of Public Records within 30 days after the parties involved have been notified that the entire matter has been closed. Complaints and responses are placed on the public record, though in some cases, sensitive or privileged information such as personal phone numbers or

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financial information is redacted. Closed enforcement files are also available for review at the Enforcement Query System found on the Commission's web site at http://eqs.nictusa.com/eqs/searcheqs**Error! Hyperlink reference not valid.**.

R. Overview of Stages and Applicable Timeframes

Stage	Number of Days
Complaint Received	n/a
Complaint Notification	5 Days
Response to Complaint	15 Days
Reason to Believe Finding	n/a
Investigation	n/a
Pre-Probable Cause Conciliation	60 Days*
General Counsel's Brief	n/a
Response to General Counsel's Brief	15 Days
Probable Cause to Believe	n/a
Probable Cause to Believe Conciliation	30-90 Days
Disposition	n/a
Public Release of closed case file	30 Days
* Not set by statute or regulation.	

III. ALTERNATIVE DISPUTE RESOLUTION ("ADR")

The Commission established the Alternative Dispute Resolution Office ("ADRO") to promote compliance with the federal election laws by encouraging settlements outside of the general enforcement process. In most enforcement matters where a settlement is involved, the Commission has already voted to find reason to believe a violation has occurred or is about to occur. In ADR, however, a settlement is generally reached prior to any finding by the Commission. ADR tends to place greater emphasis on remedial measures, such as hiring compliance specialists or having persons responsible for FEC disclosure attending Commission educational conferences.

ADR is an option extended only in appropriate matters based on criteria approved by the Commission. Once a matter is deemed suitable for ADR, the respondent will receive a letter from the ADRO asking for a commitment, in writing, to the terms for participation in ADR, which include (1) engaging in the ADR process; (2) setting aside the statute of limitations while the complaint or referral is pending in ADRO; and (3) participating in bilateral negotiations. The respondent should respond to the letter within 15 business days of receipt; otherwise, the matter may be dropped from further consideration for ADR and sent to OGC for further processing. After the respondent provides this information (which involves completing a form enclosed with ADRO's notification letter) and any additional information relevant to the matter, ADRO will contact the respondent or respondent's counsel to discuss mutually acceptable dates and times for engaging in bilateral negotiations.

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If the respondent and ADRO are able to reach a mutually acceptable settlement agreement, ADRO presents a signed agreement to Commission for approval. All ADR settlements are placed on the public record. They do not serve as precedents for subsequent enforcement actions. If the respondent and ADRO are unable to reach a settlement during bilateral negotiations, the case may be sent to OGC for enforcement processing.

For more information regarding ADR, please see http://www.fec.gov/pages/brochures/adr.shtml.

IV. ADMINISTRATIVE FINE PROCESS

Civil fines for violations by registered political committees involving (1) failure to file reports on time, (2) failure to file reports at all, and (3) failure to file 48-hour notices of contributions are assessed through the Administrative Fine process. 2 U.S.C. § 437g(a)(4)(C); 11 CFR 111.30 – 111.46.

Under the administrative fine regulations, if the Commission finds reason to believe that a committee violated the law, the Commission sends a letter to the committee containing the factual and legal basis of its finding and the amount of the proposed fine. Fine schedules are published in the administrative fine regulations and all fines are calculated using the formulas in these schedules. 11 CFR 111.43, 111.44. The committee has 40 days from the date of the reason to believe finding to (1) pay the proposed fine or (2) challenge the RTB finding and/or fine.

Unlike enforcement matters that are handled through OGC or ADRO, the penalties assessed through the Administrative Fine Program are not subject to settlement negotiations. So there are no settlement agreements approved by the Commission as typically occurs when a respondent is on the OGC or ADR enforcement track.

If the committee pays the proposed fine, it sends the payment and remittance form (provided in the Commission's RTB letter) to the FEC following the instructions in the letter. Upon receipt of payment, the Commission makes a final determination, assesses the appropriate fine, and sends the committee a final determination letter.

If the committee does not pay the proposed fine or submit a challenge, the Commission makes a final determination, assesses the appropriate fine, and sends the committee a final determination letter.

If the committee challenges the RTB finding and/or the fine, it must submit a written response to the Office of Administrative Review ("OAR"). The challenge must include the reason why the committee is challenging the RTB finding and/or fine, along with supporting documentation. The FEC only considers challenges that are based on the following:

- A factual or legal error in the RTB finding;

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- A miscalculation of the RTB fine by the FEC; or
- A demonstrated use of best efforts to file in a timely manner but being prevented from filing by reasonably unforeseen circumstances that were beyond the committee's control.

The RTB letter includes examples of circumstances that are considered reasonably unforeseen and beyond the committee's control, as well as examples that are not considered reasonably unforeseen and beyond the committee's control.

The committee's challenge is reviewed by a reviewing officer who was not involved in the original RTB finding. After review of the challenge and any information provided by staff, the reviewing officer makes a recommendation to the Commission and sends a copy of the recommendation to the committee. The committee has 10 days to respond in writing to the recommendation. The Commission then either (1) makes a final determination that a violation occurred and upholds the RTB fine; (2) determines that no violation occurred because the RTB finding was based on a factual error or the committee used best efforts to file on time; (3) terminates its proceedings; or (4) makes a final determination that a violation occurred and modifies the fine.

OAR will notify the committee in writing of the Commission's decision. If the letter notifies the committee that the Commission has made a final determination that a violation occurred, the committee has 30 days from its receipt of such "final determination letter" to (1) pay the assessed fine or (2) file suit in the U.S. District Court where the committee or treasurer resides or transacts business.

If the committee pays the fine, it sends the payment and remittance form (provided in the notification letter) to the FEC following the instructions in the letter. If the committee chooses to appeal the final determination, it should file suit within the 30-day timeframe in the U.S. District Court in which it or the treasurer reside or transact business. The failure to raise an argument in a timely fashion during the administrative process shall be deemed a waiver of the committee's right to present that argument in the court petition.

If the committee fails to pay the fine or seek judicial review, the unpaid fine is treated as a debt under the Debt Collection Improvement Act. The Commission will transfer the unpaid fine to the Department of the Treasury for collection.

For more information about the Administrative Fine Program, including a fine calculator and examples of how to calculate a fine, please see http://www.fec.gov/af/af.shtml.

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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)

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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.

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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

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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

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CALENDAR OF REPORTING DATES FOR FLORIDA SPECIAL ELECTION

Report	Close of books[1]	Reg. cert. & overnight mailing deadline	Filing deadline
Committees Involved In *Only* the Special Primary (02/02/10) Must File			
Year-End	—WAIVED —		
Pre-Primary	01/13/10	[2]01/18/10	01/21/10
April Quarterly	03/31/10	04/15/10	04/15/10
Committees Involved In Both the Special Primary (02/02/10) and Special General (04/13/10) Must File			
Year-End	—WAIVED—		
Pre-Primary	01/13/10	[2]01/18/10	01/21/10
Pre-General	03/24/10	03/29/10	04/01/10
April Quarterly	03/31/10	04/15/10	04/15/10
Post-General	05/03/10	05/13/10	05/13/10
July Quarterly	06/30/10	07/15/10	07/15/10
Committees Involved In *Only* the Special General (04/13/10) Must File			
Pre-General	03/24/10	03/29/10	04/01/10
April Quarterly	03/31/10	04/15/10	04/15/10
Post-General	05/03/10	05/13/10	05/13/10
July Quarterly	06/30/10	07/15/10	07/15/10

[1] The reporting period always begins the day after the closing date of the last report filed. If the committee is new and has not previously filed a report, the first report must cover all activity that occurred before the committee registered as a political committee with the Commission up through the close of books for the first report due.

[2] Notice that the registered/certified & overnight mailing deadline falls on a federal holiday. The report should be postmarked on or before that date.

On behalf of the Commission.

Dated: December 8, 2009.

Steven T. Walther,

Chairman, Federal Election Commission.

[FR Doc. E9–29611 Filed 12–11–09; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL ELECTION COMMISSION

[Notice 2009–26]

Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record

AGENCY: Federal Election Commission.

ACTION: Statement of Policy.

SUMMARY: The Federal Election Commission will resume the practice of placing all First General Counsel's Reports on the public record, subject to appropriate redaction or withholding.

DATES: December 14, 2009.

FOR FURTHER INFORMATION CONTACT: Lawrence Calvert, Deputy General Counsel, or Nicole St. Louis Matthis, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Federal Election Commission is returning to its prior practice of placing First General Counsel's Reports on the public record to promote transparency.

I. Background

For approximately the first 25 years of its existence, the Federal Election Commission ("Commission") placed on the public record, at the close of an enforcement matter, all materials considered by the Commissioners in their disposition of a case, except for those materials prohibited from disclosure by the Federal Election Campaign Act ("FECA" or "the Act") or, in most instances, those exempt from disclosure under the Freedom of Information Act ("FOIA").

In 2001, following the decision of the district court in *AFL–CIO* v. *FEC*, 177 F. Supp. 2d 48 (D.D.C. 2001) ("*AFL–CIO*"), the Commission placed on the public record only those documents that reflected the very final action in an enforcement matter and the reasons for that action. Then, after the court of appeals decision in the *AFL–CIO* case, 333 F.3d 168 (DC Cir. 2003), the Commission adopted an interim policy, in which it said it would place on the public record, among other things, "General Counsel's Reports that recommend dismissal, reason to believe, no reason to believe, no action at this time, probable cause to believe, no probable cause to believe, no further action, or acceptance of a conciliation agreement[.]" *See* Statement of Policy Regarding Disclosure of Closed Enforcement or Related Files, 68 FR 70423 (Dec. 20, 2003) ("Interim Disclosure Policy").

In 2006, the Commission reconsidered its practice of placing First General Counsel's Reports on the public record after a case arose in which the Commission adopted a recommendation offered by the Office of General Counsel ("OGC") in a General Counsel's Report, but rejected one of several underlying rationales for the recommendation. Thereafter, OGC began recommending the approval of a Factual & Legal Analysis ("F&LA") in all cases, not just those with reason to believe recommendations. From January 2007 forward, F&LAs providing an explanation for the Commission's decisions were placed on the public record in new enforcement matters, but First General Counsel's Reports were not.

II. Return to Prior Practice

In the interest of promoting transparency, the Commission is resuming the practice of placing all First General Counsel's Reports on the public record, whether or not the recommendations in these First General Counsel's Reports are adopted by the Commission.

The Commission will place all First General Counsel's Reports on the public record in closed enforcement matters, prospectively and retroactively, while

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reserving the right to redact portions of such documents consistent with the Act, the principles articulated by the court of appeals in *AFL–CIO*, and subject to the Commission's authority to withhold material under an exemption set forth in the FOIA.

Until such time as all previously undisclosed First General Counsel's Reports have been placed on the public record, the Commission intends to approve any FOIA request seeking a First General Counsel's Report or accompanying F&LA that has not yet been placed on the public record, but reserves the right to redact portions of such documents consistent with the Act, the principles articulated by the court of appeals in *AFL–CIO*, and subject to the Commission's authority to withhold material under an exemption set forth in the FOIA.

This document amends an agency practice or procedure. This document does not constitute an agency regulation requiring notice of proposed rulemaking, opportunities for public comment, prior publication, and delay effective under 5 U.S.C. 553 of the Administrative Procedure Act ("APA"). The provisions of the Regulatory Flexibility Act, 5 U.S.C. 605(b), which apply when notice and comment are required by the APA or another statute, are not applicable.

On behalf of the Commission.

Dated: December 4, 2009.

Steven T. Walther,

Chairman, Federal Election Commission.

[FR Doc. E9–29609 Filed 12–11–09; 8:45 am]

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FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 30, 2009.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. The Robert and Norman Ohlde Trust, Robert and Norma Ohlde, trustees; Steven and Cynthia Ohlde, all of Linn, Kansas; and Timothy and Debra Ohlde, Clyde, Kansas, acting in concert; to retain/acquire voting shares of Elkcorp, Inc., and thereby indirectly retain/acquire voting shares of The Elk State Bank, both in Clyde, Kansas.

Board of Governors of the Federal Reserve System, December 9, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–29651 Filed 12–11–09; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 8, 2010.

A. Federal Reserve Bank of Cleveland (Nadine Wallman, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. Excel Bancorp, LLC, St. Clairsville, Ohio; to become a bank holding company by acquiring a controlling interest in Ohio Legacy Corp., and thereby indirectly acquire Ohio Legacy Bank, N.A., Wooster, Ohio.

Board of Governors of the Federal Reserve System, December 9, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–29652 Filed 12–11–09; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0293]

Peter Xuong Lam: Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (the act) debarring Peter Xuong Lam for a period of 20 years from importing articles of food or offering such articles for importation into the United States. FDA bases this order on a finding that Mr. Lam was convicted of four felonies under Federal law for conduct relating to the importation into the United States of an article of food. After being given notice of the proposed debarment and an opportunity to request a hearing within the timeframe prescribed by regulation, Mr. Lam failed to request a hearing. Mr. Lam's failure to request a hearing constitutes a waiver of his right to a hearing concerning this action.

DATES: This order is effective December 14, 2009.

ADDRESSES: Submit applications for termination of debarment to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Kenny Shade, Division of Compliance Policy (HFC–230), Office of Enforcement, Office of Regulatory Affairs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 240–632–6844.

SUPPLEMENTARY INFORMATION:

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

Jeff Jordan/FEC/US
09/09/2009 09:04 AM

To Enforcement Staff
cc Gregory Baker/FEC/US@FEC, Retha Dixon/FEC/US@FEC, Elaine Devine/FEC/US@FEC, Leroy Rhinehart/FEC/US@FEC, Kim Collins/FEC/US@FEC,
bcc
Subject Location of Permanent Files in Livelink

Hello Enforcement:

In order to assist you in obtaining the digital copy of our permanent files, we have placed a shortcut in your "Enforcement - Active Case" folder in Livelink. Additionally, you can gain access through the shared folder under Voting Ballot Matters at NTSRV1. I have provided screen shots below. We are almost complete in migrating all Open and Closed matters from DOCs Open. If you have questions concerning the location of digital permanent files please contact me (X1552) or Charnika (at X1520).

Thanks,

Jeff

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

Active - Microsoft Internet Explorer

http://fecas049/feclivepd/livelink.exe?func=ll&objId=2410248&objAction=browse&viewType=1

Enterprise Workspace:
Active

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Enterprise ▸ OGC ▸ Enforcement ▸ Enforcement Matters ▸ Active

Browse | Drag & Drop

Detail View

Copy | Move | Delete | Zip & Download | Zip & E-mail | Print

Type | Name

Permanent Files (Open) Shortcut

Copy | Move | Delete | Zip & Download | Zip & E-mail | Print

1 item

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Done

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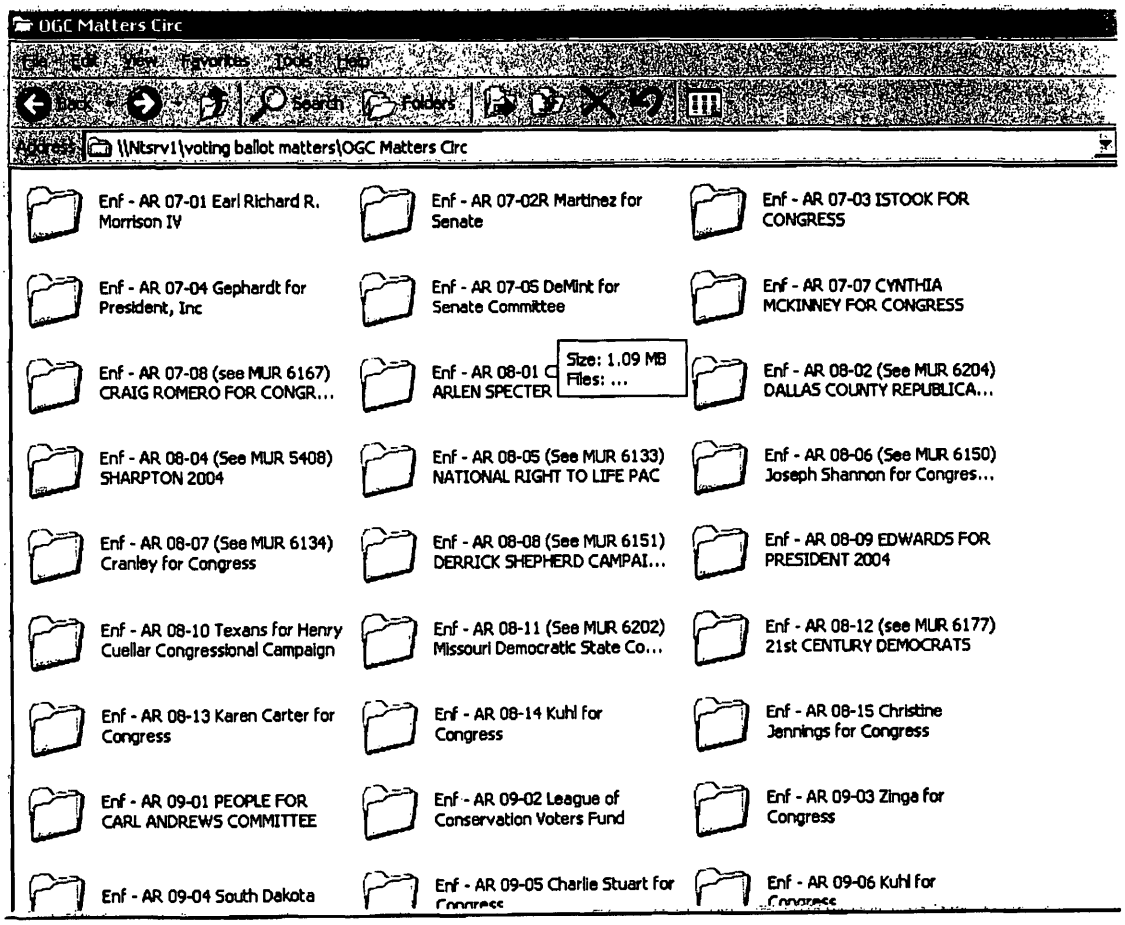

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Jeff Jordan/FEC/US
06/18/2009 09:54 AM

To Enforcement Staff
cc Retha Dixon/FEC/US@FEC, Elaine Devine/FEC/US@FEC, Leroy Rhinehart/FEC/US@FEC, Kim Collins/FEC/US@FEC, Charnika Miles/FEC/US@FEC, Frankie
bcc
Subject Case Summaries by Attorneys - Add Specific Statutory Violation Reference

Hello Everyone:

I would like to request that all the attorneys who prepare Case Summaries to begin listing the **statutory and regulatory** violations at the bottom of their summary paragraph. Even if the complaint has no merit, please list the alleged violation(s). This effort will assist us in tracking the incoming violations prior to the FGC being circulated.

I appreciate the assistance.

Jeff

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Jeff Jordan/FEC/US
06/02/2009 12:51 PM

To Enforcement Staff
cc Gregory Baker/FEC/US@FEC, Kim Collins/FEC/US@FEC, Retha Dixon/FEC/US@FEC, Leroy Rhinehart/FEC/US@FEC, Charnika Miles/FEC/US@FEC
bcc
Subject Special Routing Slip for Closed MURs - Effective Today

Hello All:

In our attempt to treat closing matters more expeditiously we are beginning to use a PINK routing slip on all closing packages delivered to you by CELA. Specifically, the process, beginning today, will be that we will attach a pink routing slip to a cert and the case files and transmit the package to the Enforcement attorney assigned to the matter. Once the close-out letters are complete by the Enforcement attorney (or paralegal) he or she will merely transmit the package back to docket, which will include the pink routing slip, along with the close-out letters and blue or red routing slips. Please make sure that when the letters are returned to docket for mailing that the PINK routing slip is on top of the package and note on the routing slip whether the matter is a "Special Press Release" case.

Thank you in advance for your assistance.

If you have any questions please contact Curtis at X1522 or me at X 1552.

Jeff

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

ENFORCEMENT PROCEDURE 2009-22

Ann Marie Terzaken/FEC/US
12/29/2009 12:33 AM

To Enforcement Staff
cc
bcc

Subject Reminder - Original CAs

Just a reminder that when you accept a signed CA via fax or pdf please be sure to follow-up with counsel immediately to make sure the CA with the original signature is on its way to our office. If and when the CA is accepted by the Commission, I need to be able to sign the original. Thanks.

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ENFORCEMENT PROCEDURE 2009-21

Ann Marie Terzaken/FEC/US
10/27/2009 02:27 PM

To Enforcement Staff
cc
bcc

Subject Fw: Enforcement Weekly October 26, 2009

Everyone, just want to emphasize the discussion below re conciliation agreements to make sure you all focus on it. The Commission revised a template we sometimes use in CAs so I want to make sure you are aware of it.

In cases where we agree to a substantially reduced CP because of the poor financial condition of the respondent, we typically include a paragraph in the CA that describes the financial condition of the respondent and ties the financial condition to the CP. You might recall recent Commission discussions regarding this type of paragraph in the [redacted] matters. In instances where the respondent is not a committee (and therefore does not already have a legal obligation to be truthful about its finances in FEC reports), or in instances where (as in [redacted] below) information about the committee's finances is supplemented in a material way by representations made during conciliation, we typically add something in this explanatory paragraph that provides a consequence for providing false information to the Commission re the committee's finances, usually an obligation to pay the full CP that the Commission would have otherwise sought. After some discussion last week, the Commission agreed to continue the practice of providing a financial consequence in CAs for false financial information, and they approved the CAs in the [redacted] matter as is. Going forward, however, we have been asked to make some modest changes to our template language.

The language in the CAs approved by the Commission in [redacted] had the following language:

In ordinary circumstances, the Commission would seek a civil penalty based on the violations outlined in this agreement as well as mitigating circumstances. However, based upon representations made by Respondents, including submission of financial documentation, the Commission is taking into account the fact that the GPL is defunct, has no cash on hand, and has little ability to raise any additional funds. Accordingly, the Commission agrees *to depart from the civil penalty that the Commission would normally seek for the violations at issue, and the Commission agrees* that no civil penalty will be due. If evidence is uncovered indicating Respondents' financial condition is not as stated, a total civil penalty of up to six thousand five hundred dollars ($6,500) shall be immediately due, pursuant to 2 U.S.C. § 437g(a)(5)(A).

The italicized language should be omitted going forward.

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There is a second issue that hasn't been completely worked out yet, but you should be aware of it. [redacted] We have not received guidance from the Commission as to which number to place in the CA in instances where the OSO is greater than the statutory penalty. If you face this issue in the future, please discuss it with your team leader and KG/SG/me. Thanks.

3. [redacted] (Jin Lee) -- We circulated a memorandum requesting that the Commission accept the signed conciliation agreements by the Respondents. [redacted]

In the future, for agreements where the OSO is $6,500 or less, we were instructed to use similar language as described below:

In ordinary circumstances, the Commission would seek a civil penalty based on the violations outlined in this agreement as well as mitigating circumstances. However, based upon representations made by Respondents, including submission of financial documentation, the Commission is taking into account the fact that the [redacted]'s defunct, has no cash on hand, and has little ability to raise any additional funds.

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Accordingly, the Commission agrees that no civil penalty will be due. If evidence is uncovered indicating Respondents' financial condition is not as stated, a total civil penalty of up to six thousand five hundred dollars ($6,500) shall be immediately due, pursuant to 2 U.S.C. § 437g(a)(5)(A).

----- Forwarded by Ann Marie Terzaken/FEC/US on 10/27/2009 10:59 AM -----

Maura Callaway/FEC/US
10/27/2009 10:47 AM

To General Counsel Staff
cc
Subject Enforcement Weekly October 26, 2009

Enf Weekly October 26, 2009.docx

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ENFORCEMENT PROCEDURE 2009-20

Ann Marie Terzaken/FEC/US
10/15/2009 12:02 PM

To Enforcement Staff
cc
bcc

Subject Advisory Opinion Review

As a follow-up to our division meeting in September, I am sending around a roster (see below) for the advisory opinion review we discussed. When a new advisory opinion request comes in, Cindy will send the request to the next attorney on the list. The attorney will then follow the AOR through the AO process and give a short summary of the issues to all of us at the first division meeting following the approval of the final AO. This will help us follow hot issues and new developments in the law that are being handled through the AO process, which will be particularly useful as our Policy friends enter an active AO season in 2010.

If you have any questions, please let me or your team leader know. Also, if you are interested and have the time to assist Policy with an AOR from start to finish, please let me know. They would appreciate the assistance.

Thanks.

----- Forwarded by Ann Marie Terzaken/FEC/US on 10/15/2009 11:52 AM -----

Cynthia Myers/FEC/US
10/15/2009 11:51 AM

To Ann Marie Terzaken/FEC/US@FEC
cc
Subject let's try again - AO Roster

AO Enforcement Roster.doc

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ENFORCEMENT PROCEDURE 2009-19

Ann Marie Terzaken/FEC/US
09/28/2009 09:17 AM

To Enforcement Staff
cc
bcc

Subject PCTB Hearing Procedures

At the open session last Thurs, the Commission approved (4-1 with Weintraub dissenting) a modification to our PCTB hearing procedures that allows Commissioners to question OGC staff during the hearings "to elicit clarification." *See* Agenda Document 09-48. This modification is consistent with the new procedures for audit hearings. Your team leaders will discuss at your next team meeting how this modification will impact preparation for PCTB hearings. We can also discuss this topic at the next division meeting.

Also FYI -- The Commission received the first request for an audit hearing since the approval of the new hearing procedure for audits. I will attach Larry's summary below.

The first request for an audit hearing came in this week: Tennessee Democrats. The request is expected to circulate to the Commission Monday. This audit raises the question of whether telephone polls that contain PASO messages about Federal candidates are FEA -- similar to the polling-and-disclaimer issues we had in a MUR earlier this year involving the DCCC. There's also a question of audit documentation, as the auditors want to count 11 Harold Ford invoices apparently paid for by TDP as coordinated party expenditures, and the executive director of the TDP has submitted an affidavit that says that all of the invoices were misdirected, because they were really for generic party rallies. To be truly generic, and thus payable with Federal/Levin split (as TDP did), not a candidate could be mentioned at any such rally. There's no evidence on this point on either side, so that raises the hardy perennial of who's got the burden of proof in an audit. We've advised Audit that we see no Sunshine obstacle to having the hearing in open session if the Commission wants to. I believe I'm correct that the Commission has 30 days from receipt of the request to see if two Commissioners want to grant it.

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ENFORCEMENT PROCEDURE 2009-18

Ann Marie Terzaken/FEC/US
09/30/2009 09:56 AM

To Enforcement Staff
cc
bcc

Subject Emails to the Commission

Quick note/reminder -- When you send emails to the Commission, please be sure to not only cc: KG, SG, (the Deputy Associate GC's) and me, but also Tommie (GC). Thank you.

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

Enforcement Procedure 2009-17

Ann Marie Terzaken/FEC/US
09/30/2009

TO: Enforcement Staff

Subject: MUR 6181 (Krupp)
Reminder Letter Prepared for Mailing

For your general information, please review the attached reminder letter that will be used as the template for all future EPS dismissals that CELA determines requires a reminder. They will no longer be using cautionary language.

This template has not been approved for Enforcement cases. At this time, **we are continuing to use cautionary language.** If you would like to see a recent example, review the letter from the McClintock matter, which was handled on Team 2.

Thanks.

----- Forwarded by Ann Marie Terzaken/FEC/US on 09/30/2009 10:08 AM -----

Jeff Jordan/FEC/US
09/30/2009 10:03 AM

To Commissioners
cc Commissioner EAs, Gregory Baker/FEC/US@FEC, Ann Marie Terzaken/FEC/US@FEC
Subject MUR 6181 (Krupp) - Reminder Letter Prepared for Mailing

Commissioners:

In response to the discussion during the Executive Session on September 23, 2009, we have prepared a "reminder letter" that we intend to use in the Krupp matter, and similarly situated EPS cases in the future. We intend on mailing the attached letter on Friday at 4:00 PM, unless we receive any feedback from your office that may warrant further modifications.

If you have any concerns or questions, please contact me on X1552.

Thanks,

Jeff

MUR 6181 Krupp post Executive Session reminder letter.doc

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

ENFORCEMENT PROCEDURE 2009-16

EMAIL FROM: Ann Marie Terzaken

DATE: August 4, 2009

TO: Enforcement Staff

----- Forwarded by Ann Marie Terzaken/FEC/US on 08/04/2009 01:54 PM -----

Eugene Lynch/FEC/US

08/04/2009 01:40 PM

To Commissioners Office, Rosie Smith/FEC/US@FEC, Christopher Hughey/FEC/US@FEC, Rosie Smith/FEC/US@FEC, Robert Knop/FEC/US@FEC, Amy Rothstein/FEC/US@FEC, Robert A Hickey/FEC/US@FEC, Duane Pugh/FEC/US@FEC, Press Office Staff, Gregory Scott/FEC/US@FEC, Public Disclosure Division (PDD) Staff, Blake Lange/FEC/US@FEC, James Jones/FEC/US@FEC, Stephen A Gura/FEC/US@FEC, Ann Marie Terzaken/FEC/US@FEC, Kathleen Guith/FEC/US@FEC

cc

Subject FR Notice 2009-18

Attached is Notice 2009-18, entitled Notice of Agency Procedure for Notice to Respondents in Non-Complaint Generated Matters, as published in the Federal Register on 8/4/09 (74 FR 38617).

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

Federal Register / Vol. 74, No. 148 / Tuesday, August 4, 2009 / Notices

P

FEDERAL ELECTION COMMISSION

[NOTICE 2009–18]

Agency Procedure for Notice to Respondents in Non-Complaint Generated Matters

AGENCY: Federal Election Commission.

ACTION: Agency procedure.

SUMMARY: The Federal Election Commission ("Commission") is establishing a new agency procedure that will provide respondents in certain enforcement matters brought under the Federal Election Campaign Act of 1971, as amended ("FECA") with notice of a non-complaint generated referral and an opportunity to respond thereto, prior to the Commission's consideration of whether it has reason to believe that a violation of the Act has been or is about to be committed by such respondent. This program will provide respondents in non-complaint generated matters procedural protections similar to those of respondents in complaint-generated matters. Further information about the procedures for providing notice to respondents in non-complaint generated matters is provided in the supplementary information that follows.

DATES: Effective August 4, 2009. FOR FURTHER INFORMATION CONTACT: Mr. Mark Shonkwiler, Assistant General el, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION:

I. Background

On June 11, 2003, the Commission held a hearing concerning its enforcement procedures. The Commission received public comments, many of which argued for increased transparency in Commission procedures and expanded opportunities to contest allegations. Comments and statements for the record are available at: *http://www.fec.gov/agenda/agendas2003/notice2003–09/comments.shtml*. In response to issues raised at the hearing, the Commission issued new agency procedures. *See* Statement of Policy Regarding Deposition Transcripts in Nonpublic Investigations, 68 FR 50688 (Aug. 22, 2003); Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings, 70 FR 3 (Jan. 3, 2005).

On December 8, 2008, the Commission issued a notice of public hearing and request for public comment on the compliance and enforcement aspects of its agency procedures. Agency Procedures (Notice of public hearing and request for public comments), 73 FR 74495 (Dec. 8, 2008). On January 14–15, 2009, the Commission received comment and testimony. The comments received by the Commission, as well as the transcript of the hearing are available at: *http://www.fec.gov/law/policy/enforcement/publichearing011409.shtml*.

The Commission received numerous comments regarding respondents in non-complaint generated matters not receiving notice when a matter has been referred to the Commission's Office of General Counsel ("OGC") for enforcement. One commenter opined that the Commission should never find reason to believe ("RTB") that a violation occurred without first giving the respondent the opportunity to respond. Another commenter recommended instituting a program whereby potential respondents in non-complaint generated matters are given a written summary of the matter and an opportunity to respond in writing before the Commission makes an RTB finding, in order to put respondents on notice about the potential outcome of the proceeding. Other commenters urged the Commission to adopt procedures to notify committees of any internal referral, and to implement procedures to provide respondents with the opportunity to review and respond to any adverse course of action recommended by OGC before the Commission considers such recommendation.

II. Procedures for Notice to Respondents in Non-Complaint Generated Matters

The Commission is issuing a new agency procedure to provide notification to respondents of enforcement proceedings based on information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities (*i.e.*, non-complaint generated matters). *See* 2 U.S.C. 437g. In matters generated by complaints, the Commission may take no action on the complaint (other than dismissal) until respondents have at least 15 days after notification of the allegations contained in the complaint to answer the allegations. *See* 2 U.S.C. 437g(a)(1). However, the statute does not afford respondents the same opportunity to answer allegations in non-complaint generated matters. This agency procedure is intended to provide respondents in non-complaint generated enforcement matters with notice of the basis of the allegations, and an opportunity to respond.

For matters arising from a referral from the Commission's Reports Analysis Division or Audit Division ("internal referrals"), respondents will be notified of the referral within five days of receipt of the referral by OGC. The notice will contain a copy of the referral document and a cover letter setting forth the basis of the referral and potential violations of the Act and/or Commission regulations that arise based upon the referral. The respondent will then be given an opportunity to demonstrate that no action should be taken based on the referral, by submitting, within 15 days from receipt of the referral document and cover letter, a written explanation of why the Commission should take no action. The Commission will not take any action, or make any RTB finding against a respondent based on an internal referral unless it has considered such response or unless no such response has been served upon the Commission within 15 days.

Under current Commission practice, non-complaint generated matters based on referrals from the U.S. Department of Justice or any other law enforcement or governmental agency ("external referrals") are also deemed to be matters based on information ascertained in the normal course of carrying out its supervisory responsibilities. Under the new procedures, if OGC intends to initiate an enforcement proceeding based on an external referral, notice of

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the referral will be provided to respondents in the same manner as an internal referral. However, where immediate notification to a respondent of an external referral is deemed inappropriate, OGC will notify the Commission of the referral within 5 days of receipt of the referral from the governmental agency. In cases where, due to law enforcement purposes, the referral document may not be provided to a respondent, OGC will provide the respondent with a letter containing sufficient information regarding the facts and allegations to afford the respondent an opportunity to demonstrate that no action should be taken. Absent exercise of the Commission's discretion (by the affirmative vote of four Commissioners), OGC will not proceed with an enforcement proceeding based on an external referral until the referral or substitute informational letter is provided to the respondent.

III. Conclusion

This notice establishes agency practices or procedures. This notice does not constitute an agency regulation requiring notice of proposed rulemaking, opportunities for public participation, prior publication, and delay effective under 5 U.S.C. 553 of the Administrative Procedures Act ("APA"). The provisions of the Regulatory Flexibility Act, 5 U.S.C. 605(b), which apply when notice and comment are required by the APA or another statute, are not applicable. The above provides general guidance concerning notice to respondents in non-complaint generated matters and announces the general course of action that the Commission intends to follow. This notice sets forth the Commission's intentions concerning the exercise of its discretion in its enforcement program. However, the Commission retains that discretion and will exercise it as appropriate with respect to the facts and circumstances of each matter it considers. Consequently, this notice does not bind the Commission or any member of the general public.

On behalf of the Commission.
Dated: July 29, 2009.

Steven T. Walther,

Chairman, Federal Election Commission.

[FR Doc. E9–18542 Filed 8–3–09; 8:45 am]
BILLING CODE 6715–01–P

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FHFA, through advisory bulletins issued
by the prior regulator of the

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Enforcement Procedure 2009-15 (DO #47483)

Ann Marie Terzaken/FEC/US
07/24/2009 09:10 AM

To Enforcement Staff
cc
bcc

Subject CA provisions re substantially reduced civil penalty

See explanation below re new practice with respect to substantially reduced civil penalties and how we should describe them in our conciliation agreements.

For some reason, I was unable to cut and paste from the draft email below to send you a fresh email, so let me just add to what appears below that we should make one additional change to the new CA provision we intend to use going forward, and that is to simply switch the two sentences so that we first state what the civil penalty is and then we state the sentence about how we would normally seek a substantially higher civil penalty.

[redacted]

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CA will require that we use different language in the agreement, language that we have also used in the past to explain a substantial reduction in the CP.

[redacted]

Here is the language we intend to use for the foreseeable future:
In ordinary circumstances, the Commission would seek a substantially higher civil penalty based on the violations outlined in this agreement as well as the mitigating circumstances, including that the Respondents refunded contributions received in violation of 2 U.S.C. § 441b(a) as directed by the Commission's auditors. However, the Commission is taking into account the fact that the Committee is defunct, has very little cash on hand, and has a limited ability to raise any additional funds. Respondents will pay a civil penalty to the Federal Election Commission in the amount of five thousand dollars ($5,000), pursuant to 2 U.S.C. § 437g(a)(5)(A).

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nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

ENFORCEMENT PROCEDURE 2009-14 (DO #46737)

EMAIL FROM: Ann Marie Terzaken/FEC/US

Date: 05/29/2009 03:14 PM

To: Enforcement Staff

Cc: Lawrence Calvert/FEC/US@FEC, Nicole St Louis Matthis/FEC/US@FEC

Subject: SOR review

As you all know, various SORs have been circulated under the 48-hour review policy, and we have had questions or concerns about a number of them. We should continue to raise those questions and concerns during the review period, and I need to ask that you keep GLA (particularly Larry and Nicole) in the loop during this process. For them, the most important thing is not the substance of our questions/concerns, but rather what the status is of our discussions and negotiations with the relevant Commission offices. So, we should continue to alert GLA during the review period that we have questions and concerns that we plan to raise with Commissioners, and then we should continue to send them periodic updates as to the status of the negotiations -- obviously to let them know when the negotiations have ended, but also before that point, when applicable, to let them know that they are still ongoing. Keeping them in the loop will ensure that the SOR is processed for the public record in a timely manner.

For our attorneys, when you handle the SOR review for Enforcement, please confer with your team leader and, as appropriate, KG, SG, or me, when you identify issues that should be raised with the Commissioners who have signed the SOR.

Thank you!

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nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

Enforcement Procedure 2009-13 (DO #46735)

EMAIL TO: Enforcement Staff

Subject: Original Documents

From: Ann Marie Terzaken/FEC/US

Date: 05/29/2009 03:31 PM

For the integrity of our case files, and to ensure that we keep a complete inventory of PII (personally identifiable information), please remember to do two things when handling original documents. In addition to Retha's recent reminder on making sure all original documents are promptly sent to CELA, please also place a note in the official case file when you temporarily or permanently keep original documents in your office. For example, if you receive discovery that's in a banker's box and you want to store the documents in your office because they won't fit in the official file or because you need access to them before you've made a copy, please alert CELA and make sure the documents are logged in and a memo is placed in the case file identifying the documents and their location. Also, if you remove an original document from the case file (please only do this when absolutely necessary; making a copy is preferable), please make sure to log it out with a notation in the official file that includes who logged it out, on what date, and where the info will be stored.

If you ever have questions, please talk to Jeff. Thanks for your cooperation.

This document does not bind the Commission,
nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

ENFORCEMENT PROCEDURE 2009-12 (DO #46733)

To: Enforcement Staff

Cc: Retha Dixon/FEC/US@FEC, Elaine Devine/FEC/US@FEC, Leroy Rhinehart/FEC/US@FEC, Kim Collins/FEC/US@FEC, Charnika Miles/FEC/US@FEC, Frankie Hampton/FEC/US@FEC, Ruth Heilizer/FEC/US@FEC, Gregory Baker/FEC/US@FEC

FROM: Jeff Jordan/FEC/US

DATE: 06/18/2009 09:54 AM

Subject: Case Summaries by Attorneys - Add Specific Statutory Violation Reference

Hello Everyone:

I would like to request that all the attorneys who prepare Case Summaries to begin listing the statutory and regulatory violations at the bottom of their summary paragraph. Even if the complaint has no merit, please list the alleged violation(s). This effort will assist us in tracking the incoming violations prior to the FGC being circulated.

I appreciate the assistance.

Jeff

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nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

ENFORCEMENT PROCEDURE 2009-11
(DO # 45678)

EMAIL TO: Team Leaders

FROM: Ann Marie Terzaken

DATE: April 29, 2009

SUBJECT: Discovery

One thing I did want to pass on to you is that the discovery authority memo is close to circulation. I will ask Peter to send you all the next draft. One thing the memo notes is that we told the Commn back in 03 that instead of sending up each subpoena for approval, we would describe our investigation plan in detail and identify likely subpoena recipients in the FGCR. Over time, our FGCRs have become less descriptive in the investigation section, though some would meet this standard. As I have discussed with some of you already, going forward, let's make sure all FGCRs meet this standard. Please ask your team members to keep this in mind when drafting reports, and let's all keep this in mind when we edit. If you have questions, comments, etc., please let me know, or we can discuss it at our next meeting.

Thanks, everyone.

This document does not bind the Commission,
nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

ENFORCEMENT PROCEDURE 2009-10
(DOCS Open #45677)

EMAIL TO: Enforcement Staff

FROM: Ann Marie Terzaken

DATE: April 23, 2009

SUBJECT: Special Press Releases

FYI -- The Press Committee has decided to resume special press releases on enforcement matters. The criteria is now $150,000 in civil penalties, an increase from the previous $50,000 trigger. It's a good idea to refamiliarize yourself with the close-out procedures for special press release cases so that we do our part to make sure this process works as smoothly as possible. I will have the procedures circulated around again, particularly for the new folks.

Thanks, everyone.

MUR Close-out Procedures Checklist—Docs Open #41839

MUR Closeout Procedures Outline—Docs Open #41920

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nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

ENFORCEMENT PROCEDURE 2009-9
(DO #45676)

EMAIL TO: Enforcement Staff

FROM: Ann Marie Terzaken

DATE: March 26, 2009

SUBJECT: Investigative Plans

As you know, investigation plans should be submitted to Kathleen, Stephen, or me shortly after an investigation is authorized by the Commission. I found the plan attached below very helpful and thought I would send it along for your reference.

----- Forwarded by Ann Marie Terzaken/FEC/US on 03/26/2009 09:11 AM -----

Mark Allen/FEC/US
03/25/2009 06:55 PM

To Ann Marie Terzaken/FEC/US@FEC
cc
Subject MUR 6179 (Ward): revised Investigative Plan

Hi Ann Marie-
Please find attached the revised IP. I note that Michael magnanimously acknowledged that he modeled the MUR 6179 IP after the IP that Kasey drafted for MUR 5951 (Californians for Obama).

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nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

ENFORCEMENT PROCEDURE 2009-8
(DO #45675)

EMAIL To: Enforcement Staff

FROM: Ann Marie Terzaken

Date: March 17, 2009

SUBJECT: Statements of Reason

Please remember that SORs, once signed by the necessary Commissioners and circulated on a 48-hour no-objection basis, must be mailed to the complainant and respondent without delay by the enforcement attorney assigned to the matter. Before you mail, please confirm with GLA that it is ready to be mailed. Thank you!

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

ENFORCEMENT PROCEDURE 2009-7
DO # 45462

EMAIL FROM: Ann Marie Terzaken

DATE: March 11, 2009

SUBJECT: Commission Notification of Closing Letters

Good afternoon, everyone. As you have seen, we have been sending a monthly SOR log to Commissioners in the hope of facilitating the timely completion of SORs. To help further in this regard, I'd like for us to add to our email notifications re closing letters two additional pieces of information -- who is required to sign an SOR and who is preparing it. So, for example:

MUR 1234 (XTZ) is now closed. The notification letters will be mailed tomorrow morning. The file may now be made public within 30 days. One or more Statement of Reasons is required in this matter from Commissioners _____, _____, and _____ to be prepared by their offices.

OR

MUR 1234 (XTZ) is now closed. The notification letters will be mailed tomorrow morning. The file may now be made public within 30 days. One or more Statement of Reasons is required in this matter from all six Commissioners, and a draft SOR prepared by our office was circulated on _____.

If you have any questions or concerns about this, please raise them at our division meeting tomorrow, or separately with me if you prefer. Thanks.

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nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

ENFORCEMENT PROCEDURE 2009-6
(DO 45468)

EMAIL FROM: Ann Marie Terzaken

DATE: March 4, 2009

SUBJECT: Admonishment Letters

Just a heads-up -- During the executive session this afternoon, the Commission instructed us to use admonishment letters with the "softer" language until the Commission decides the issue of admonishments in the context of the public hearing and our recommendations relating to that hearing, which will be going up shortly. For an example of a letter with the "softer" language, please see the revised letter in the recent Shaner EPS dismissal.

Also, if we have any reports pending before the Commission that recommend admonishments in the traditional sense, please let me know so that we can discuss modifying our recommendation.

Thanks.

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

Enforcement Procedure 2009-5
(DO #45121)

CELA INFORMATIONAL DISCUSSION WITH ENFORCEMENT

- **Remedies**
- **Miscellaneous CMS Information**
- **Pre-Probable Cause Conciliation – Key Picks / Stats**

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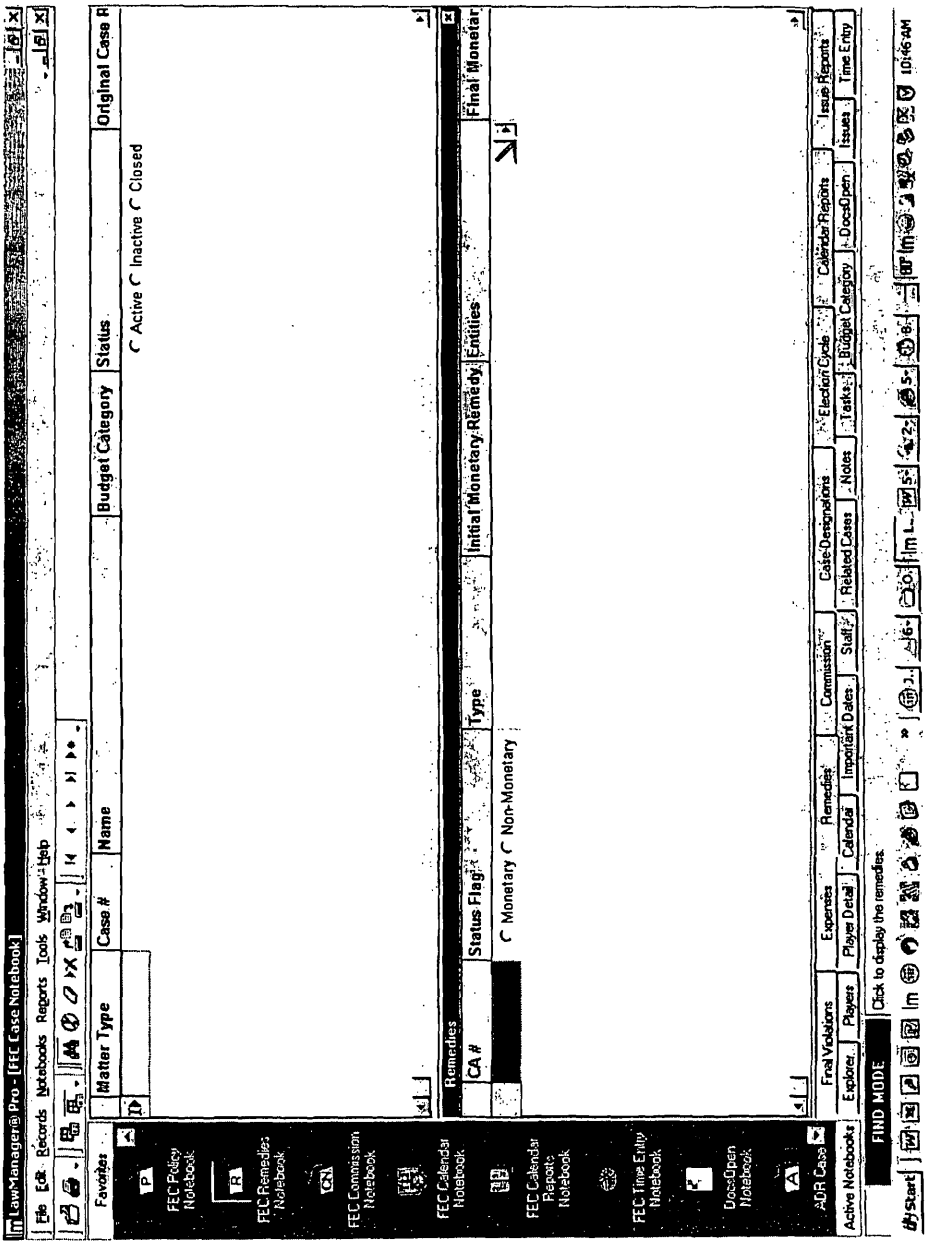
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

REMEDIES

Remedies Tab:



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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

Illustration 1: Tab showing case with Civil Penalties and non-monetary remedies. Note, the final monetary amount, effective date, status, and balance. Thus, if you are questioning payments made in a case this is your starting point.

LawManager® Pro - [FEC Case Notebook - TERRELL FOR SENATE]

File Edit Records Notebooks Reports Tools Window Help

Favorites: FEC Policy Notebook, FEC Remedies Notebook, FEC Commission Notebook, FEC Calendar Notebook, FEC Calendar Reports Notebook, FEC Time Entry Notebook, DocsOpen Notebook, ADR Case

Matter Type	Case #	Name	Budget Category	Status	Original Case R
MUR	5652	TERRELL FOR SENATE	Internal Enforcement	◉ Active ○ Inactive ○ Closed	

Remedies

CA #	Status Flag	Type	Final Mon	Entities	Status	Effective Date	Balance Due	Initial Monetary Reme
4	◉ Monetary ○ Non-Monetary	Penalty	$8,000.00	Otto Candies, LLC	In Process		$0.00	$0
5	◉ Monetary ○ Non-Monetary	Penalty	$5,000.00	Russo, Sammy Joe	Complete	Sat 6/30/2007	$0.00	$6,500
2	◉ Monetary ○ Non-Monetary	Penalty	$34,000.00	Schmidt, Justin; Terre	In Process		$0.00	$0
3	◉ Monetary ○ Non-Monetary	Penalty	$2,500.00	Chaffe, McCall, Phillip	Complete	Fri 12/1/2006	$0.00	$2,500
1	◉ Monetary ○ Non-Monetary	Penalty	$4,500.00	Carthage Partners, LL	Complete	Mon 6/27/2005	$0.00	$4,500
5	○ Monetary ◉ Non-Monetary	Other	$0.00	Russo, Sammy Joe	Complete		$0.00	$6,500
1	○ Monetary ◉ Non-Monetary	Other	$0.00	Carthage Partners, LL	Complete		$0.00	$4,500
3	○ Monetary ◉ Non-Monetary	Other	$0.00	Chaffe, McCall, Phillip	Complete		$0.00	$2,500

Final Violations | Expenses | Remedies | Commission | Case Designations | Election Cycle | Calendar Reports | Issue Reports

Active Notebooks | Explorer | Players | Player Detail | Calendar | Important Dates | Staff | Related Cases | Notes | Tasks | Budget Category | DocsOpen | Issues | Time Entry

Record 1 of 8

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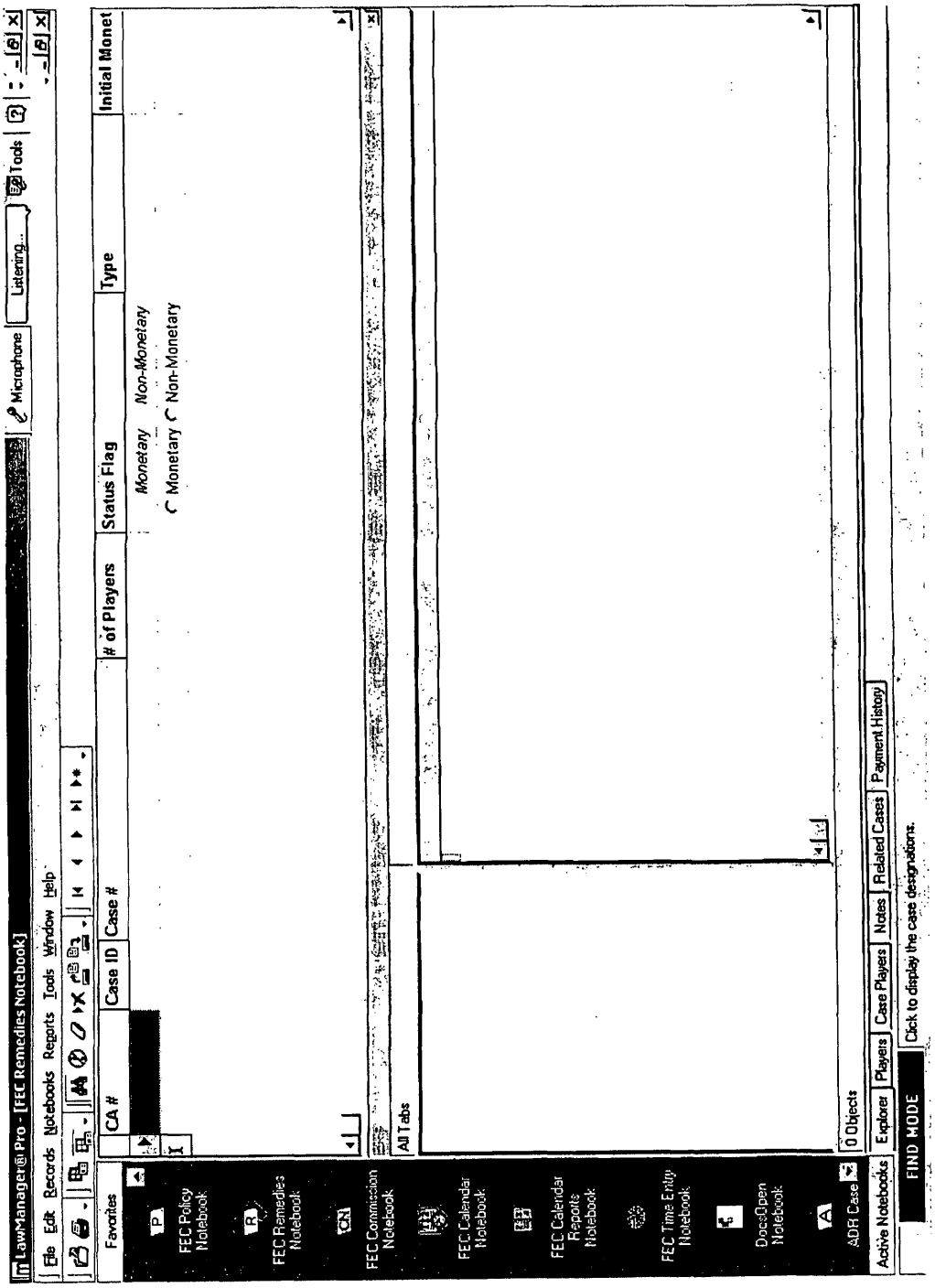
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

2.

Remedies Notebook:



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3.

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

Illustration 2: This illustration shows payments and current balance on the account. Note, amount due, amount received, payment date, and balance on the account.

LawManager® Pro - [FEC Remedies Notebook]

File Edit Records Notebooks Reports Tools Window Help

Favorites: FEC Policy Notebook, FEC Remedies Notebook, FEC Commission Notebook, FEC Calendar Notebook, FEC Calendar Reports Notebook, FEC Time Entry Notebook, DocsOpen Notebook, ADR Case

CA #	Case ID	Case #	# of Players	Status Flag	Type	Initial Monet
4	35327	5652 TERRELL FOR SENATE	1	Monetary / Non-Monetary	Penalty	
5	35327	5652 TERRELL FOR SENATE	1	Monetary / Non-Monetary	Penalty	
2	35327	5652 TERRELL FOR SENATE	2	Monetary / Non-Monetary	Penalty	
3	35327	5652 TERRELL FOR SENATE	1	Monetary / Non-Monetary	Penalty	
1	35327	5652 TERRELL FOR SENATE	1	Monetary / Non-Monetary	Penalty	
5	35327	5652 TERRELL FOR SENATE	1	Monetary / Non-Monetary	Other	
1	35327	5652 TERRELL FOR SENATE	1	Monetary / Non-Monetary	Other	
3	35327	5652 TERRELL FOR SENATE	1	Monetary / Non-Monetary	Other	

Payment History

Date Due	Date Received	Amount Due	Amount Receiv	Balance	Transaction #	Added	Added By	Updated	Updated By	Own
Wed 5/17/2006	Wed 5/17/2006	$34,000.00	$7,529.04	$26,470.96	ck #711	5/17/2006	KCOLLINS			KCO
Wed 5/17/2006	Wed 5/17/2006	$26,470.96	$26,470.96	$0.00	ck #69792	5/17/2006	KCOLLINS			KCO

Active Notebooks | Explorer | Players | Case Players | Notes | Related Cases | Payment History

Record 2 of 2 | Click here to activate the Data Explorer.

4.

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

Il. ..ration 3: This illustration shows the OGC's initial recomm. .ed civil penalty, the out-the-door "initial" civil penalty appro .. by the Commission and the final conciliated amount.

LawManager@Pro - [FEC Remedies Notebook]

File Edit Records Notebooks Reports Tools Window Help

Favorites: FEC Policy Notebook, FEC Remedies Notebook, FEC Commission Notebook, FEC Calendar Notebook, FEC Calendar Reports Notebook, FEC Time Entry Notebook, DocsOpen Notebook, ADR Case

CA #	Case #	# of Players	Status Flag	Type	Initial Monetary Remedy	Final Monetary Remedy	Effecti
5	5652 TERRELL FOR SENATE	1	Monetary Non-Monetary	Penalty	[redacted]	$5,000.00	Sat 6/
5	5652 TERRELL FOR SENATE	1	Monetary Non-Monetary	Other	[redacted]	$0.00	
4	5652 TERRELL FOR SENATE	1	Monetary Non-Monetary	Penalty	[redacted]	$8,000.00	
3	5652 TERRELL FOR SENATE	1	Monetary Non-Monetary	Penalty	[redacted]	$2,500.00	Fri 12/
3	5652 TERRELL FOR SENATE	1	Monetary Non-Monetary	Other	[redacted]	$0.00	
2	5652 TERRELL FOR SENATE	2	Monetary Non-Monetary	Penalty	[redacted]	$34,000.00	
1	5652 TERRELL FOR SENATE	1	Monetary Non-Monetary	Other	[redacted]	$0.00	
1	5652 TERRELL FOR SENATE	1	Monetary Non-Monetary	Penalty	[redacted]	$4,500.00	Mon 6/

Name	Total Player Remedies	Amount	Phone #	Sort	Added	Added By	Updated	Upda
Russo, Sammy Joe	2	$5,000.00		0	7/3/2007	KCOLLINS	7/3/2007	KCOL

Active Notebooks | Explorer | Players | Case Players | Notes | Related Cases | Payment History

Record 1 of 8

5.

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

Illustration 4: This illustration shows an example of disgorgement payments.

LawManager® Pro - [FEC Remedies Notebook]

File Edit Records Notebooks Reports Tools Window Help

Favorites: FEC Policy Notebook; FEC Remedies Notebook; FEC Commission Notebook; FEC Calendar Notebook; FEC Calendar Reports Notebook; FEC Time Entry Notebook; DocsOpen Notebook; ADR Case

CA #	Case #	# of Players	Status Flag	Type	Initial Monetary Remedy	Final Monetary
1	5442 KEYES 2000, INC.	2	Monetary / Non-Monetary	Penalty	$28,000.00	$
1	5442 KEYES 2000, INC.	2	Monetary / Non-Monetary	Disgorgement	$95,302.00	$

Payment History

Date Due	Date Received	Amount Due	Amount Receiv	Balance	Transaction #	Added	Added By	Updated	Updated By	O
Fri 4/7/2006	Fri 4/7/2006	$65,302.00	$4,000.00	$61,302.00	ck#5156	4/7/2006	KCOLLINS			KC
Wed 5/10/2006	Wed 5/10/2006	$61,302.00	$4,000.00	$57,302.00	ck#5157	5/10/2006	KCOLLINS			KC
Thu 6/15/2006	Thu 6/15/2006	$57,302.00	$4,000.00	$53,302.00	ck#5158	6/15/2006	KCOLLINS			KC
Tue 7/11/2006	Tue 7/11/2006	$53,302.00	$4,000.00	$49,302.00	ck#5159	7/11/2006	KCOLLINS			KC
Thu 8/24/2006	Thu 8/24/2006	$49,302.00	$4,000.00	$45,302.00	ck#5160	8/24/2006	KCOLLINS			KC
Tue 8/29/2006	Mon 8/28/2006	$45,302.00	$4,000.00	$41,302.00	ck#5161	8/29/2006	KCOLLINS			KC
Tue 10/10/2006	Tue 10/10/2006	$41,302.00	$4,000.00	$37,302.00	ck#5162	10/12/200	KCOLLINS			KC
Wed 11/8/2006	Wed 11/8/2006	$37,302.00	$4,000.00	$33,302.00	ck#5163	11/16/200	KCOLLINS			KC
Tue 12/19/2006	Tue 12/19/2006	$33,302.00	$4,000.00	$29,302.00	ck#5164	1/19/2007	KCOLLINS	1/19/2007	KCOLLINS	KC
Fri 1/19/2007	Fri 1/19/2007	$29,302.00	$4,000.00	$25,302.00	ck#5165	1/19/2007	KCOLLINS	1/19/2007	KCOLLINS	KC
Tue 2/20/2007	Tue 2/20/2007	$25,302.00	$4,000.00	$21,302.00	ck#5166	2/28/2007	KCOLLINS			KC
Tue 3/20/2007	Tue 3/20/2007	$21,302.00	$4,000.00	$17,302.00	ck#5167	3/20/2007	KCOLLINS			KC
Tue 4/10/2007	Tue 4/10/2007	$17,302.00	$4,000.00	$13,302.00	ck#5170	4/10/2007	KCOLLINS			KC
Thu 5/17/2007	Thu 5/17/2007	$13,302.00	$4,000.00	$9,302.00	ck#5171	5/17/2007	KCOLLINS			KC
Tue 7/3/2007	Tue 7/3/2007	$9,302.00	$4,000.00	$5,302.00	ck#5172	7/3/2007	KCOLLINS			KC
Fri 7/13/2007	Fri 7/13/2007	$5,302.00	$4,000.00	$1,302.00	ck#5173	7/13/2007	KCOLLINS			KC
Wed 9/5/2007	Wed 9/5/2007	$1,302.00	$1,302.00	$0.00	ck#5174	9/5/2007	KCOLLINS			KC

Active Notebooks | Explorer | Players | Case Players | Notes | Related Cases | Payment History

Record 23 of 23 | This is the balance due.

6.

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Miscellaneous CMS Remedies Information

- **Two Way Memo from Accounting....**
- **Press Release Cases: What to do.....**
- **Procedures for handling checks received from respondents (in person)...**
- **Wire Transfers Directed to the Agency (notification to CELA)....**
- **Commission rejects CP, respondents have submitted CA w/money – how do we return the proceeds....**

Miscellaneous Entity Notebook Information

Some Common Reasons for changing entities in the entity notebook, which will also have an effect on the "Players Tab."

- **Change of address**
- **Treasurer change**
- **Cert causes Primary Respondent to change**
- **Team Leader and attorney changes or re-assignments**

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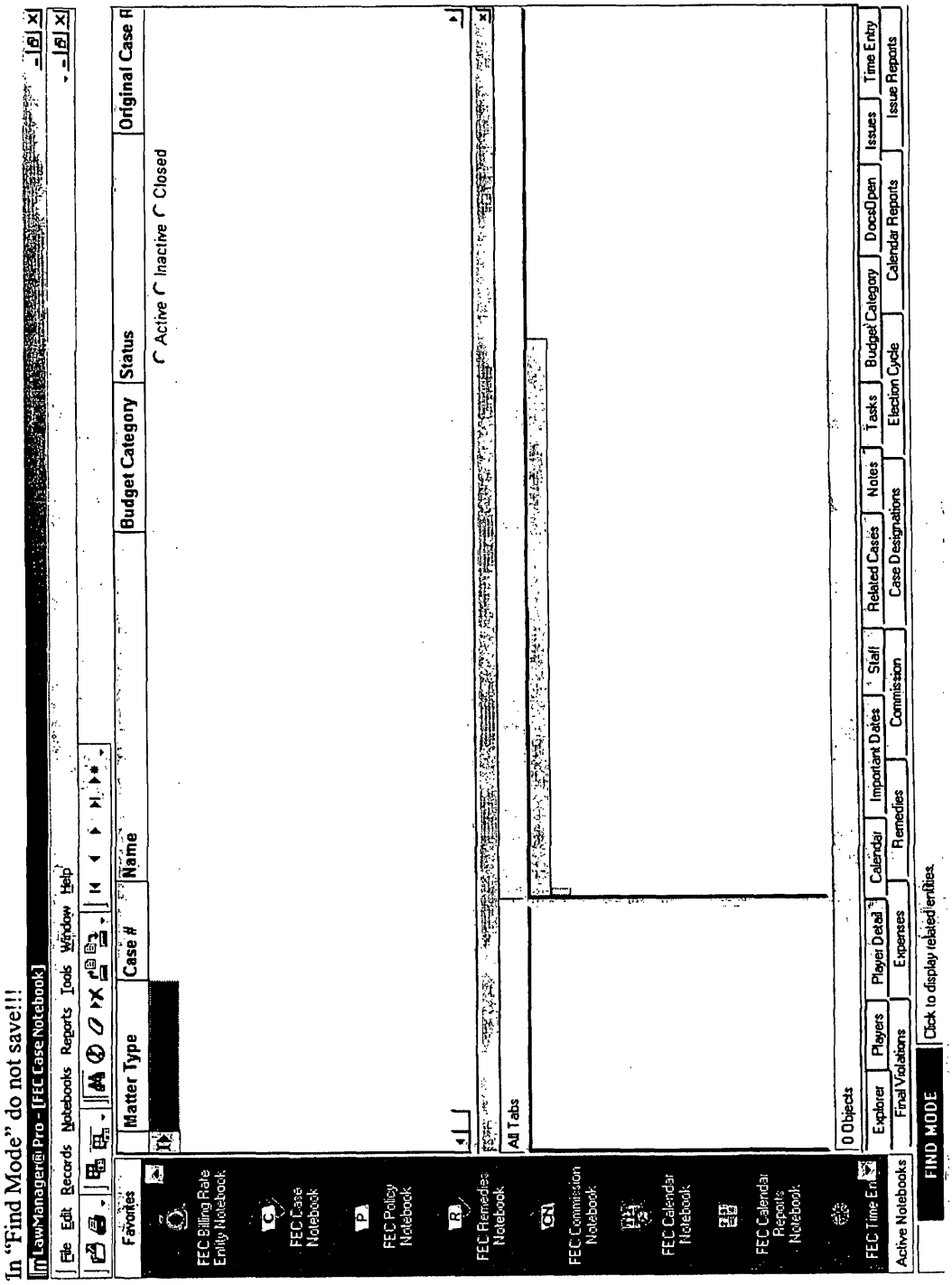
A Common Mistake in CMS

In "Find Mode" do not save!!!



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LawManager® Pro - [FEC Case Notebook - COMMITTEE TO ELECT MIKE BOYCE]

File Edit Records Notebooks Reports Tools Window Help

Favorites: FEC Billing Rate Entity Notebook; FEC Case Notebook; FEC Policy Notebook; FEC Remedies Notebook; FEC Commission Notebook; FEC Calendar Notebook; FEC Calendar Reports Notebook; FEC Time En

Matter Type	Case #	Name	Budget Category	Status	Original Case R
MUR	6000	COMMITTEE TO ELECT MIKE BOYCE	External Enforcemer	C Active C Inactive C Closed	

Case ID	Entities	Start Date	Event	Linkage	Sort	Status	Warning
56037	Committee to Elect Mike Bc	Fri 4/25/2008	Enforcement-Complaint/Referral		5	Pending	
56037	Waddell, Mike	Fri 4/25/2008	Enforcement-Complaint/Referral-Initial Comp		15		
56037	Committee to Elect Mike Bc	Wed 4/30/2008	Enforcement-Complaint/Referral-Initial Comp		30		
56037	Committee to Elect Mike Bc	Thu 5/15/2008	Enforcement-Complaint/Referral-Initial Comp		55		
56037	Boyce, Judy Moon; Commit	Sun 5/18/2008	Enforcement-Complaint/Referral-Initial Comp		35		1
56037	Committee to Elect Mike Bc	Wed 5/28/2008	Enforcement-Complaint/Referral-Initial Rating		105		
56037	Committee to Elect Mike Bc	Thu 1/24/2013	Enforcement-Statute of Limitation-Statute of		1545		

Explorer | Players | Player Detail | Calendar | Important Dates | Staff | Related Cases | Notes | Tasks | Budget Category | DocsOpen | Issues | Time Entry

Active Notebooks | Final Violations | Expenses | Remedies | Commission | Case Designations | Election Cycle | Calendar Reports | Issue Reports

Record 1 of 1 | Click here to assign all Respondents for this Matter or Case to this Event.

Start | 11:54 AM

9.

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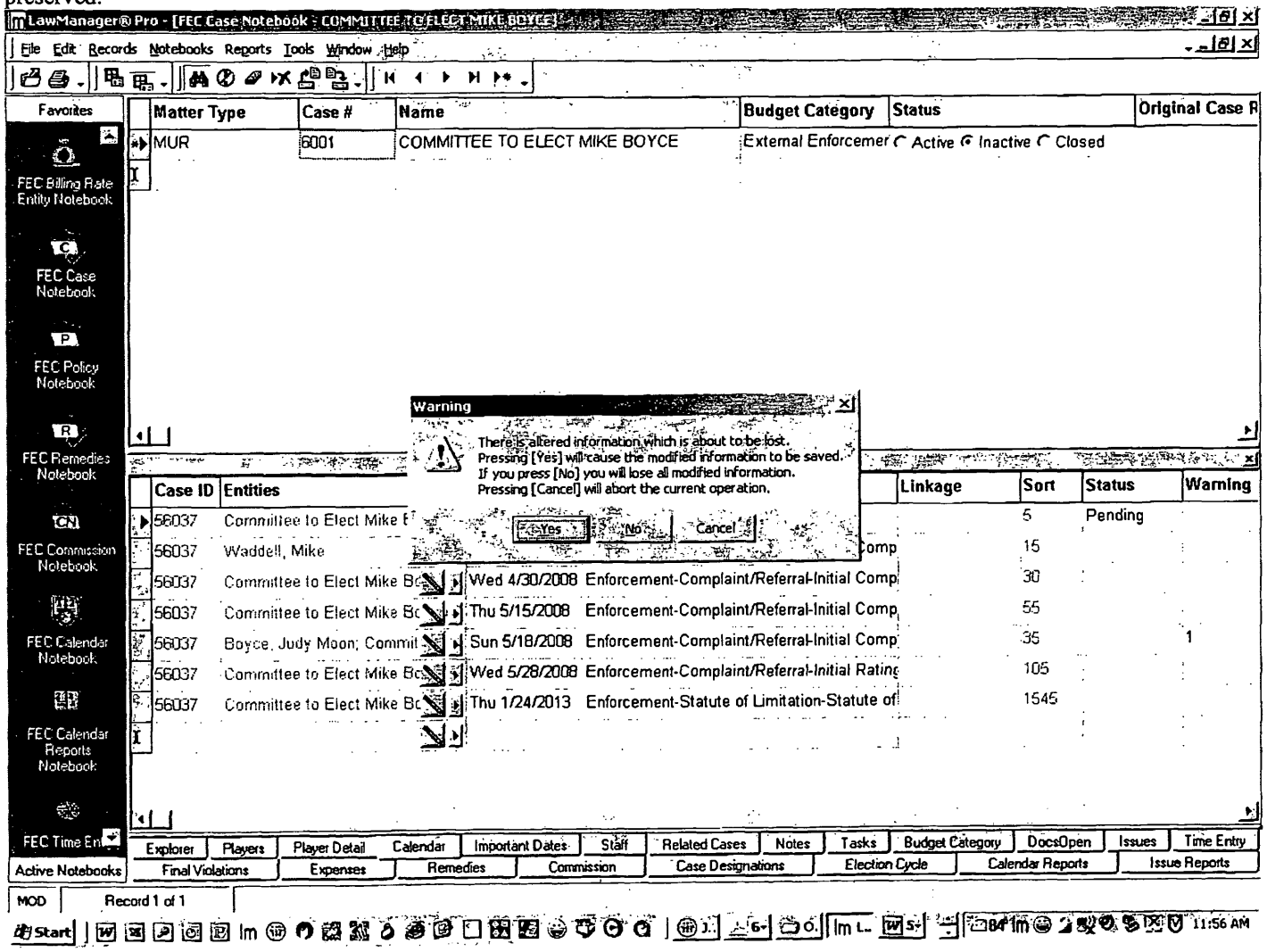
When moving out of a case you must clear all information using the binoculars icon first and then the eraser icon, before you enter another field – such as the case# field. If you accidentally modify a record DO NOT select "Yes." Instead, select "No" so your change will not be preserved.



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PPCC

3 selections for PPCC in order to track progress for statistical analysis. 1. PPCC Letter w/CA to Respondent.
2. Pre-PCC Concluded. 3. PPCC Report with CA to Commission.

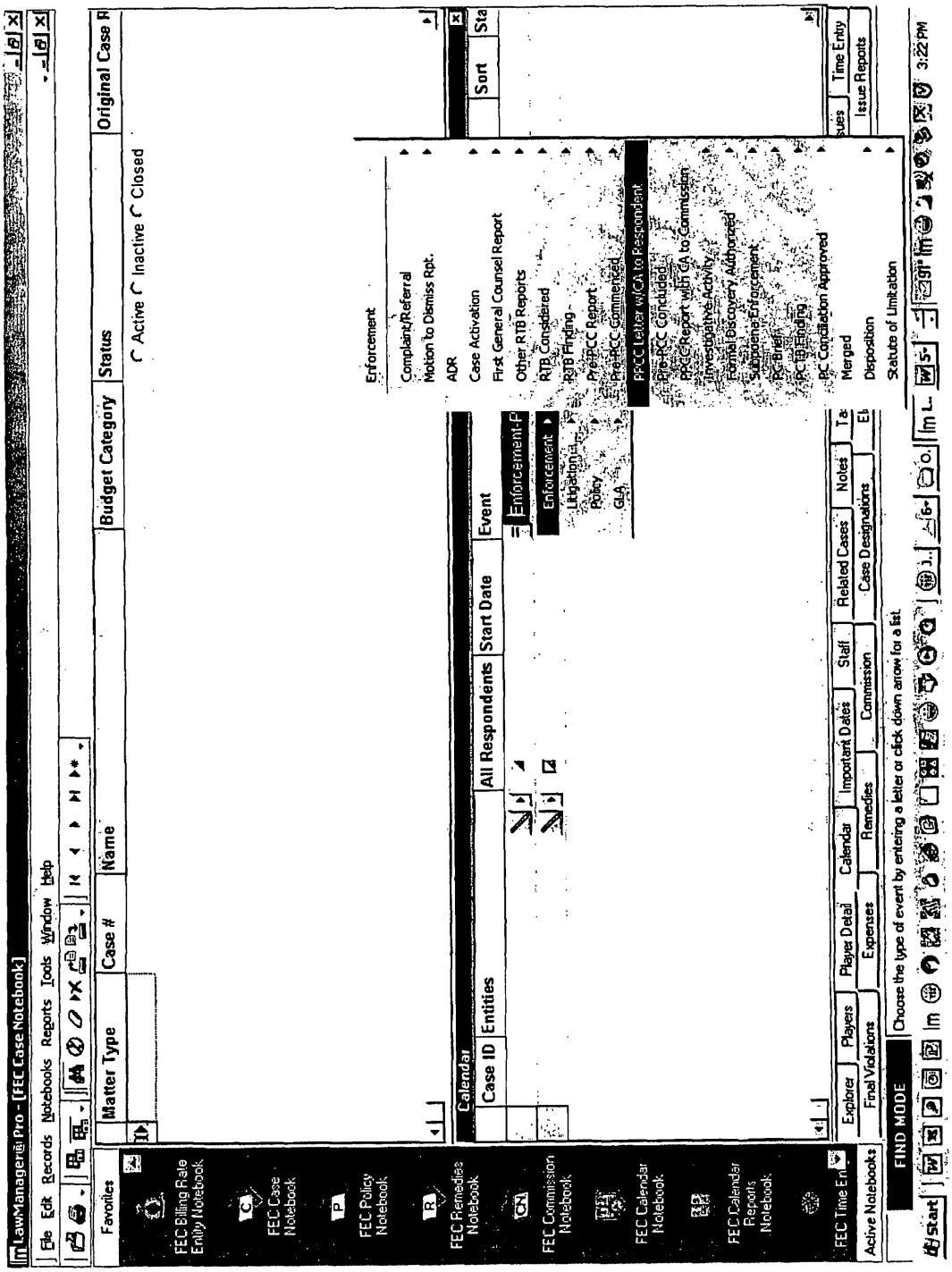

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Illustration 5: This illustration shows entry for PPCC at both the beginning of the stage when the letters are mailed out and the end of the stage when the report has been circulated to the Commission for a vote. At the point of mailing the CA to the respondent the **staff attorney** is responsible for noting in CMS the event as illustrated below, along with the linkage identifier of "100." When the CA is circulated to the Commission for a vote the **team secretary or Associate's secretary** is responsible for noting in CMS the event illustrated below, along with the linkage identifier of "102."

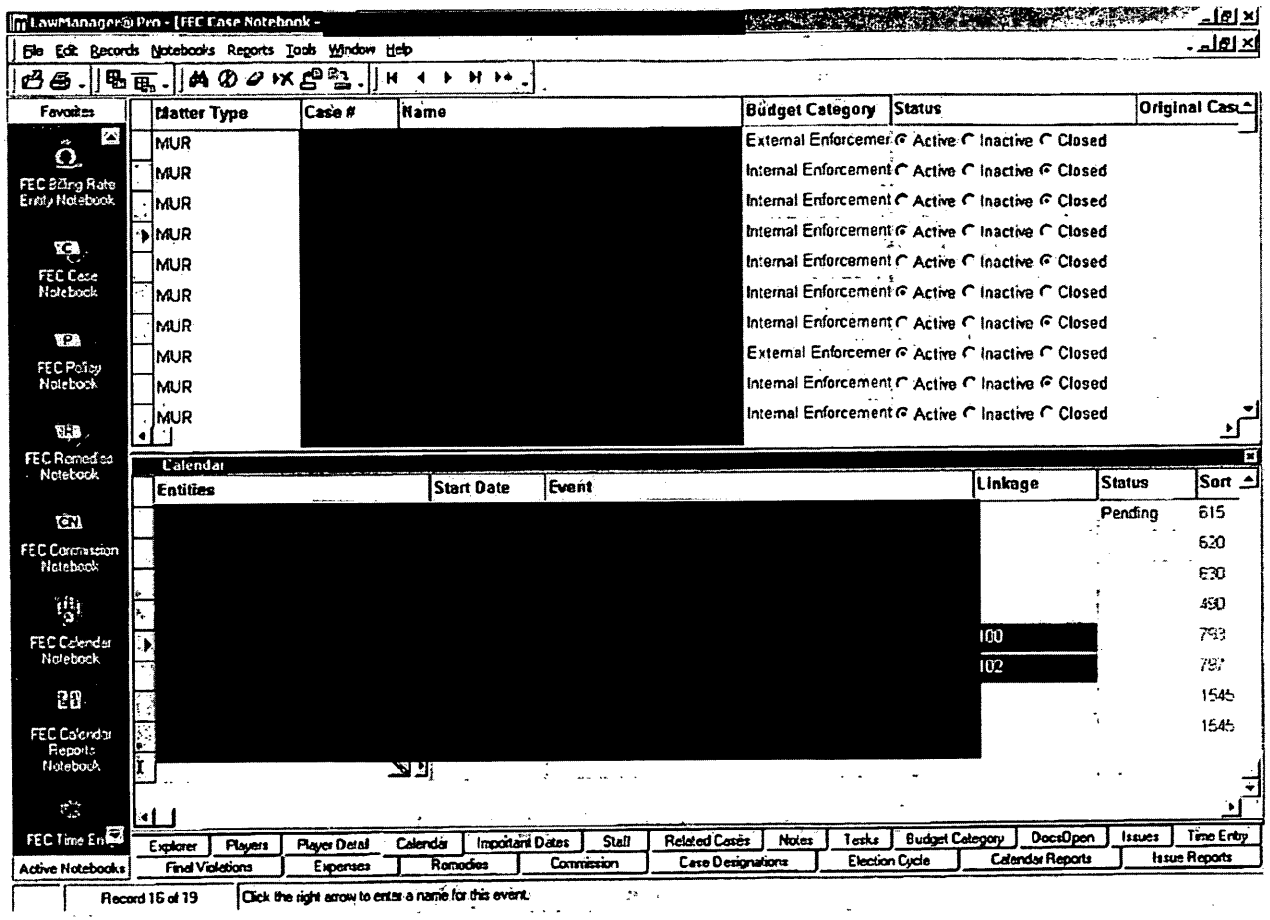

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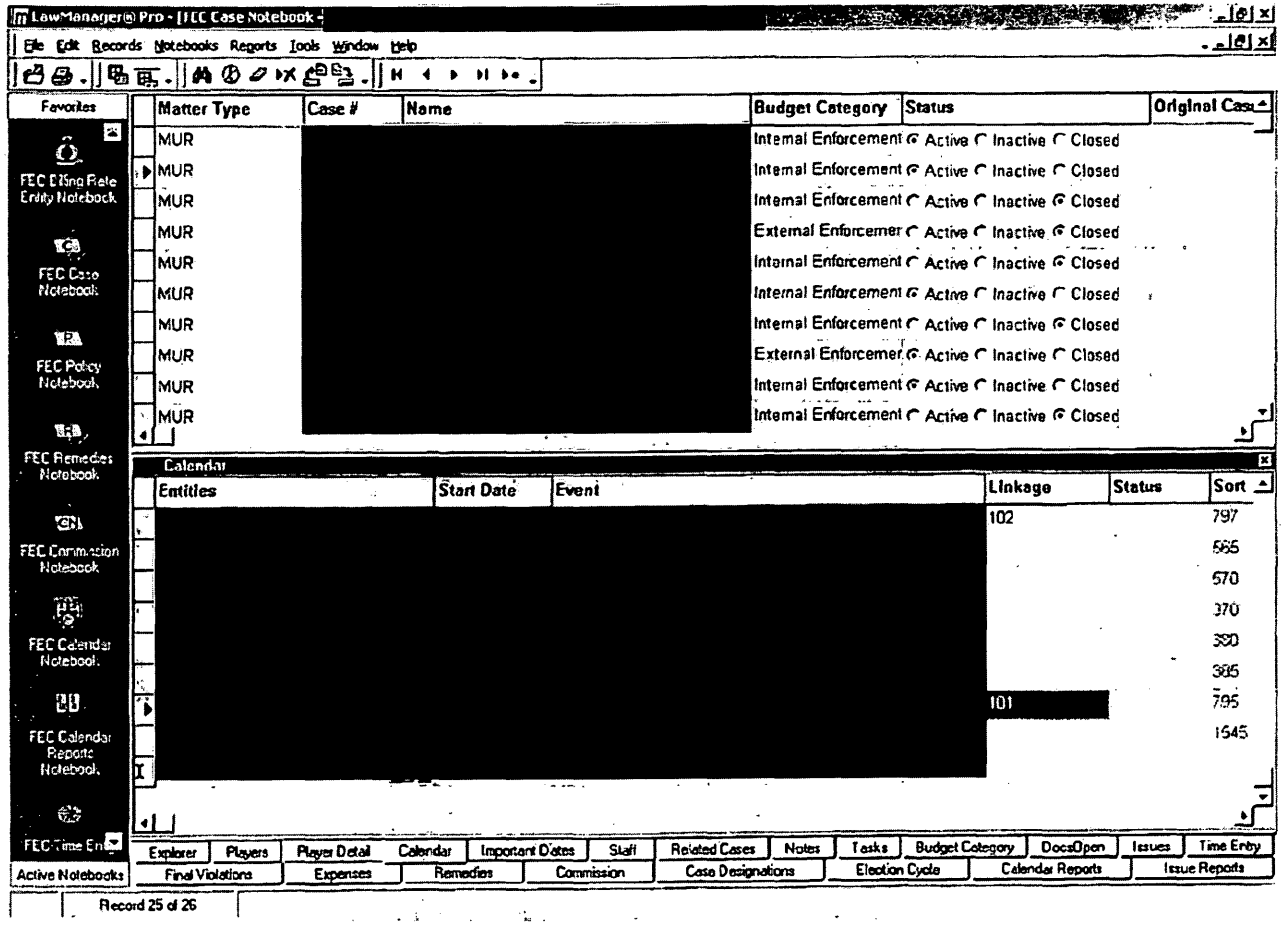
Illustration 6: This illustration shows entry for PPCC at the end of the stage in circumstances where no CA will be forthcoming and OGC has decided to move on to Probable Cause or recommend no further action. The **staff attorney** is responsible for noting the entry illustrated below, as well as marking the linkage identifier with the number "101."



13.

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ENFORCEMENT PROCEDURE 2009-4
(DO #44478)

COMPILATION OF PROCEDURES DISCUSSSED IN ENFORCEMENT MANAGERS MEETINGS NOTES

(Notes are contained in the Enforcement Manager Meeting Notes folder in Docs Open)

Paralegals Should Attend Case Activation Meetings (2/23/09 PB)
Paralegals should attend case activation meetings to facilitate their early involvement in cases as well as to generally broaden their exposure to enforcement cases and issues. Please confirm that your team paralegal is invited to these meetings and has access to the relevant materials. (Cindy and Nora are including paralegals on the invitations to the meetings).

Updates to Civil Penalty Chart (2/5/09 APW)
Please remember to inform Maura if a different civil penalty is used in one of your cases so that she can update the civil penalty chart appropriately.

Review Legal Cases Cited in GCR Before Executive Session (4/16/09 MS)
During several recent Executive Sessions, Commissioners have questioned staff quite closely about prior cases cited as precedent for various legal propositions. While many of these citations were essentially "boilerplate" cases that OGC routinely cites, Commissioners clearly expect staff to be able to discuss the specific facts (and distinguishing characteristics) of any case cited in a GCR as precedent. Accordingly, it is important that all attorneys always read (and have available copies) of any legal cases cited in their GCR, so that they can respond to such inquiries at the table.

Executive Session Summaries (new policy) (2/23/09 PB)
Executive Session summaries should be submitted to your supervisor for review prior to their transmittal to Maura Callaway (*this is a new policy*). In general, the summary should provide background on the case and focus on meaningful "takeaways" from the meeting. A detailed discussion of all of the Commissioners' remarks is not necessary. The summary should be completed within two days after the meeting. Set forth below is a template summary that fulfills these objectives.

PPCC—60 Day Target (5/7/09 MA)
Please continue to work towards completing conciliation within 60 days. If you have not reached an agreement and you are within a few days of the 60 day target, please discuss whether it makes sense to terminate or continue ppcc with your team leader and, as applicable, AMT/KG/SG.

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OBJECTION MEMOS (5/7/09 MA)
Objection Memoranda are due by noon Friday of the week prior to the Executive Session. If you need additional time, please make sure to disseminate the memo in time for everyone to place them in their binders before they leave for the weekend. Thank you.

COORDINATE WITH POLICY (5/7/09 MA)
If the subject of a case is relevant to an ongoing rulemaking, such as coordinated communications and FEA, please touch base with Policy and also make sure they receive a copy of our Report.

SOLS and Tolling Agreements (5/7/09 MA)
For cases with an SOL within two years, please ask respondents for tolling agreements in exchange for requested extensions. We can also ask for an SOL waiver in order to engage in ppcc, since that process is optional at the Commission's discretion.

SPECIAL PRESS RELEASES (5/28/09)(SL)
Now that we are again releasing "special press releases," the close-out procedures will be amended to reflect the practice of faxing the close-out packages to the complainant and respondents the evening before the release or, if no fax number can be found, sending the close-out package by overnight courier the day before the release.

SOL DATES and CMS—SOL SENSITIVE MATTTERS (6/25/09)(MA)
In order to ensure accurate SOL dates in CMS, which are relied upon for case tracking purposes, and in view of various recent inaccuracies, every Enforcement attorney is being asked to review their cases to make sure the first and last SOL dates in CMS are accurate, and to revise the SOL dates as necessary. It is also very important that attorneys adjust the SOL dates in CMS where necessary to reflect tolling agreements and Commission actions, for example, if the Commission determines to take NFA as to certain respondents and/or activity. If you are unsure of how to calculate the SOL for a particular violation, please see your team leader and also consider confirming with Litigation.

Further on the SOL issue, everyone is reminded for SOL-sensitive matters:

* if the Commission finds RTB and enters into ppcc, ask respondent for an SOL waiver for the period of ppcc; if respondent does not agree to provide a waiver, after consultation with your supervisor, submit a memorandum notifying the Commission that we are withdrawing from ppcc; and

* for post-investigation matters in which we are contemplating ppcc, we should obtain an SOL waiver to cover ppcc before we even submit the GCR to the Commission recommending ppcc; if respondent does not agree to provide

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a waiver, we should draft a PCTB brief instead of a ppcc GCR.

"Morris'" Pre-RTB Notifications in External Referrals (6/25/09) (MA)
We are expanding our use of the so-called "Morris" letters by sending pre-RTB notification letters to respondents brought to our attention by external referrals, such as from DOJ. See, e.g., [redacted]

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ENFORCEMENT PROCEDURE 2009-3
(DO # 44466)

Ann Marie Terzaken/FEC/US
03/05/2009 09:44 AM

To Enforcement Staff
cc Thomasenia Duncan/FEC/US@FEC, Gregory Baker/FEC/US@FEC
Subject Revisions to Factual and Legal Analysis

In instances where the Commission approves an F&LA subject to revisions consistent with the table discussion, the Chairman's office has requested that we take certain action before RTB notification packages are sent up to his office for signature. Specifically, he has asked that we send the revised F&LAs informationally via email to the Commissioners' offices to give Commissioners a brief opportunity to review them before they go out the door. So, when you are in this situation, please send an email similar to the one Elena sent below and add at the end that they let you know if they have any questions by a certain date, which should be two business days from the date of your email.

If you are in a situation where the Commission found No RTB or dismissal and the F&LA was revised at the table, even though the notifications are not sent up to the Chairman for signature, please discuss with your team leader whether the extent of the revisions necessitates an informational circulation.

If you have any questions, please let me know. Thanks.

[redacted]

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[redacted]

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ENFORCEMENT PROCEDURE 2009-2
(DO #44464)

Ann Marie Terzaken/FEC/US
02/27/2009 02:23 PM

To Mark Shonkwiler/FEC/US@FEC, Peter Blumberg/FEC/US@FEC, Susan Lebeaux/FEC/US@FEC, Mark Allen/FEC/US@FEC, Ana Pena-Wallace/FEC/US@FEC, Sidney Rocke/FEC/US@FEC
cc Kathleen Guith/FEC/US@FEC, Stephen A Gura/FEC/US@FEC, Maura Callaway/FEC/US@FEC
Subject SORs and closing letters

Just a reminder on closing letters -- OGC is pushing to avoid the hold up of closing letters for SORs because of the 60-day deadline for g(a)(8) suits. If you get such a request from the 9th floor, please let me know with a cc to GLA before you grant the request.

Given the 60-day deadline, it is also important for us to circulate draft SORs soon after the relevant executive sessions. As I mentioned earlier this week, the monthly SOR log will be going out next week, and we need to make sure all draft SORs required to be circulate by our office are, in fact, circulated by early next week. I asked for the draft by COB yesterday, and so far I've received one. If there are others, please send them to me (or to KG or SG, as applicable) before the end of the day today.

Thanks.

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ENFORCEMENT PROCEDURE 2009-1
(Docs Open #44463)

Ann Marie Terzaken/FEC/US
02/24/2009 12:34 PM

To Enforcement Staff
cc
Subject Fw: Additional Memoranda for Matters with Objections

FYI -- Darlene would like a heads-up on erratas and supplements to reports. She tends to work on certs before the sessions so that there's not as much to do after the sessions. Giving her a heads-up will help her incorporate the errata or supplement into her cert preparation in a timely manner. Thanks!

----- Forwarded by Ann Marie Terzaken/FEC/US on 02/24/2009 12:32 PM -----

Darlene Harris/FEC/US
02/24/2009 11:36 AM

To Ann Marie Terzaken/FEC/US@FEC
cc Mary Dove/FEC/US@FEC
Subject Additional Memoranda for Matters with Objections

Whenever OGC is going to circulate an errata, supplemental memo, etc., for a matter that has been objected to, please give me a heads up - - an email from the attorney or team leader would suffice.

I just saw the errata for MUR 5783, which is on the agenda for tomorrow, and it affects the C.A. and F&LA. This impacts the vote certification language (the report date and any erratas are referenced for C.A.s and F&LAs).

Thanks, in advance, for your help.

Darlene Harris
Deputy Secretary of the Commission
Federal Election Commission
999 E Street, NW, Washington, DC 20463
202-694-1038

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2008

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2008 QUICK CHECK PRIMARY SIGNATURE POLICY

(DO #5226)

DOCUMENT	GENERAL COUNSEL SIGNS	ASSOCIATE GC/DEPUTY GC SIGNS	ASSISTANT GC SIGNS
Reports/Memos/Briefs			
General Counsel's Brief	Yes	No	No
PCTB and No PCTB Reports	Yes	No	No
All Reports authorizing civil suit	Yes	No	No
All other substantive reports and memos	Decided at activation meeting or later	Decided at activation meeting or later	Only if specifically designated at activation meeting or thereafter
All memos regarding extensions of time, extension of the voting deadlines, and suspension of rules	No	Yes	If designated
All memoranda forwarding Statements of Reason	Yes, except deadlocked votes	Yes, only for deadlocked votes	No
Correspondence			
All letters to respondents and complainants re: No RTB, split votes, or dismissals	No	No	Yes
Pre-RTB Notification Letters	No	Yes	No
Conciliation Agreements	No	Yes (Associate)	No
All letters enclosing Briefs	Yes	No	No
All letters to respondents and complainants re: PCTB/No PCTB finding	No	No	Yes
All letters to federal agencies including notification of PCTB/No PCTB	No (except for referrals to DOJ)	Yes (Associate)	No
All letters to DOJ referring FECA violation	Yes	No	No
Notification letters re: civil suit authorization	No	No	Yes

RTB Notification Letters	Signature Authority (2 USC § 437g)
All letters to respondents*	Chairman or Vice Chairman

*RTB letters do not need to be reviewed by the Associate GC. These letters may go directly from the team to CELA.

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Jeff Jordan/FEC/US
12/03/2008 12:57 PM

To Enforcement Staff
cc Charnika Miles/FEC/US@FEC, Retha Dixon/FEC/US@FEC, Leroy Rhinehart/FEC/US@FEC, Gregory Baker/FEC/US@FEC
bcc
Subject Important Reminder About Circulations and Document Processing

There are two important points I would like to remind you about:

1. In all cases that are in the FGC stage (post-activation), you as an Enforcement Attorney are responsible for identifying any supplements, amendments, or responses that have arrived since you received the matter (i.e., activation). If you have received a correspondence falling within one of these categories please notify Curtis or Retha in CELA Docket (X1517) so the matter may be circulated to the Commission on an "Information" basis.

2. In all cases where you have a matter that is circulating on tally, please assist us in verifying that the documents in your MUR file are also found in the OGC Shared Drawer we have with the Commission. This would include all previous reports, responses, supplements, discovery, etc. In the event you cannot find a particular document please contact Charnika Miles at extension 1520. The link to the shared folder is:

\\Ntsrv1\voting ballot matters\OGC Matters Circ

If you have any further questions, please feel free to contact me on extension 1552.

Thanks,

Jeff

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Jeff Jordan/FEC/US
11/25/2008 09:54 AM

To Enforcement Staff
cc Charnika Miles/FEC/US@FEC, Leroy Rhinehart/FEC/US@FEC, Retha Dixon/FEC/US@FEC, Kim Collins/FEC/US@FEC, Frankie Hampton/FEC/US@FEC,
bcc
Subject Friendly Reminder Re: Copies for scanning (2nd request)

CELA is still not receiving the "copy" for scanning, as requested whenever a document is left with us for processing. Please understand that by not giving us a copy you are delaying the circulation or mailing of your matter. I have informed my staff to return documents to Enforcement staff where copies have not been provided. Please work with us so we may more efficiently serve your needs. Of course, in some instances where there are extreme time concerns, we will work with you.

Thanks,

Jeff
Retha Dixon/FEC/US

Retha Dixon/FEC/US
10/15/2008 12:23 PM

To Enforcement Staff
cc Leroy Rhinehart/FEC/US@FEC, Charnika Miles/FEC/US@FEC, Jeff Jordan/FEC/US@FEC
Subject Friendly Reminder Re: Copies for scanning

This is to remind you to make certain that you **include a copy**, for scanning purposes, when you submit any documents for circulation to OCS through CELA.

Thank you for your attention and cooperation in this matter.

Retha L. Dixon
Docket Manager
Office of General Counsel
Federal Election Commission

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Jeff Jordan/FEC/US
11/17/2008 02:32 PM

To *Enforcement Staff*
cc Charnika Miles/FEC/US@FEC, Gregory Baker/FEC/US@FEC, Maura Callaway/FEC/US@FEC, Retha Dixon/FEC/US@FEC, Leroy
bcc
Subject Responsibility for Determining Relevant Documents for Circulation to the Commission

Hello All:

As you may already be aware, as part of your responsibility when reports and memoranda are circulated to the Commission, you should be checking the shared digital folder OGC has with the Commissioners. The shared folder contains all the cases on circulation along with the underlying documents available for the Commissioners to review. It is important that the Commissioners be able to see all the historical reports, responses, and complaint documents associated with your cases. Accordingly, you are being asked to access the shared folder at the time you submit a matter for circulation. Please determine whether the Commissioners have all the documents they need to make their vote.

The link to the shared folder is:

\\Ntsrv1\voting ballot matters\OGC Matters Circ

The types of documents, in addition to the report or memoranda on circulation (allow the report on circulation 2 business days to be scanned), that should be in the shared folder include:

- Response(s) (historically these documents have been attached to the case ratings so you will need to open the rating to see if the responses are present - going forward we have separated the responses for scanning purposes)

- Complaint

- Prior GC Report(s) or Memoranda (thus, if you are circulating a 2nd GC Report you should expect to see the First GC Report)

If believe something may be missing from the shared folder please e-mail or contact Charnika Miles in CELA at X1520.

Thanks,

Jeff

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FEDERAL ELECTION COMMISSION		
MANUAL OF DIRECTIVES	COMMISSION DIRECTIVE:	
	REVOKES:	NO. 52
	Revision dated December 12, 2006	EFFECTIVE DATE: September 10, 2008
SUBJECT: Circulation Vote Procedure		

The purpose of this directive is to provide written guidelines on circulation votes at the Federal Election Commission. It is intended to supplement other Commission documents and clarify procedures when matters circulated for a vote are subsequently addressed at a Commission meeting.[1]

I. CIRCULATION VOTE POLICIES

A. General. Matters requiring formal Commission action that have not been placed on a meeting agenda will be circulated for a vote. Vote circulations requiring certification shall be made by the Commission Secretary. In certain instances, the Staff Director, the General Counsel or the Chief Financial Officer may determine that direct circulation by his or her office is warranted for administrative matters not requiring certification. All documents circulated to the Commission for a vote shall include a ballot.

B. Objection and Withdrawal. If a Commissioner objects to a document by the voting deadline, the matter will be added to the agenda for a meeting[2] unless the Commissioner formally withdraws the objection before the meeting by notifying the Commission Secretary in writing or by e-mail communication. An objection that is "for the record" does not cause a matter to be added to the agenda for a meeting. The General Counsel shall be consulted in appropriate instances on matters that have Sunshine Act implications.

Before the Commission discusses at a meeting a document to which there is an objection, the originating office may withdraw the document. A written or e-mailed notice of withdrawal shall be given to the Commission Secretary, who will then notify the Commission. Withdrawal of the document by the originating office nullifies votes previously submitted.

C. Impact of Revisions. Suggested revisions agreed to by the originating office or division should be addressed by withdrawal and recirculation or by objection and discussion at a Commission meeting. If a Commissioner suggests minor changes without substantive impact, the originating office may advise the other Commissioners orally and seek approval of the changes.

[1] See also Directive No. 10, Rules of Procedure of the Federal Election Commission.
[2] See also Directive No. 17, Agenda Deadline Procedures and Sunshine Act Regulations.

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D. Timing of Votes; Changing of Votes. A Commissioner may amend, withdraw, or cast a vote at any point up to the official certification (which normally takes place immediately after the voting deadline for any matter that has received the requisite four votes and has not received an objection). Any vote so amended, withdrawn, or cast will have the same effect as a vote cast by the voting deadline (e.g., an objection to a matter not previously objected to anytime prior to the official certification would place the matter on a meeting agenda[3] or, conversely, the withdrawal of a previously cast objection would negate the need for a meeting discussion if the withdrawal results in a unanimous tally).

For any circulated matter that is discussed at a Commission meeting, any Commissioner may cast or change his or her vote at the meeting. Prior votes of individual Commissioners will stand unless changed at the meeting. If an intervening motion is adopted, prior votes are superseded.

E. Certification of Votes. Certifications of tally votes and no-objection items will be prepared by the Commission Secretary as soon as possible after the vote deadline has passed. The original certification will be kept in the Commission Secretary's office and a copy with the official seal will be delivered to the Staff Director, the General Counsel and the Chief Financial Officer.

F. Suspension of Voting Deadlines. Voting deadlines may be suspended by Commission approval of such a recommendation circulated on a 24-hour no-objection basis with the following exceptions: Title 26 certification matters, publication of Non-filers, and setting of filing dates for special elections. The normal voting deadlines for these exceptions shall prevail.

II. CIRCULATION VOTE PROCEDURES

A. Tally Votes. Sensitive matters shall be circulated on green paper and non-sensitive matters on white paper. Matters for tally votes shall generally be circulated daily and shall have a voting deadline of 4:00 P.M. the second Wednesday following the day of circulation, unless the matter is circulated on a Wednesday, in which case the voting deadline will be the Wednesday following the date of circulation. Public funding certification matters will have a voting deadline of 4:00 P.M. one full business day ("24-hour deadline") from the day of circulation.

An office or division may request for cause a compression or an extension of the timeframe for matters circulated for tally vote (such as certain expedited advisory opinions and special election notices). If the Staff Director, the General Counsel or the Chief Financial Officer approves the request, the matter shall be circulated with the appropriate deadline indicated on the ballot sheet. Offices should be diligent in submitting matters that conform to established deadlines and only request modifications for exceptional circumstances.

The Chairman, after consultation with the other Commissioners, may extend the voting deadline for a particular matter circulated for tally vote if it appears that a majority of the Commissioners will not have an adequate opportunity to review the material.

[3] Subject to deadlines established in Directive No. 17.

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B. No-Objection Matters. Sensitive no-objection matters shall be circulated on yellow paper and non-sensitive matters on white paper. No-objection matters shall generally have a 24-hour deadline. An office may request for cause a compression or an extension of the timeframe. If the Staff Director, the General Counsel or the Chief Financial Officer approves the request, the matter shall be circulated with the appropriate deadline indicated on the ballot sheet.

The Staff Director, or the Staff Director and the Chief Financial Officer,[4] shall circulate recommendations to the Commission on a 24-hour no-objection basis for competitive selections (including initial appointments, transfers, and temporary and permanent promotions) for all positions at the Senior Level (SL), as well as certain pay matters for SL employees.[5]

Additionally, items that have no substantive recommendations of first impression for consideration by the Commission or documents to which the Commission has given prior acceptance subject to certain modifications may be circulated on a 24-hour no-objection basis. In the Administrative Fines Program, reason to believe recommendations and final determination recommendations where the respondents do not challenge the reason to believe finding may also be circulated on a 24-hour no-objection basis.

Matters circulated on a 24-hour no-objection basis shall be deemed approved unless an objection is received in the Commission Secretary's Office by the voting deadline. An objection will result in the matter being placed on the agenda of an Open Meeting or Executive Session, whichever is appropriate, according to the deadlines provided in Directive 17. A vote must be taken during the meeting, which supersedes all previous no-objection ballots cast.

C. Non-filer Circulation. Reports Analysis Division (RAD) recommendations regarding publication of non-filer information will be circulated on goldenrod paper immediately upon receipt in the Commission Secretary's Office. Publication will occur immediately after the vote deadline or as soon as there are four affirmative votes.

D. Inspector General's Semiannual Report. Section 5 of the Inspector General Act of 1978 (as amended) requires Inspectors General to report to Congress on a semiannual basis for the 6-month periods ending March 31 and September 30. Section 5(b) specifies that the Head of Agency shall be provided the semiannual reports by April 30 and October 31 for "any comment such head determines appropriate" and other information as appropriate. The reports are to be transmitted by the Head of Agency to the Congress within 30 days.

To preserve the independent expression of the Inspector General while assuring the opportunity for any Commissioner to comment, the following circulation procedures are established:

The Inspector General shall circulate his or her final report to the Commission, the Staff Director, the General Counsel and the Chief Financial Officer.

---

[4] Recommendations for personnel actions that do not have budget implications are placed into circulation by the Staff Director; recommendations for personnel actions that do have budget implications are placed into circulation jointly by the Staff Director and the Chief Financial Officer. See Directive No. 17.

[5] See Personnel Instruction 319.1, Senior Level Pay.

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The Staff Director, in coordination with the Chief Financial Officer, will draft the Head of Agency report containing substantive comment on the Inspector General's Report. This report will be prepared for the Chairman's signature and shall be circulated for a tally vote.

In order to include the Head of Agency report in the published Inspector General's semiannual report, the Staff Director shall provide the Inspector General the approved Head of Agency report at least two business days prior to the transmittal of the report to Congress. The Inspector General's Office will then provide the published semiannual report to the Staff Director for his or her transmittal.

III. DELIVERY AND PHOTOCOPYING OF DOCUMENTS

A. Delivery of Circulation Materials. Matters circulated for tally vote will be delivered to each Commissioner's office and other recipients by the Commission Secretary's Office at 11:00 A.M. daily. Other matters will be delivered to each Commissioner's office and other recipients by the Commission Secretary's Office at 11:00 A.M. and 4:00 P.M., Monday through Thursday. On Friday, there will be a circulation of documents at 12:00 P.M. Expedited or emergency circulations may be made when warranted by special circumstances.

To assure that matters circulated for tally vote are included in the 11:00 A.M. daily circulation, documents are due at the Secretary's Office by 3:00 P.M. the previous working day. For other matters, to assure inclusion in the 11:00 A.M. circulation, documents are due at the Secretary's Office by 5:00 P.M. the previous working day. To assure inclusion in the 4:00 P.M. circulation, documents are due at the Secretary's office by 1:00 P.M. the same day. To assure inclusion in the Friday circulation, documents are due in the Secretary's Office by 10:00 a.m. that day. Documents received after these times will only be included in a circulation at the Commission Secretary's discretion subject to workload constraints.

B. Photocopying. The Administrative Division shall give priority attention to the photocopying of circulation vote materials and shall immediately notify the Commission Secretary of any difficulty in accomplishing requested photocopying services in a timely manner. The Commission Secretary's Office will communicate as soon as practicable to the Administrative Division any known extraordinary circumstances that may affect the production schedule.

IV. DOCUMENT SIGNING AUTHORITY ON VOTING BALLOTS[6]

Votes on circulations may only be made via a signed ballot delivered to the Commission Secretary's Office. A Commissioner may not delegate to any person his or her vote or decision-making authority. However, a Commissioner may delegate to a member of his or her staff the authority to affix the Commissioner's name to a circulation vote provided the Commissioner has given instructions to the staff member regarding the matter being acted on and the staff member is acting in accordance with those instructions. In this way, the Commissioner is actually casting the vote and the staff member is signing in a purely ministerial capacity. In each instance in which a Commissioner's staff member has acted as agent in casting the Commissioner's vote, the

[6] See Commission Memorandum No. 1247, from General Counsel William Oldaker entitled "Delegation of Document Signing Authority," discussed at the April 7, 1977 Commission Meeting.

Additional Enforcement Materials

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Secretary shall maintain with the ballot any written authorization, instructions, or after-the-fact ratification provided by the Commissioner.

No proxy voting shall be permitted in Commission meetings.

This Directive was adopted on September 10, 2008.

Joseph F. Stoltz
Acting Staff Director

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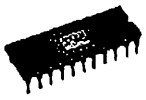

Jeff Jordan/FEC/US
09/17/2008 12:56 PM

To Enforcement Staff
cc Gregory Baker/FEC/US@FEC, Ann Marie Terzaken/FEC/US@FEC, Kathleen Guith/FEC/US@FEC, Leroy Rhinehart/FEC/US@FEC, Charnika
bcc
Subject New Deadlines for Circulations to the Commission Secretary's Office

Pursuant to revised Commission Directive 52 there is a new process for circulating matters to the Commission. Generally, the Commission will have at least one week to consider voting matters and will receive circulations for tally votes and non-tally votes at two intervals during the day.

Specifically, I have broken down below the cut-off times you should be aware of in processing your memos and reports through CELA:

For Tally Vote Circulations: The report must be given to the Commission Secretary by no later then 3:00 PM in order to be circulated to the Commission by 11:00 AM the next day. The Commission Secretary only circulates Tally Vote matters once a day - at 11:00 AM. Therefore, you must bring the report to CELA no later than 2:30 PM in order to ensure the matter is forwarded to the Commission Secretary by 3:00 PM.

For Non-Tally Circulations: These would include informational memos, no-objection matters, etc.. The Secretary's Office circulates all non-tally matters at 11:00 AM and 4:00 PM. Thus, the Secretary's Office needs the non-tally documents in its office at 5:00 PM on the prior day for an 11:00 AM circulation and by 1:00 PM the same day for a 4:00 PM circulation. Accordingly, there are two cut-off times to be concerned with here. First, for the 11:00 AM circulation CELA needs the document on the prior day by no later then 4:00 PM and for the 5:00 PM circulation CELA will need the document by no later than 12:00 PM the same day.

If you have a document that exceeds 20 pages (with attachments), please be advised we may need additional processing time before we circulate it upstairs. Also, any matter that must make it by the deadline for a particular reason should be clearly labeled as an expedite and be preceded by an e-mail to Retha and Curtis noting the need to move on the matter once it's received.

NOTE: Any exceptions to the CELA cut-off times should be run through me, and if possible we will accommodate staff whenever we can. It is unlikely any exceptions to the Secretary's cut-off times will be permitted; therefore, please plan accordingly.

Recap:

Tally - To CELA by 2:30 PM for next day circulation

Non-Tally - To CELA by 4:00 PM for next morning, and 12:00 PM for same day, circulation.

Thanks,

Jeff

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

TABLE 1. TIERING OF TRU WC PROCESSES IMPLEMENTED BY HANFORD BASED ON JUNE 4–7 AND 27, 2007 ON-SITE BASELINE INSPECTION

WC process elements	Hanford WC T1 changes	Hanford WC T2 changes*
Acceptable Knowledge (AK) and Load Management.	Implementation of load management; AK (5)	Notification to EPA upon completion of AK Accuracy Reports; AK (2).
	New waste streams created as a result of combining or separating previously distinct waste streams; AK (6).	Notification to EPA upon completion of updates to or substantive modifications****of the following: —AK Summaries/Waste Stream Profile Forms (WSPFs) and AK Documentation Reports; AK (16) —AK–NDA Communication changes; AK (3) —Changes to site procedure WMP 400.7.1.9; AK (4).
	Categories of waste not approved under this baseline inspection (e.g., soil/gravel, newly-generated solids including K Basin waste); AK (16).	Notification to EPA upon generation of new WSPFs, AK summaries and AK documentation reports; AK (16).
Nondestructive Assay (NDA)	New equipment or physical modifications to approved equipment**; NDA (1)***. Extension or changes to approved calibration range for approved equipment; NDA (2)***.	Notification to EPA upon completion of changes to software for approved equipment, operating range(s) and site procedures that require CBFO approval; NDA (2)***.
Real-Time Radiography (RTR)	N/A	Notification to EPA upon the following: —Implementation of new equipment or substantive changes****to approved equipment; RTR (1) —Completion of changes to site procedures requiring CBFO approval; RTR (2).
Visual Examination (VE) and Visual Examination Technique (VET).	N/A	Notification to EPA upon the following: —Completion of changes to site VE and VET procedures requiring CBFO approval; VE (1) and VET (1) —Addition of new Summary Category Group (SCG) or waste stream(s); VE (2) and VET (2).
WIPP Waste Information System (WWIS).	Implementation of load management; WWIS (4)	Notification to EPA upon the completion of changes to WWIS procedure(s) requiring CBFO approval; WWIS (1).

*Upon receiving EPA approval in this action, Hanford will report all T2 changes to EPA at the end of each fiscal year quarter.
**Modifications to approved equipment include all changes with the potential to affect NDA data relative to waste isolation and exclude minor changes, such as the addition of safety-related equipment.
***These are discussed in Sections (1) and (2) of the section for each NDA system, i.e., 8.2.1 for WRAP GEA Units A & B, 8.2.2 for WRAP IPAN Units A & B, 8.2.3 for WRAP SHENCA and 8.2.4 for PFP Calorimeters and the Room 172 SGSAS.
****Substantive changes means changes with the potential to impact the site's waste characterization activities or documentation thereof, excluding changes that are solely related to Environmental Safety & Health (ES&H), nuclear safety, the Resource Conservation and Recovery Act (RCRA) or are editorial in nature.

IV. Availability of the Baseline Inspection Report for Public Comment

EPA has placed the report discussing the results of the Agency's inspection of the Hanford Site in the public docket as described in **ADDRESSES**. In accordance with 40 CFR 194.8, EPA is providing the public 45 days to comment on these documents. The Agency requests comments on the proposed approval decision, as described in the inspection report. EPA will accept public comment on this notice and supplemental information as described in section 1.B. above. EPA will not make a determination of compliance before the 45-day comment period ends. At the end of the public comment period, EPA will evaluate all relevant public comments and revise the inspection report as necessary. If appropriate, the Agency will then issue a final approval letter and inspection report, both of which will be posted on the WIPP Web site.

Information on the certification decision is filed in the official EPA Air Docket, Docket No. A–93–02 and is available for review in Washington, DC, and at the three EPA WIPP informational docket locations in New Mexico (as listed in **ADDRESSES**). The dockets in New Mexico contain only major items from the official Air Docket in Washington, DC, plus those documents added to the official Air Docket since the October 1992 enactment of the WIPP LWA.

Dated: January 18, 2008.

Elizabeth Cotsworth,

Director, Office of Radiation and Indoor Air.

[FR Doc. E8–1658 Filed 1–29–08; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

[Notice 2008–1]

Rules of Procedure

AGENCY: Federal Election Commission.

ACTION: Notice of Rules of Procedure.

SUMMARY: The Federal Election Commission is revising its written rules for conducting its activities to provide for the circumstance when the Commission has fewer than four Members. Further information is provided in the **SUPPLEMENTARY INFORMATION** that follows.

FOR FURTHER INFORMATION CONTACT: Associate General Counsel Lawrence L. Calvert, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: Under 2 U.S.C. 437c(e) the Commission "shall prepare written rules for the conduct of

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its activities." In 1978, the Commission adopted Directive 10 to fulfill this statutory obligation. *See Rules of Procedures*, 43 FR 31433, (July 21, 1978). On December 20, 2007, the Commission adopted revisions to Directive 10, which added new section L, to provide rules of conduct when the Commission has fewer than four Members. The Commission is publishing the revised Directive 10 below in accordance with 2 U.S.C. 437c(e). For the convenience of the reader, the entire text of Directive 10 is set forth below including sections A through K, which have not been published in the **Federal Register** since 1978.

Directive 10

A. Meetings

The Commission shall meet at least once every month and also at the call of any Member, pursuant to U.S.C. 437c(d).

1. For the purpose of these rules, the word Member means a Commissioner appointed by the President with the advice and consent of the Senate pursuant to 2 U.S.C. 437c(a)(1).

2. For the purpose of these rules, the word meeting means the collegiate deliberation of at least four Members of the Commission pursuant to 2 U.S.C. 437c(d).

B. Quorum

Four Members of the Commission shall constitute a quorum for the consideration and resolution of matters that involve the exercise of its duties and powers under the Federal Election Campaign Act of 1971 as amended and Chapters 95 and 96 of the Internal Revenue Code of 1954 (the Act). If less than four Members of the Commission are present at any time during a Commission meeting, the Chairman shall declare a temporary recess until a quorum is again present at which time the meeting may resume.

C. Presiding Officer

1. The Chairman of the Commission shall be the presiding officer over meetings of the Commission.

2. He or she shall call meetings to order.

3. The Vice-Chairman shall act as presiding officer in the absence or disability of the Chairman or in the event of a vacancy in the office of Chairman. In the absence of the Chairman and Vice-Chairman, the Members of the Commission present shall select a presiding officer, to act during the absence of the Chairman and Vice-Chairman.

D. Introduction of Business

1. Meetings of the Commission shall be called to order by the Chairman.

2. The Chairman shall ascertain the presence of a quorum before proceeding with the business of any meeting.

3. All business before the Commission shall be brought by the presiding officer.

E. Motions

1. Any motion shall be reduced to writing at the request of any Member of the Commission.

2. Any motion may be withdrawn or modified by the movant at any time before it is amended or voted upon.

3. Any principal or secondary motion that exercises a duty or power of the Commission under the Act shall require four votes for approval.

4. Any motion to adjourn or recess shall require a majority vote of at least three Members of the Commission for approval.

5. Any principal or secondary motion regarding a procedural matter shall require a majority vote of at least three Members of the Commission for approval.

6. For the purpose of these rules, a procedural motion is any matter not exercising the powers of the Commission under the Federal Election Campaign Act, as amended or Chapter 95 or 96 of the Internal Revenue Code of 1954, including but not limited to any motion to delay a vote on a matter to any subsequent meeting; or any motion requesting a status report; or directing further studies, information and reports from the General Counsel, the Staff Director or any division thereof; or any motion to waive the timely submission requirement for circulation of material for the agenda of the Commission.

7. Motions to Consider

The introduction of a principal motion puts a matter before the Commission for deliberation. When any such matter is under debate the Chairman shall entertain no motion except:

(a) A motion to adjourn.

(b) A motion to recess.

(c) A motion to call for the order of the day.

(d) Motion to Reconsider. The effect of the adoption of a motion to reconsider is to place before the Commission again the question on which the vote to reconsider was taken in the exact position in which it was before the original vote. Four votes are necessary to adopt a motion to reconsider. It is in order for any such motion to be offered by a member who was on the prevailing side of the question when it was initially adopted.

(e) 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. In order to table any agenda item which was placed on the agenda for a particular meeting by a Member of the Commission who is absent at that meeting a vote of a majority of at least three members of the Commission is required for approval. A motion to lay a matter over takes precedence over any motion to move the previous question.

(f) A motion to postpone consideration of a matter to a date certain. Any such motion shall require a majority vote of at least three members of the Commission.

(g) A motion to move the previous question.

(h) A motion in the nature of a substitute.

(i) A motion to amend. Any motion to amend takes precedence over the motion that it proposes to amend but is subordinate to all other motions. The effect of the foregoing is that the adoption of any such motion to amend does not result in the adoption of the motion to be amended; instead, that motion remains pending in its modified form. Rejection of a motion to amend leaves the pending motion as it was before the amendment was offered.

F. Personal Privilege

Any Commissioner may as a matter of personal privilege obtain recognition to speak upon any subject matter which in his or her judgment may affect the Commission or the Commissioner.

G. General Consent

In cases where there appear to be no opposition, the Chairman may state that in the absence of objection, action shall be considered taken on a matter.

H. Members Subsequently Recorded as Voting

Whenever any Member of the Commission who was absent when a vote was taken subsequently requests consent to be recorded as having voted on the matter, he or she shall place the reason for his or her absence on the record. Any such request shall be in order only on the same day on which the vote was taken.

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I. Points of Order

Points of order shall be debatable at the discretion of the chair. Any Member of the Commission may appeal any decision of the chair but for any such appeal to prevail it must receive a *majority vote of at least three Members* of the Commission.

J. Proxies

No vote by any Member of the Commission with respect to any matter may be cast by proxy; 2 U.S.C. 437c(c).

K. Miscellany

Any parliamentary situation or circumstance not addressed in these Rules shall be governed by *Roberts Rules of Order, Newly Revised* or if not covered therein by a decision of the Chairman. Any Member of the Commission may appeal any such decision of the Chair but for any such appeal to prevail it must receive a majority vote of at least three Members of the Commission.

L. Special Rules To Apply Only When the Commission Has Fewer Than Four Members

When the Commission has fewer than four Members, all of the foregoing provisions of this directive shall apply, except as follows:

1. Notwithstanding section A.2 of this directive, the word "meeting" shall mean the collegiate deliberation of two or more Members.

2. Notwithstanding section B of this directive, all Members of the Commission must be present to constitute a quorum for the consideration or resolution of any matter. If any Member of the Commission is absent at any time during a Commission meeting, the Chairman shall automatically declare a temporary recess (notwithstanding the absence of a call for a quorum) until a quorum is again present at which time the meeting may resume.

3. When these special rules are in effect, the Commission may discuss any matter otherwise in order for discussion pursuant to the other provisions of this Directive. However, the Commission may not act on any matter except for the *following:*

(a) Documents such as *Campaign Guides* and any other brochures or public education materials that may customarily be voted on by the Commission;

(b) Notices of filing dates, including filing dates for special elections;

(c) Any action otherwise requiring Commission approval with respect to FEC Conferences or invitations for public appearances;

(d) Election of which Members shall serve as chairman and vice chairman solely for the period during which the Commission has fewer than four Members, provided that in each instance that there is a Member eligible to hold the position pursuant to the eligibility requirements of 2 U.S.C. 437c(a)(5);

(e) Appointment of an acting general counsel, an acting staff director, an acting chief financial officer or an acting inspector general, approval of temporary personnel actions at the GS–15 level and above, and approval of other personnel actions;

(f) Budget estimates or requests for concurrent submission to the President and Congress, and other budget related matters requiring Commission approval;

(g) Minutes of previous meetings;

(h) Non-filer notices issued pursuant to 2 U.S.C. 438(a)(7);

(i) Debt settlement plans pursuant to 11 CFR Part 116;

(j) Administrative terminations pursuant to 11 CFR 102.4 and Commission Directive 45;

(k) Systems of Records Notices pursuant to the Privacy Act;

(l) Policies, procedures and directives pursuant to the Privacy Act or Section 522 of the Consolidated Appropriations Act, 2005;

(m) Agency head review of labor-management agreements;

(n) Any other action where a statute imposes a duty of "agency head review" on the Commission;

(o) Appeals under the Freedom of Information and Privacy Acts;

(p) Sunshine Act recommendations for items on an agenda;

(q) Contracts;

(r) The FEC Management Plan, pursuant to OMB Circular A–123 and the Federal Managers' Financial Integrity Act;

(s) Corrective action plans prepared in response to audits both financial and non-financial pursuant to FEC Directive 50 and/or the Accountability of Tax Dollars Act; or,

(t) EEO-related **Federal Register** notices.

4. Notwithstanding any provision of sections E, I or K of this directive, approval of any motion or appeal properly before the Commission under this section L shall require the affirmative vote of a majority of the Members of the Commission. However, if such majority comprises exclusively the affirmative votes of Members affiliated with the same political party (or Members whose positions are aligned for the purpose of nomination by the President), then the motion or appeal shall be deemed not approved.

5. Section H of this directive shall not be operative during any period in which these special rules are in effect.

Dated: January 24, 2008.

David M. Mason,

Chairman, Federal Election Commission.

[FR Doc. E8–1565 Filed 1–29–08; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments on the agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreement are available through the Commission's Office of Agreements (202–523–5793 or *tradeanalysis@fmc.gov*).

Agreement No.: 201177.

Title: Marine Terminal Services Agreement between Port of Houston Authority and Hapag-Lloyd AG.

Parties: Port of Houston Authority and Hapag-Lloyd AG.

Filing Party: Erik A. Eriksson, Esq.; General Counsel; Port of Houston Authority; P.O. Box 2562; Houston, TX 77252.

Synopsis: The agreement sets discounted rates and charges applicable to Hapag-Lloyd's container vessels calling at the port's facilities.

Dated: January 24, 2008.

By Order of the Federal Maritime Commission.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. E8–1575 Filed 1–29–08; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to

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2008-10

ENFORCEMENT PROCEDURE 2009-10

Susan Lebeaux/FEC/US
10/21/2008 09:30 AM

To Enforcement Staff
cc
bcc

Subject Fw: Use of "Gross" vs. "Net" in Calculating Civil Penalties for Misstatements of Financial Activity

FYI.
----- Forwarded by Susan Lebeaux/FEC/US on 10/21/2008 09:28 AM -----

Susan Lebeaux/FEC/US
10/21/2008 09:28 AM

To Commissioners Office
cc Thomasenia Duncan/FEC/US@FEC, Joseph Stoltz/FEC/US@FEC, John Gibson/FEC/US@FEC, Ann Marie Terzaken/FEC/US@FEC
Subject Use of "Gross" vs. "Net" in Calculating Civil Penalties for Misstatements of Financial Activity

Commissioners--

In response to a number of questions concerning our use of "gross" vs. "net" amounts in violation in calculating civil penalties in section 434(b) misreporting matters, here is some additional information. Although we do not expect this topic to arise with respect to matters on this week's Executive Agenda, it may be relevant to other matters that have received objections that will be considered by the Commission in the near future.

We hope this is helpful. Please let us know if you have any questions.

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ENFORCEMENT PROCEDURE 2008-9 **(DO #47484)**

Ann Marie Terzaken/FEC/US
11/12/2008 10:49 AM

To Enforcement Staff
cc Jeff Jordan/FEC/US@FEC
bcc

Subject Fw: RAD Assistance to OGC Staff Attorneys

Please see the message below re the need to go through the appropriate RAD manager when requesting info from an analyst. RAD would like to help in any way they can, but they have made similar requests in the past so that they can manage their own workloads. Please keep this in mind and go through proper channels. Thank you.

----- Forwarded by Ann Marie Terzaken/FEC/US on 11/12/2008 10:46 AM -----

Stephen A Gura/FEC/US
11/12/2008 10:35 AM

To Ann Marie Terzaken/FEC/US@FEC
cc
Subject Fw: RAD Assistance to OGC Staff Attorneys

FYI

Stephen A. Gura
Deputy Associate General Counsel--Enforcement
Federal Election Commission
(202) 694-1328

----- Forwarded by Stephen A Gura/FEC/US on 11/12/2008 10:35 AM -----

Jeff Jordan/FEC/US
11/12/2008 10:33 AM

To Susan Lebeaux/FEC/US@FEC, Stephen A Gura/FEC/US@FEC
cc Gregory Baker/FEC/US@FEC
Subject RAD Assistance to OGC Staff Attorneys

At our monthly meeting today it was noted that OGC Enforcement attorneys have been soliciting the assistance of RAD analysts for mini research projects. My guess is that this is in response to several objections, which now require more detailed analysis in preparation for up coming Executive Sessions. Going forward, RAD would like all requests for research related to Enforcement matters to be tracked through the Branch Chiefs directly, and not through the

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analyst who may be assigned to the particular committee. Thus, please inform Enforcement staff to contact either Madelynn Lane (authorized branch) or Deborah Chacona (unauthorized branch) for all research related questions.

Thanks for your assistance.

Jeff

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ENFORCEMENT PROCEDURE 2008-8
(DO #44462)

Ann Marie Terzaken/FEC/US
12/16/2008 08:26 AM

To Enforcement Staff
cc Thomasenia Duncan/FEC/US@FEC
Subject Fw: Complaint Summaries for Week of October 27-31, 2008

Good morning, everyone. With respect to distributing complaint summaries, I found the format below very helpful and would like to ask our attorneys to follow a similar format when it's their turn. Thank you!

----- Forwarded by Ann Marie Terzaken/FEC/US on 12/16/2008 08:23 AM -----

Michael Columbo/FEC/US
11/04/2008 12:45 PM

To General Counsel Staff
cc
Subject Complaint Summaries for Week of October 27-31, 2008

(Note: this procedure has been edited to show four formatting examples)

Please find below short summaries of the complaints received October 27-31, 2008 (also summarized in the attached memos).

[redacted]

MUR 6109 (Durston for Congress): Complaint alleges that Durston/Durston for Congress aired two television ads that failed to fully comply with the Act's disclaimer requirements because they allegedly contain the written 'Paid for by Durston for Congress' disclaimer but do not contain a candidate approval statement.

[redacted]

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MUR 6111 (WOSU Public Media, et al.): Complaint alleges that the two Respondents held a televised forum for candidates in Ohio's 15th Congressional District that excluded one of the four candidates on the ballot. Consequently, the Complaint asserts, the respondents (one is a television station) selected which candidates would benefit from the forum and should be required to register and report to the Commission as PACs. Further, the three candidates that benefited from the Respondents' forum should be required to disclose the respondents' expenditures for the forum as independent expenditures on their Commission disclosure reports.

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ENFORCEMENT PROCEDURE 2008-7
(DO #44461)

Ann Marie Terzaken/FEC/US
12/18/2008 12:55 PM

To Ann Marie Terzaken/FEC/US
cc Enforcement Staff, Lawrence Calvert/FEC/US@FEC, Nicole J St Louis/FEC/US@FEC
Subject Re: F&LAsNotes Link

Actually, let me rephrase. If you are unsure about something, you should consult GLA. Otherwise, it's optional. Thanks.

Ann Marie Terzaken/FEC/US
12/18/2008 12:52 PM

To Enforcement Staff
cc Lawrence Calvert/FEC/US@FEC, Nicole J St Louis/FEC/US@FEC
Subject F&LAs

I have received a few questions about F&LA's and whether we should be sending them to GLA for review before we include them in our RTB notification packages. This issue will be the topic of further discussion, and, in the meantime, you may send them to GLA when you are unsure about something but doing so is optional. Thanks.

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Enforcement Procedure 2008-6
(DO #44460)

Ann Marie Terzaken/FEC/US
12/15/2008 01:18 PM

To Enforcement Staff
cc Nicole J St Louis/FEC/US@FEC
Subject Fw: SORs

One other thing, gang. Please keep Larry Calvert and Nicole St. Louis in the loop as to our efforts to get the SORs completed, including cc'ing them on any emails you send to Commissioners. Thanks.

----- Forwarded by Ann Marie Terzaken/FEC/US on 12/15/2008 01:16 PM -----

Ann Marie Terzaken/FEC/US
12/11/2008 06:26 PM

To enforcement staff
cc Nicole J St Louis/FEC/US@FEC
Subject SORs

We will be soon sending the Commission a chart on a monthly basis that will identify the cases that have SORs pending and make clear who's responsible for drafting the SOR - us or the objecting Commissioners. The purpose is to make sure nothing falls through the cracks and hopefully keep the timing of them on track so we do not receive as many requests to delay public release of the MUR. I will also be sending an explanation re when SORs are required and under what circumstances are they prepared by OGC v. the objecting Commissioners. I will send you the material once they are finalized.

Please note that it will be GLA's responsibility to follow-up with Commissioners' offices on pending SORs - to check in on a periodic basis re the status. An exception to this practice will be in cases where a Commissioner has asked that the close-out letters be held pending the completion of the SOR. In that case, we will need to rely upon the Enforcement attorney to check-in with the relevant Commissioner office(s) re the SOR so that we can keep an eye on the 60-day jurisdictional requirement for filing a 437g(a)(8) suit. If you begin to approach 20 days, please let your team leader know so that we can do what we can to get the closing letters released.

Thank you for your cooperation.

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ENFORCEMENT PROCEDURE 2008-5 (DO #4222)

Ann Marie Terzaken/FEC/US
12/16/2008 04:21 PM

To Enforcement Staff
cc Thomasenia Duncan/FEC/US@FEC
Subject Probable Cause Briefs

Some of you might recall that we used to attach cover memos to our probable cause briefs when we submitted them to the General Counsel for review -- just a short summary of the basic story and timeline of the case and any noteworthy issues the GC should be aware of. I'd like to restart that approach and ask that we include cover memos (1-3 pages) with our briefs. I think it would also be helpful if we attached the informational memo to the Commission withdrawing from pre-probable cause conciliation. Our informational memos should follow an approach that airs on the side of inclusion with respect to the details of the negotiations given the questions we have received in recent months about the conciliation process in our cases, but if there are details not specifically mentioned in the informational memo that may be worth noting to the GC, let's add them to the cover memo as well.

If you have any questions about this, please discuss with your team leaders or you can raise them with me at our next division meeting, if not sooner. Thank you in advance for your cooperation.

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

2008-04

Last updated March 11, 2009

MUR Closeout Procedures Training
Public Record Review Process
December 9, 2008

I. The Public Record MUR Review Process

A. MUR File Items That Will Be Included On the Public Record

- After the closed, or pending closure, MUR is logged in by the GLA Secretary, the file is assigned to an Administrative Law Paralegal to take apart and assemble the packet of documents that are to be placed on the public record. Only the following documents are included on the public record:

1. The Complaint (Externally Generated Matter)
2. Referrals from RAD or Audit (Internally-Generated Matter)
3. Response to complaint and attachments that are already publicly available (news articles);
4. Pre-RTB letters to potential Respondents and responses thereto (case-by-case basis);
5. Designation of counsel;
6. Requests for extensions of time and responses;
7. Factual and Legal Analysis (F&LA);
8. Statement(s) of Reasons (SOR);
9. GC Reports, or portions of GC Reports, that recommend (1) dismissal, (2) reason to believe, (3) no reason to believe, (4) no action at this time, (5) probable cause to believe, (6) no probable cause to believe, (7) no further action, or (8) acceptance of a conciliation agreement (*see* Interim Disclosure Policy) if there is no F&LA or SOR to replace the GC Report. A conciliation agreement does not replace a GC Report;
10. Response to reason to believe notification and attachments that are already publicly available (news articles);
11. Probable cause brief;
12. Respondent's reply brief;

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

13. Transcript of Probable Cause Hearing (This is pursuant to the PCTB Hearing Statement of Policy. However, these hearings can include substantial discussion of what went on during pre-PCTB conciliation which can never be disclosed pursuant to 2 U.S.C. § 437g(a)(4)(B)(i). Thus, the transcripts must be screened heavily.);

14. Closeout letters;

15. *Signed* conciliation agreements (Signed by Commission and Respondent (or representative));

16. Commission certifications on substantive determinations (e.g., dismissal, RTB or No RTB, PCTB or No PCTB, no further action, accept the conciliation agreement); and

17. Evidence of payment of civil penalty or of disgorgement.

- The following documents are not placed on the public record:

1. Sua Sponte complaints/submissions (unless also styled as a complaint against another individual)(e.g. a committee files a sua sponte submission regarding an embezzler on their staff. If the Commission treats the one document both as a sua sponte submission by the committee and a complaint against the embezzler, the submission goes on as the complaint.);

2. Referrals from another agency, e.g. DOJ, OGE;

3. GC Reports (1) where there is an F&LA or SOR that disposes of all issues and all Respondents in the GC Report and (2) that is an interim report that does not dispose of an issue or Respondent;

4. GC Reports that are not delineated in the Interim Disclosure Policy (see above);

5. Discovery documents. It is FEC policy to withhold all responses to FEC requests for information whether the request was an informal request for information or made during the compulsory process (e.g. requests for clarification, interrogatories, document requests) Discovery documents are the heart of the *AFL-CIO* case which prompted the Interim Disclosure Policy;

6. Deposition Transcripts; and

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7. Commission certifications that are not dispositive (i.e. the certification does not pertain to a GC Report on the Interim Disclosure Policy list (*see above*)). (*e.g.*, approving subpoenas).

8. Other misc. documents in the MUR file such as routing slips.

Note- There is sometimes confusion regarding affidavits. If an affidavit is submitted with a response to a complaint, response to an RTB finding or included with a brief, the affidavit stays on. If the affidavit is submitted with informal or formal discovery, it stays off.

B. What Is Redacted From the Public Record File and Why

- The Admin. Law Paralegal is responsible for proposing initial redactions to the public record MUR file. The Golden Rule is to disclose unless there is a policy, law or other GLA/Admin. Law supervisor approved reason not to. Information that is redacted from public record documents include:

    1. Substantive information concerning conciliation (§ 437g(a)(4)(B)(i)/FOIA Exemption 3)

    2. Information concerning open MURs (§ 437g(a)(12)(A)/FOIA Exemption 3)

    3. Other redactions:

        a) All information, in any document, relating to any law enforcement agency (Federal, State or local) unless it's public information (i.e. we keep off referrals to and from DOJ, our interactions with DOJ, investigative material we've shared between the two agencies) (FOIA Exemption 7)

        b) Personal information (e.g. home address, phone, email) (FOIA Exemption 6)

        c) FEC deliberative process– anything OGC recommended to the Commission that was rejected. (FOIA Exemption 5)

        d) Discovery block quotes - references to discovery are OK, unless it's a block quote that is the meat of the document. (i.e. if the block quote is the entire discovery document, redact; if the block quote is a small portion of a 27 pg discovery document, keep in.) (Interim Disclosure Policy/supervisor approved reason)

        e) How the Commission determines civil penalties (legal strategy) (FOIA Exemption 5) (Note- The calculations used to determine the opening offer is kept off under FOIA Exemption 5, the substantive

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information that comes out during negotiations is kept off under § 437g(a)(4)(B)(i)/FOIA Exemption 3)

f) Attorney-client/Attorney work product privileged information (FOIA Exemption 5)

g) Information of a personal sensitive nature, particularly concerning parties not a part of the MUR but can also extend to Respondents. (FOIA Exemption 6)

h) Internal document numbers and other trivial internal codes. (FOIA Exemption 2)

i) Attachments, other than attachments to complaints, that are not otherwise publicly available (Interim Disclosure Policy)

- Information **that should not be redacted** includes:

  1. Procedural/factual information. (e.g. "We normally do X, Y and Z.")

  2. **In GC Reports, discussions of the investigation and citations to discovery documents. (In the past, this information has sometimes been redacted. Given that the Commission relied on this information to reach its determination, we believe this information is essential to the public's understanding of the Commission's rationale. We will still keep the *documents* off of the public record in accordance with the AFL-CIO case and our Interim Disclosure Policy. However, the documents are still considered agency records under the FOIA and may be released if FOIAed, unless a FOIA exemption applies.)**

  3. Anything that is already public information if there is not some very good reason to redact it. (This is discretionary and should be done on a case-by-case basis.)

- After the Admin. Law Paralegal completes their initial review; they will complete their section of GLA/AL Form 1-B and transfer the file and form to the Enforcement Attorney.

C. <u>Enforcement Public Record MUR Review Process</u>

- The Enforcement staff will be more familiar with the case than the Admin. Law staff. Therefore, Enforcement is expected to review the proposed public record file for items that the Admin. Law Paralegal may have missed. This includes, but is not limited to, items such as:

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1. Does the proposed public record file contain all of the close-out letters for the Complainant and all Respondents?

2. Is the file closed as to all Respondents?

3. Are all appropriate GC Reports included?

4. Is there a discovery document (informal or formal) included that shouldn't be?

5. Should the proposed public record file include another MUR that was merged into the case?

6. Is there a personal email address or phone number included in the proposed public record file that should be redacted?

7. Does the proposed public record file include legal strategy that should be redacted?

8. Does the proposed public record file include conciliation information that should be redacted?

9. Does the proposed public record file contain information about an open MUR that should be redacted?

10. Are all appropriate Commission certifications included?

11. Are there any other documents that should be included on the public record?

12. Are there documents that should be removed from the public record?

- Both the Enforcement Staff Attorney and the Enforcement Team Leader are expected to write in the space provide on GLA/AL Form 1-B any issues they may have found when reviewing the case. By initialing GLA/AL Form 1-B, the Enforcement Staff Attorney and Team Leader are indicating that they have reviewed the proposed public record MUR file for the items listed above.

- The proposed public record file, with the form, should be delivered to the GLA Secretary so that it can be logged in.

D. Final Admin. Law Review Procedures

- After logging the file in, the GLA Secretary will return the proposed public record file to the assigned Paralegal who will make appropriate changes.

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- The proposed public record file is then assigned to an Admin. Law Attorney or the Team Leader who is responsible for (1) ensuring that the appropriate documents are withheld/included in the file, (2) reviewing proposed redactions, and (3) reviewing and making a final determination on the Enforcement comments that the Admin. Law Paralegal has not disposed of.

- All Special Press Release cases will also be reviewed by the Associate General Counsel for General Law and Advice.

Note- Pursuant to 11 C.F.R. 5.4(a)(4) the Commission must have closed MURs on the public record "no later than 30 days from the date on which all Respondents are notified that the Commission has voted to close [the] file." However, you should know that the Admin. Law Team must get the case down to Public Records by the 25th day after the closeout letters are sent so that Public Records has enough time to prepare the documents for the public record.

II. Procedures for Reviewing Statements of Reasons

A. When a final Commission circulated SOR is received by Admin. Law, it is assigned to an Admin. Law Attorney.

B. The Admin. Law Attorney will immediately circulate GLA/AL Form 3-B and a copy of the SOR to the Enforcement Staff Attorney and the Enforcement Team Leader assigned to the case. (The Staff Attorney and Team Leader will each get their own copies of the form and SOR.) The Admin. Law Attorney will also begin their review of the SOR.

C. The Enforcement Staff Attorney and Team Leader must:

1. Check off on Form 3-B whether the SOR "does" or "does not" contain information protected by § 437g(a)(4)(B)(i) and 437g(a)(12)(A);

2. Provide the required information in the comment section, when necessary; and

3. Initial and date the form (affirming that they reviewed the SOR for § 437g(a)(4)(B)(i) and § 437g(a)(12)(A) protected information).

D. The Enforcement Staff Attorney and Team Leader should return their initialed GLA/AL Form 3-B to the Admin. Law Staff Attorney as soon as possible.

E. When changes need to be made to an SOR:

- Enforcement staff will contact the Commissioners if the change pertains to an issue in the case.
- Admin. Law staff will contact the Commissioners if the change pertains to a § 437g(a)(4)(B)(i) or §347g(a)(12)(A) issue.

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F. Revised SORs will be circulated according to the same procedures noted above.

G. The SOR will be made a part of the public record with the rest of the MUR file.

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FEDERAL ELECTION COMMISSION
Washington, DC 20463

[DATE]

MEMORANDUM

TO: Assistant General Counsel [*Identify assigned Enforcement team leader*]
[*Identify Enforcement staff attorney*]

FROM: [*Admin Law Team circulating attorney*]

SUBJECT: Statements of Reasons (SOR) – MUR [*number*]

The following MUST be completed and returned to [*Admin Law Team circulating attorney*] not later than the end of the 48-hour circulation period:

1. The attached proposed SOR ___ DOES ___ DOES NOT contain any references to open respondents or enforcement matters that would, if released, result in a breach of confidentiality in violation of 2 U.S.C. § 437g(a)(12). If you checked "DOES," above, explain here:

_____
_____
_____
_____
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_____
_____
_____

_____ INITIALS _____ DATE

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

2. The attached proposed SOR ___ DOES ___ DOES NOT contain any information about the conciliation of this matter that would, if released, result in a breach of confidentiality in violation of 2 U.S.C. § 437g(a)(4). If you checked "DOES," above, explain here:

_____
_____
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_____
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_____

_____ INITIALS _____ DATE

3. Other issues to note for record:

_____
_____
_____
_____
_____

Attachment:

SOR, [*identify signing Commissioner(s)*], rec'd [*date received in GLA*]

(Continuation)

_____
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GLA Form 3-B
DOCS 32131v1
8/28/2007

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

October 18, 2007

JQ/CS	
Tran	
Shonkwiler	
Return: Admin Law in-box	
NStL/Admin. Law Attny	
LC (if SPR)	

MUR 5666 (MZM, Inc. PAC)

1. The Admin Law Team must note any issues that are debatable or unsettled under the Interim Disclosure Policy and other applicable guidance:

_____
_____
_____
_____
_____
_____
_____

_____ **Admin. Law Team Paralegal** **Date** _____

2. Enforcement Staff: Please flag any unusual issues in the case that are not apparent upon review of the file, e.g., issues raised during Commission meetings. Please check off your concurrence with proposed contents of file and forward to your Team Leader.

_____
_____
_____
_____
_____
_____
_____

_____ **Enforcement Staff Member** **Date** _____

GLA/AL Form 1-B
DOCS 21217v3
3/1/2007

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

3. Enforcement Team Leader: Please comment, if necessary. Please check off your concurrence and return this form to Rm. 456. File then will be forwarded to Press Office and Public Disclosure Office.

_____ **Enforcement Team Leader** **Date** _____

4. Admin Law Manager comments and approval for transmittal to Public Records.

_____ **File Reviewed by Admin. Law Mgr./Attny** **Date** _____

GLA/AL Form 1-B
DOCS 21217v3
3/1/2007

This document does not bind the Commission,
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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

MUR CLOSEOUT PROCEDURES OUTLINE

(last updated December 9, 2008)

I. CLOSEOUT PROCESS FOR REGULAR (NON-SPECIAL PRESS RELEASE) CASES

A. When the Final Report is on Circulation to the Commission:

1. Ensure all open Respondents are addressed in *recommendations of report on circulation.*

2. Notify Team Paralegal and Team Secretary of impending closeout so they may be available for assistance.

3. Start drafting closeout letters and preparing closeout packages in cases with numerous respondents.

B. AFTER the Commission has Approved the Recommendations in the Final GCR or Has Otherwise Closed the Case:

1. If a Statement of Reasons ("SOR") is required, the Attorney sends an e-mail to the Commission immediately upon the final vote reminding the Commission that a SOR is necessary. The e-mail should "cc" the Administrative Law Staff ("Admin Law Team") and Larry Calvert.

   NOTE: An SOR is required when OGC recommends going forward in a MUR, but the Commission votes against the recommendation or does not have sufficient votes to move forward. This only applies to complaint generated matters because the Complainant needs a "decision" or "order" explaining the rationale of a Commission action as a basis for a civil suit. There is no need for an SOR in internally generated matters or *sua sponte* submissions, but Commissioners can write one regardless.

   - If a majority of the Commissioners vote against moving forward on the recommendation, OGC writes a draft and circulates it to the Commission for them to work with.
   - If 3-3 split, the 3 who voted against going forward have to write the SOR. All Commissioners who voted against moving forward should either write or sign on to an SOR, so that we have a written rationale for the vote.

DOCS # 41920

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2. Upon case closing, CELA will provide to the Attorney the complete original case file, the final Commission Certification, and the Closed MUR Routing Slip.

3. Compare the Certification with the final recommendations in the Report. If discrepancies are noted in the Certification (*e.g.*, names are misspelled; it does not accurately reflect the recommendations or the Commission vote), the Attorney notifies the Commission Secretary, who will issue an Amended Certification. By contrast, if this Office made an error in the Report, such as omitting a recommendation for the disposition of an open respondent, the Attorney drafts and forwards to the Team Leader a Memorandum to the Commission to correct the error.

4. Review the case file and make sure all the necessary documents appear in the file. The Attorney determines which documents (conciliation agreements, F&LAs, dispositive GCRs) should be included in the closeout packages.

5. If GCRs or F&LAs are to be included in the closeout packages, give them to the Admin Law Team for redaction. Once the Admin Law staff has redacted the documents and provided them to the Attorney, the Attorney reviews them for accuracy.

   NOTE: All F&LAs and GCRs that are to be included in any Respondent notifications need to be redacted by the Admin Law Team. Documents that need to be redacted should be placed in the box behind the GLA secretary's (Jackie Crawford's) desk.

6. The Attorney works with the Team Paralegal in selecting the appropriate template forms and in drafting the closeout letters (including respondents who were previously notified that the case was closed as it pertained to them). The Attorney provides the Team Paralegal with all available information necessary for completing the letters (*e.g.*, the case file, and/or names of opposing counsel and current contact information, etc.).

7. Within five working days of receiving the case file from CELA, the Attorney transfers the complete case file (with a copy of the final Commission Certification) to Admin Law for redaction. Admin Law Staff should receive the file preferably before the closing letters are mailed.

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

NOTE: Case files for matters where the Commission *declines to open a MUR* do not appear on the public record. As such, these files are not given to Admin Law staff. They need to be returned to CELA.

8. The Attorney enters on the Closed MUR Routing Slip the date of transfer to Admin Law and whether an SOR has been or will be issued in this case, and then forwards the Slip to the Special Assistant to the Associate GC (Maura Callaway).

9. The Attorney directs the Team Paralegal or Team Secretary to prepare mailing envelopes and copy relevant attachments (conciliation agreements, F&LAs and/or redacted GCRs).

10. The Attorney reviews the closeout packages and submits them to the Team Leader/Associate GC for review and signature. If there is a conciliation agreement, the original agreement signed by the respondent and accepted by the Commission goes to the Associate GC for signature, after which the Associate GC forwards the conciliation agreement to CELA for processing.

    NOTE: All CA's needing the Associate GC's signature should be submitted to Cindy Myers with a routing slip, so that Cindy can log it in. Once it has been signed, Cindy will forward it to CELA for processing. If the staff attorney needs the CA immediately, Cindy should be notified and she will make a copy for CELA and send the original to the attorney.

11. The Team Leader/Associate GC will return the closeout packages to the Attorney.

12. **BEFORE** the closeout packages are mailed, the Attorney notifies the Commission via e-mail of case closing, and the date the closeout packages are to be mailed. *See* Enforcement Procedure 2004-1 (DOCS #7501). The case number and name of primary respondent must be included in the email subject line and should "cc" the Admin Law Team and Larry Calvert.

    * This notification to the Commission should be completed several hours before the packages are to be mailed; a good practice is to send the e-mail in the morning if the packages are to be mailed that afternoon, or send the e-mail in the afternoon when the packages are to mailed out the next morning.

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SAMPLE E-MAIL:

MUR 5913 (International Longshoremen's Association) is now closed. The notification letter will be mailed tomorrow morning. The file may now be made public within the next 30 days. No statement of reasons is required for this matter.

NOTE: Because closed matters are to be placed on the public record within 30 days, Admin Law prefers that closeout packages are not mailed on Fridays as this will reduce the amount of time they have for preparation of the public record.

12. After the e-mail notification to the Commission of the case closing, the Attorney forwards the closeout packages to CELA for mailing.
NOTE: The routing slip should be clearly marked "Close Out Letters" for proper processing by CELA. Upon receiving a copy of the closeout package that was mailed, the Attorney should check with Julia Queen and/or Candace Salley to see if they have received a copy of the package, and provide a copy of the packet to them if necessary to expedite the case closing process.

13. Once Admin Law has redacted the case file, it will forward the redacted file to the Attorney to review for accuracy. Admin Law also provides to the Attorney a cover sheet on which the Attorney records any discrepancies or other comments. After the Attorney reviews the file, he or she initials the cover sheet and forwards it with the file to the Team Leader. Once the Team Leader has reviewed the file and initialed the cover sheet, he or she returns it to Admin Law.

NOTE: The Attorney and Team Leader should complete their reviews of the redacted file as quickly as possible, returning it to Admin Law along with the cover sheet in two to three working days.

The Attorney reviews all CMS entry fields for accuracy (*e.g.*, "players," "calendar," "findings," "final violations"). The Attorney directly revises or completes calendar events in the Case Notebook, which are directly related to the team picks (such as back and forth drafts and mailings); for other entries in the Case Notebook (such as the stage entries), and for the

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Entity Notebook, the Attorney notifies CELA of any necessary changes.

15. The Attorney reviews DOCS Open profiles for accuracy and makes any necessary changes (*e.g.*, in the Document Profile, verify that "Document Access" in the "Access Control" field includes "OGC" (that is, all OGC staff) as read-only, and in the "Document Status" field, indicate which documents are "Final" or "Final to Commission," as appropriate).

II. CLOSEOUT PROCESS FOR SPECIAL PRESS RELEASE CASES:

*** NOTE:**

Until further notice, all cases will be released through as regular, rather than special, press releases. As of October 2008, the Commission's Press Committee is studying possible revisions to the Special Press Release Policy, including raising the civil penalty threshold.

Special Press Release indicators: (*See DOCS #5775, Enforcement Procedure 2003-10, for detailed Press Release information.*)

a). Matters in which aggregate civil penalties will exceed $50K; *or*,

b). Cases in which the Commission has applied or interpreted a statutory or regulatory provision for the first time, or is taking its first action based on any change in the law due to a court decision;

c). Additionally,
   i). other matters involving undeveloped and/or important legal principles, or new trends in political activity that may be of interest to the public; *or*
   ii). when the Commission has specifically approved a detailed release.

A. BEFORE the Final GCR is Circulated to the Commission:

1. The Attorney notifies the Team Leader, Associate GC, and supervisors in Admin Law and CELA that the matter is about to close and that it is a press release matter.

2. The Attorney notifies the Team Paralegal and Team Secretary of impending closeout so they may be available for assistance.

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3. CELA will transmit the complete original case file to Admin Law for immediate redaction. *See* Enforcement Procedure 2005-4 (DOCS #22048). The Attorney confirms this transmittal.

4. If GCRs or other specific documents that may need to be redacted are to be provided to respondents or complainant, the Attorney notifies the Admin Law Team at this time. *See* Enforcement Procedure 2005-2 (DOCS #21078).

5. The Attorney prepares a summary of the case in "bullet-point" format. Generally, the bullet points describing the underlying facts should be copied from the final conciliation agreement(s) and/or GCRs. *The bullet points should note the respondents* with whom the Commission entered into conciliation, how respondents violated the law, how much each paid in civil penalties and dispositions of other respondents. *See* Enforcement Procedure 2006-4 (DOCS # 21978).

6. The Attorney submits the draft bullet-point summary along with the final GCR to the Team Leader for approval.

7. Upon Team Leader approval of the bullet-point summary and final GCR, the Team Leader submits these documents to the Associate GC for immediate review.

8. Upon the Associate GC's approval of the bullet-point summary and final GCR, he or she will submit the final GCR for circulation to the Commission. The Associate GC will hold the bullet-point summary until the Commission closes the file in the case.

B. <u>AFTER the Final GCR has Circulated to the Commission and the Commission has Approved the Recommendations or has Otherwise Closed the Case:</u>

FOLLOW THE SAME STEPS AS WITH REGULAR (NON-SPECIAL PRESS RELEASE) CASES. ADDITIONAL OR ALTERNATE PROCEDURES ARE NOTED IN ***ITALICS.***

1. *Immediately upon the Commission closing the case, the Attorney reminds the Associate GC to transmit the previously-approved bullet-point summary to the Press Office.* ***NOTE:*** *The summary should be transmitted to the Admin Law Team at the same time.*

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2. If an SOR is required, the Attorney sends an e-mail to the Commission immediately upon the final vote reminding the Commission that a SOR is necessary. The e-mail should "cc" the Admin Law Team and Larry Calvert.

3. The Attorney receives the final Commission Certification and Closed MUR Routing Slip from CELA.

4. The Attorney compares the Certification with the final recommendations in the Report and/or the Commission's actions at the Executive Session. If discrepancies are noted in the Certification (*e.g.*, names are misspelled; it does not accurately reflect the recommendations of the Commission vote), the Attorney notifies the Commission secretary, who will issue an Amended Certification. By contrast, if this Office made an error in the Report, such as omitting a recommendation for the disposition of an open respondent, the Attorney drafts and forwards to the Team Leader a Memorandum to the Commission to correct the error.

5. The Attorney gives the final Report to Admin Law for redaction, if it will be provided to respondents and/or complainant. Once Admin Law has redacted all the documents identified by the Attorney for redaction, the Attorney reviews them for accuracy.

6. *The Attorney notifies the Commission via e-mail of the case closing; that it is a special press release case and the reason why; that notification letters will be sent immediately prior to public release; and that Admin Law will notify the Commission of the release date. See Enforcement Procedure 2004-1(DOCS #7501). The case number and name of primary respondent must be included in the e-mail subject line.*

SAMPLE E-MAIL:

On March 20, 2007, the Commission voted to accept a conciliation agreement with America's Foundation and closed the file in this matter. (The Commission earlier had conciliated with Highmark Inc. and Bruce Hironimus).

This is a Special Press Release case in light of the civil penalties totaling over $50,000. GLA will notify the Commission of the release date.

No Statements of Reasons are required.

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7. The Attorney works with the Team Paralegal in selecting the appropriate template forms and in drafting the closeout letters (including respondents who were previously notified that the case was closed as it pertained to them). The Attorney provides the Paralegal with all available information necessary for completing the letters (*e.g.*, names of opposing counsel and current contact information, etc.).

8. The Attorney directs the Team Paralegal or Team Secretary to prepare mailing envelopes and to copy relevant attachments (conciliation agreements, F&LAs and/or redacted GCRs).

   NOTE: In a case with numerous respondents to be notified, the tasks of drafting closeout letters and preparing envelopes should begin prior to the closing of the case.

9. The Attorney enters on the Closed MUR Routing Slip whether a Statement of Reasons has been issued or will be issued in this case, and then forwards the Routing Slip to the Special Assistant to the Associate GC (Maura Callaway).

10. *Once the Press Office prepares its draft press release and provides it to the Attorney, the Attorney reviews it immediately and discusses it with Team Leader and Associate GC, particularly regarding any suggested revisions.*
    NOTE: *The timing of the Attorney's review may be particularly sensitive because the Attorney may receive the draft press release at the same time the Attorney is notified that the press release date is the following day.*

11. *The Attorney reminds the Associate GC to:*
    a). forward to the Press Office any comments concerning the draft press release, and
    b). inform Admin Law that the comments have been forwarded.
    NOTE: *After OGC reviews the draft press release and the Press Office makes revisions, if any, the Press Office circulates the press release to the Commission for review.*

12. *Once Enforcement Staff, Admin Law, the Press Office and the Public Disclosure Division determine the press release date, the Attorney finalizes the closeout letters and forwards them to Team Leader and then the Associate GC, if necessary, for approval and signatures.* ***NOTE:*** *Staff attorneys should keep*

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their Team Leaders and the Associate GC for Enforcement apprised of the press release date.
DO NOT FORWARD THE LETTERS TO CELA FOR MAILING AT THIS TIME.

13. Once Admin Law has redacted the case file, it will forward the redacted file to the Attorney to review for accuracy. Admin Law also provides to the Attorney a cover sheet on which the Attorney records any discrepancies or other concerns. After the Attorney's review, he or she initials the cover sheet and forwards it with the file to the Team Leader for review. Once the Team Leader has reviewed the file and initialed the cover sheet, he or she returns it to Admin Law. **NOTE:** The Attorney and Team Leader should complete their review of the redacted file as quickly as possible, returning it to Admin Law along with the cover sheet within two to three days.

C. **The Day BEFORE the Press Release Date**:

1. The Attorney obtains from CELA the original of any conciliation agreement signed by respondent and accepted by the Commission and provides it to the Associate GC for signature; the Attorney should inform the Associate GC that the conciliation agreement is part of a press release matter and must be signed immediately. The Attorney should also attach a copy of the fully executed conciliation agreement to the closing letters addressed to that respondent and to the complainant, if there is one.

   NOTE: All CA's needing the Associate GC's signature should be submitted to Cindy Myers with a routing slip, so that Cindy can log it in. Once it has been signed, Cindy will forward it to CELA for processing. If the staff attorney needs the CA immediately, Cindy should be notified and she will make a copy for CELA and send the original to the attorney.

2. The Attorney instructs the Team Secretary to:
   a). make one complete copy of each final closeout package;
   b). forward these copies to Admin Law for processing;
   c). fax the closeout packages **at close of business** to the principal respondents;[1] and

[1] In some instances, the closeout packages should be faxed the morning of the press release (*e.g.*, if the case is to go public on a Monday, fax the closeout packages Monday morning, rather than the previous Friday COB).

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d). transmit the originals to CELA for normal copying and mailing.

NOTE: Closeout letters to complainants are not faxed. Letters to complainants should be mailed the day of the release.

3. The Attorney notifies the Press Office that the letters are ready for mailing.

D. Additional Tasks

1. Around the day of the press release, Admin Law sends an e-mail informing the Commission and several OGC personnel, including the Attorney, that the case file is being sent to the Press Office.
   SAMPLE E-MAIL:
   The partial file in MUR 5379 (Alex Penelas US Senate Campaign) was forwarded to the Press Office and Public Disclosure Office September 2, 2008. The special press release is scheduled for tomorrow September 11, 2008.

   No Statements of Reasons are required.

2. The Attorney reviews all CMS entry fields for accuracy (*e.g.*, "players," "calendar," "findings," "final violations"). The Attorney directly revises or completes calendar events in the Case Notebook, which are directly related to the team picks (such as back and forth drafts and mailings); for other entries in the Case Notebook (such as the stage entries), and for the Entity Notebook, the Attorney notifies CELA of any necessary changes.

3. The Attorney reviews DOCS Open profiles for accuracy and makes any necessary changes (*e.g.*, in the Document Profile, verifies that "Document Access" in the "Access Control" field includes "OGC (that is, all OGC staff) as read-only, and in the "Document Status" field, indicates which documents are "Final" or "Final to Commission," as appropriate).

4. The Attorney reviews the draft FEC *Record* article on the case. The draft is sent to the Attorney via e-mail by staff from the Information Division. The Attorney will forward any suggested revisions to the Team Leader or directly to the Information Division.

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MUR CLOSEOUT PROCEDURES

CHECKLIST

REGULAR (NON-SPECIAL PRESS RELEASE) CASES

Final Report on Circulation

- ☐ Ensure all open Respondents are addressed in recommendations
- ☐ Notify Team Paralegal and Team Secretary of impending closeout so they may be available for assistance
- ☐ Start drafting closeout letters and preparing closeout packages in cases with numerous respondents

After Commission Votes to Close the Matter

- ☐ If Statement of Reasons ("SOR") required, send e-mail reminder to Commission and "cc" Admin Law Team
- ☐ CELA provides case file, Certification and Closed MUR Routing Slip to attorney
- ☐ Check accuracy of Certification
- ☐ Review case file and make sure all necessary documents appear in file
- ☐ Draft closeout letters using appropriate Templates
- ☐ Give Factual and Legal Analyses and GCRs that are to be included in closeout packages to Admin Law for redaction
- ☐ Transfer CELA's complete case file within 5 working days of receiving file to Admin Law (preferably before closing letters have been mailed). Include copy of final Commission Certification.
- ☐ Complete Closed MUR Routing Slip and Return to Special Assistant to the Associate GC (Maura Callaway)
- ☐ Submit closeout packages to Team Leader and/Associate GC for review and signature.
- ☐ Submit CAs for Associate GC's signature to Cindy Myers. Attach routing slip.

Docs # 41839
Revised 12/9/2008

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- ☐ Closeout packages returned to Attorney
- ☐ Notify Commissioners via e-mail of the case closing and the date the closeout packages are to be mailed. E-mail should be sent several hours BEFORE mailing (e.g., send e-mail in the morning and mail packages in the afternoon, or send e-mail in the afternoon and mail packages the next day). Avoid sending close out packages on Fridays.
- ☐ Review Admin Law's redacted file
- ☐ Review CMS entry fields for accuracy and make necessary changes
- ☐ Review DOCS Open profiles for accuracy and make necessary changes

SPECIAL PRESS RELEASE CASES

Before Final Report Circulates to Commission

- ☐ Notify Team Leader, Associate GC, Admin Law Team and CELA that press release matter is about to close
- ☐ Notify Team Paralegal and Team Secretary of impending closeout so they may be available for assistance
- ☐ Start drafting closeout letters and preparing closeout packages in cases with numerous respondents
- ☐ CELA provides case file, Certification and Closed MUR Routing Slip to attorney
- ☐ Provide documents that need to be redacted to Admin Law
- ☐ Prepare "bullet-point" summary of case, submit for approval

After Commission Votes to Close the Matter

- ☐ Remind Associate GC to transmit bullet-point summary to Press Office and "cc" Admin Law Team
- ☐ FOLLOW STEPS FOR REGULAR (NON-PRESS RELEASE) CASES
- ☐ Give Final Report to Admin Law for redaction

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- ☐ Notify Commissioners via e-mail of the case closing; that it is a special pres release case and reason why; that notification letters will be sent immediately prior to public release; and that Admin Law will notify Commission of release date.

- ☐ Review draft press release provided by Press Office; Forward Comments concerning draft press release to Press Office and "cc" Admin Law.

- ☐ Once press release date determined, finalize closeout packets. Do not forward the letters to CELA for mailing at this time.

- ☐ Review Admin Law's redacted file

- ☐ DAY BEFORE PRESS RELEASE DATE: Submit CAs for Associate GC's signature to Cindy Myers. Attach routing slip.

- ☐ Closeout packages returned to Attorney.
  - Make 1 complete copy for Admin Law
  - Fax closeout packages to Respondents only at close of business (or Monday morning if case is to go public on a Monday).
  - Closeout letters to complainants are mailed the day of the release.
  - Transmit original packages to CELA for mailing
  - Notify Press Office that letters are ready for mailing

- ☐ AROUND DAY OF PRESS RELEASE: Admin Law sends e-mail to Commission

REFERENCES

MUR Closeout Procedures Outline – Docs Open # 41920
Enforcement Procedures # 2003-10, 2004-1, 2005-2, 2005-4, 2006-4
Enforcement Manual Chapter on Closeout Procedures

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

MUR Closeout Procedures Training
Public Record Review Process
December 9, 2008

Overview

I. The Public Record MUR Review Process
   - A. MUR File Items That Will Be Included On the Public Record
   - B. An Explanation Of What Is Redacted From the Public Record File And Why
   - C. Enforcement Public Record MUR Review Process
   - D. Final Admin. Law MUR Review Procedures

II. The Procedures For Reviewing Statements Of Reasons

III. Handouts-
   - A. Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files (Interim Disclosure Policy); 68 FR 70426
   - B. Admin. Law MUR Review circulation form (GLA/AL Form 1-B)
   - C. Admin. Law SOR Review circulation form (GLA/AL Form 3-B)

Presented by- Nicole J. St. Louis
Assistant General Counsel, Administrative Law

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issued by the Small Business Administration at 13 CFR part 121.

Backfit Analysis

The NRC has determined that the backfit rule (10 CFR 50.109 or 10 CFR 72.62) does not apply to this direct final rule because this amendment does not involve any provisions that would impose backfits as defined. Therefore, a backfit analysis is not required.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED WASTE GREATER THAN CLASS C WASTE

■ 1. The authority citation for part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 42(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

■ 2. In § 72.214, Certificate of Compliance 1004 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1004.

Initial Certificate Effective Date: January 23, 1995.

Amendment Number 1 Effective Date: April 27, 2000.

Amendment Number 2 Effective Date: September 5, 2000.

Amendment Number 3 Effective Date: September 12, 2001.

Amendment Number 4 Effective Date: February 12, 2002.

Amendment Number 5 Effective Date: [Reserved].

Amendment Number 6 Effective Date: December 22, 2003.

Amendment Number 7 Effective Date: March 2, 2004.

SAR Submitted by: Transnuclear, Inc.

SAR Title: Final Safety Analysis Report for the Standardized NUHOMS® Horizontal Modular Storage System for Irradiated Nuclear Fuel.

Docket Number: 72–1004.

Certificate Expiration Date: January 23, 2015.

Model Number: Standardized NUHOMS®–24P, NUHOMS® –52B, NUHOMS®–61BT, NUHOMS®–32PT, and NUHOMS® –24PHB.

* * * * *

Dated at Rockville, Maryland, this 19th day of November, 2003.

For the Nuclear Regulatory Commission.

William F. Kane,

Acting Executive Director for Operations.

[FR Doc. 03–31207 Filed 12–17–03; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL ELECTION COMMISSION

11 CFR Parts 4 and 111

[Notice 2003–25]

Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files

AGENCY: Federal Election Commission.

ACTION: Statement of policy.

SUMMARY: The Commission is adopting an interim policy with respect to placing closed files on the public record in enforcement, administrative fines, and alternative dispute resolution cases. The categories of records that will be included in the public record are described below. This is an interim policy only; the Commission will conduct a rulemaking in this respect, with full opportunity for public comment, in 2004.

EFFECTIVE DATE: January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Vincent J. Convery, Jr., Assistant General Counsel, 999 E Street, NW., Washington, DC 20463, 202–694–1650 or 1–800–424–9530.

SUPPLEMENTARY INFORMATION: The "confidentiality provision" of the Federal Election Campaign Act, 2 U.S.C. 431 *et seq.*, (FECA), provides that: "Any notification or investigation under [Section 437g] shall not be made public by the Commission * * * without the written consent of the person receiving such notification or the person with respect to whom such investigation is made." 2 U.S.C. 437g(a)(12)(A). For approximately the first twenty-five years of its existence, the Commission viewed the confidentiality requirement as ending with the termination of a case. The Commission placed on its public record the documents that had been considered by the Commissioners in their determination of a case, minus those materials exempt from disclosure under the FECA or under the Freedom of Information Act, 5 U.S.C. 552, (FOIA). *See* 11 CFR 5.4(a)(4). In *AFL–CIO* v. *FEC*, 177 F.Supp.2d 48 (D.D.C. 2001), the district court disagreed with the Commission's interpretation of the confidentiality provision and found that the protection of section 437g(a)(12)(A) does not lapse at the time the Commission terminates an investigation. 177 F.Supp.2d at 56.

Following that district court decision, the Commission placed on the public record only those documents that reflected the agency's "final determination" with respect to enforcement matters. Such disclosure is required under section 437g(a)(4)(B)(ii) of the FECA and section (a)(2)(A) of the FOIA. In all cases, the final determination is evidenced by a certification of Commission vote. The Commission also continued to disclose documents that explained the basis for the final determination. Depending upon the nature of the case, those documents consisted of General Counsel's Reports (frequently in redacted form); Probable Cause to Believe Briefs; concilation agreements;

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Statements of Reasons issued by one or more of the Commissioners; or, a combination of the foregoing. The district court indicated that the Commission was free to release these categories of documents. *See* 177 F.Supp.2d at 54 n.11. In administrative fines cases, the Commission began placing on the public record only the Final Determination Recommendation and certification of vote on final determination. In alternative dispute resolution cases, the public record consisted of the certification of vote and the negotiated agreement.

Although it affirmed the judgment of the district court in *AFL-CIO*, the Court of Appeals for the District of Columbia Circuit differed with the lower court's restrictive interpretation of the confidentiality provision of 2 U.S.C. 437g(a)(12)(A). The Court of Appeals stated that: "the Commission may well be correct that * * * Congress merely intended to prevent disclosure of the fact that an investigation is pending," and that: "deterring future violations and promoting Commission accountability may well justify releasing more information than the minimum disclosures required by section 437g(a)." *See AFL-CIO* v. *FEC*, 333 F.3d 168 (D.C. Cir. 2003) at 174, 179. However, the Court of Appeals warned that, in releasing enforcement information to the public, the Commission must "attempt to avoid unnecessarily infringing on First Amendment interests where it regularly subpoenas materials of a 'delicate nature * * * represent[ing] the very heart of the organism which the first amendment was intended to nurture and protect.'" *Id.* at 179. (Citation omitted). The decision suggested that, with respect to materials of this nature, a "balancing" of competing interests is required—on one hand, consideration of the Commission's interest in promoting its own accountability and in deterring future violations and, on the other, consideration of the respondent's interest in the privacy of association and belief guaranteed by the First Amendment. Noting that the Commission had failed to tailor its disclosure policy to avoid unnecessarily burdening the First Amendment rights of the political organizations it investigates, *id.* at 178, the Court found the agency's disclosure regulation at 11 CFR 5.4(a)(4) to be impermissible. *Id.* at 179.

The Commission is issuing this interim policy statement to identify several categories of documents integral to its decisionmaking process that will be disclosed upon termination of an enforcement matter. The categories of documents that the Commission intends to disclose either do not implicate the Court's concerns, *e.g.*, categories 8, 9 and 10, or, because they play a critical role in the resolution of a matter, the balance tilts decidedly in favor of public disclosure, even if the documents reveal some confidential information.

With respect to enforcement matters, the Commission will place the following categories of documents on the public record:

1. Complaint or internal agency referral;
2. Response to complaint;
3. General Counsel's Reports that recommend dismissal, reason to believe, no reason to believe, no action at this time, probable cause to believe, no probable cause to believe, no further action, or acceptance of a conciliation agreement;
4. Notification of reason to believe findings (including Factual and Legal Analysis);
5. Respondent's response to reason to believe findings;
6. Briefs (General Counsel's Brief and Respondent's Brief);
7. Statements of Reasons;
8. Conciliation Agreements;
9. Evidence of payment of civil penalty or of disgorgement; and
10. Certifications of Commission votes.

In addition, the Commission will make certain other documents available which will assist the public in understanding the record without intruding upon the associational interests of the respondents. These are:

1. Designations of counsel;
2. Requests for extensions of time;
3. Responses to requests for extensions of time; and
4. Closeout letters.

The Commission is placing the foregoing categories of documents on the public record in all matters it closes on or after January 1, 2004.

The Commission is not placing on the public record certain other materials from its investigative files, such as subpoenaed records, deposition transcripts, and other records produced in discovery, even if those evidentiary documents are referenced in, or attached to, documents specifically subject to release under this interim practice. Release of these underlying evidentiary documents may require a closer balancing of the competing interests cited by the D.C. Circuit. Accordingly, the Commission will consider the appropriateness of disclosing these materials only after a full rulemaking with the opportunity for public comment. However, if a document or record is referenced in, or attached to, a document specifically subject to release under this interim practice, that document or record will be disclosed if it is, or was, otherwise publicly available.

The Commission will place documents on the public record in all cases that are closed, regardless of the outcome. By doing so, the Commission complies with the requirements of 2 U.S.C. 437g(a)(4)(B)(ii) and 5 U.S.C. 552(a)(2)(A). Conciliation Agreements are placed on the public record pursuant to 2 U.S.C. 437g(a)(4)(B)(ii).

The Commission will place these documents on the public record as soon as practicable, and will endeavor to do so within thirty days of the date on which notifications are sent to complainant and respondent. *See* 11 CFR 111.20(a). In the event a Statement of Reasons is required, but has not been issued before the date proposed for the release the remainder of the documents in a matter, those documents will be placed on the public record and the Statement of Reasons will be added to the file when issued.

With respect to administrative fines cases, the Commission will place the entire administrative file on the public record, which includes the following:

1. Reason to Believe recommendation;
2. Respondent's response;
3. Reviewing Officer's memoranda to the Commission;
4. Final Determination recommendation;
5. Certifications of Commission votes;
6. Statements of Reasons;
7. Evidence of payment of fine; and
8. Referral to Department of the Treasury.

With respect to alternative dispute resolution (ADR) cases, the Commission will place the following categories of documents on the public record:

1. Complaint or internal agency referral;
2. Response to complaint;
3. ADR Office's case analysis report to the Commission;
4. Notification to respondent that case has been assigned to ADR;
5. Letter or Commitment Form from respondent participating in the ADR program;
6. ADR Office recommendation as to settlement;
7. Certifications of Commission votes;
8. Negotiated settlement agreement; and
9. Evidence of compliance with terms of settlement.

When disclosing documents in administrative fines and alternative dispute resolution cases, the Commission will release publicly available records that are referenced in,

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or attached to, documents specifically subject to release under this interim practice.

With this interim policy, the Commission intends to provide guidance to outside counsel, the news media, and others seeking to understand the Commission's disposition of enforcement, administrative fines, and alternative dispute resolution cases and, thus, to enhance their ability to assess particular matters in light of past decisions. In all matters, the Commission will continue to redact information that is exempt from disclosure under the FECA and the FOIA.

As discussed above, the Commission hereby is announcing an interim policy. A rulemaking, with full opportunity for public comment, will be initiated in 2004.

Dated: December 12, 2003.

Ellen L. Weintraub,

Chair, Federal Election Commission.

[FR Doc. 03-31241 Filed 12-17-03; 8:45 am]

BILLING CODE 6715-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001-NM-266-AD; Amendment 39-13388; AD 2003-25-05]

RIN 2120-AA64

Airworthiness Directives; Bombardier Model DHC-8-102, -103, -106, -201, -202, -301, -311, and -315 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Bombardier DHC-8-102, -103, -106, -201, -202, -301, -311, and -315 airplanes, that currently requires inspections to detect breakage in the struts of the rear mount strut assemblies on the left and right engine nacelles, and replacement of any broken struts. The existing AD also requires eventual replacement of all currently installed struts with new and/or reworked struts, as terminating action for the inspections. The amendment requires new repetitive inspections of the strut assemblies for cracking of struts replaced per the existing AD, and replacement of any cracked strut with a new, machined strut. The amendment also changes the applicability of the existing AD by adding certain airplanes and removing certain other airplanes, and includes an optional terminating action for the repetitive inspections. The actions specified by this AD are intended to prevent failure of the engine rear mount struts, which could result in reduced structural integrity of the nacelle and engine support structure. This action is intended to address the identified unsafe conditions.

DATES: Effective January 22, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 22, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jon Hjelm, Aerospace Engineer, Airframe Branch, ANE-171, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256-7523; fax (516) 568-2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 94-04-09, amendment 39-8829 (59 FR 8393, February 22, 1994), which is applicable to certain Bombardier Model DHC-8-100 and DHC-8-300 airplanes, was published in the **Federal Register** on October 9, 2003 (68 FR 58283). The action proposed to require new repetitive inspections of the strut assemblies for cracking of struts replaced per the existing AD, and replacement of any cracked strut with a new, machined strut. The action also proposed to change the applicability of the existing AD by adding certain airplanes and removing certain other airplanes, and proposed to include an optional terminating action for the repetitive inspections.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 192 airplanes of U.S. registry that will be affected by this AD.

The actions that are currently required by AD 94-04-09 take approximately 16 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Required parts are provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the currently required actions is estimated to be $1,040 per airplane.

The new detailed inspection that is required in this AD action takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the required inspection on U.S. operators is estimated to be $12,480, or $65 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

The optional terminating action, if done, will take approximately 16 work hours per strut to accomplish, at an average labor rate of $65 per work hour. Required parts will cost aproxiamately $800 per strut. Based on these figures, the cost impact of the optional terminating action is estimated to be $1,840 per strut, per airplane.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under

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ENFORCEMENT PROCEDURE 2008-3
DO #40571

Ann Marie Terzaken/FEC/US
10/16/2008 04:15 PM

To Enforcement Staff
cc Gregory Baker/FEC/US@FEC, Jeff Jordan/FEC/US@FEC
Subject Processing of CAs

Hi all. In the spirit of having good internal controls, I need to ask all of you to follow the procedure set forth below for signatures on CAs.

From this point forward, I will not be able to sign CAs and give them back directly to you for inclusion in the public record. I need to ask all of you to instead send the CAs through Cindy with a routing slip (as you would a report) so that she can log it in and, after I sign, send the document to CELA for processing. If the CA does not make it to CELA before you send it to public records, the appropriate CMS entries are not made. CMS entries are critical because they are the only way that the CA and civil penalty can be accounted for by the Finance Office. In addition, the penalties need to be in CMS for purposes of running our own stats and accurately answering questions from the Hill and press about the civil penalties obtained by the Commission.

In difficult circumstances, where there's a rush to get the CA on the public record in special press release cases, you can go to CELA to make a copy of the original signed CA, leave the copy with CELA, and then walk the original CA down to GLA or public records.

Thanks for your cooperation.

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ENFORCEMENT PROCEDURE 2008-2
(DO # 38218)

EMAIL TO: Enforcement Staff

FROM: Ann Marie Terzaken
Associate General Counsel

Now that we are beginning to close some of our cases again, please review our current close-out procedures. You will hopefully recall that with respect to email notifications to the Commission about closing letters, we changed our procedure last summer and now send the email notifications before the closing letters go out. See #3 below. As a matter of practice, I have seen attorneys send the emails in the morning alerting the Commission that the letters will be going out in the afternoon, and I've seen emails in the afternoon alerting the Commission that the letters will be going out the next day. Both are acceptable.

----- Forwarded by Ann Marie Terzaken/FEC/US on 08/06/2008 09:59 AM -----

Sidney Rocke/FEC/US	To	Enforcement Staff
06/14/2007 05:26 PM	cc	Thomasenia Duncan/FEC/US@FEC
	Subject	Update from enforcement mgrs meeting

Several noteworthy points were made at today's Enforcement manager's meeting:

3. We are slightly modifying our case closing procedure. In all future cases, please send the standard e-mail to Commissioner's offices regarding case closure a few hours before the closing letters go out. This will give the Commissioners some opportunity to respond before notification is sent to complainants and respondents.

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ENFORCEMENT PROCEDURE 2008-1
(DO #38217)

COMPILIATION OF PROCEDUES DISCUSSED IN ENFORCEMENT MANAGERS MEETINGS' NOTES
(Enforcement Manager Meeting Notes folder in Docs Open)

Measuring PPCC/60 days of Negotiation (JM) 4/4/08
We also have changed the method of calculating the time spent in pre-probable cause conciliation since the last Status of Enforcement memo. We previously measured the time from the date the Commission authorized pre-probable cause conciliation until the date the Commission approved the CA or the date the "end PPCC" memo was circulated and backed out time on each end. Because CMS now allows us to track the date letters are mailed, we are now measuring pre-probable cause conciliation based on (1) the mailing date of the letters, minus three days for receipt, consistent with the notification regulation; and (2) the date the report recommending approval of the CA or the circulation date of the "end PPCC" memo, minus seven days for drafting and circulation of the report. This gives us a full 60 days of negotiation. Because there is a tight turnaround on the back end, we should begin drafting the relevant report as early as possible.

Questions from *Sua Sponte* Submitters re: DOJ (MA) 4/17/08
How to respond to questions from *sua sponte* submitters as to whether they should contact DOJ: If you have such a situation, you should consult with your team leader as to how to respond. In cases involving alleged embezzlement, we can point to the Commission's *Statement of Policy: Safe Harbor for Misreporting Due to Embezzlement*, which lists "Notifies relevant law enforcement of the misappropriation" among the factors for the safe harbor. (This issue arose recently in Pre-MUR 463 (PAT PAC)).

Responsibility for CMS Entries for Circulated Reports (JM) 6/13/08
PLEASE remember to make CMS entries for reports (and confirm that the dates have been entered). The most important entry is the date of circulation to the Commission, which is used to track case progress for Ann Marie and Kathleen's monthly meetings with Tommie and to calculate our statistics for Status of Enforcement. As outlined in Maura's June 4 e-mail, Nora or Cindy will take care of the entries when the report is signed by the AGC or DAGC but, where the team leader has signature authority, he or she is responsible for making (or arranging for) the entry.

Full Copy of Report Package needed for CELA (JM) 6/13/08
Two other administrative matters relating to CELA: (1) Please remember to e-mail CELA with a new SOL date every time you get a tolling agreement; and (2) when circulating a report, CELA requires the original version and attachments (which is circulated) and a *full copy of the package* (which is scanned) -- Nora

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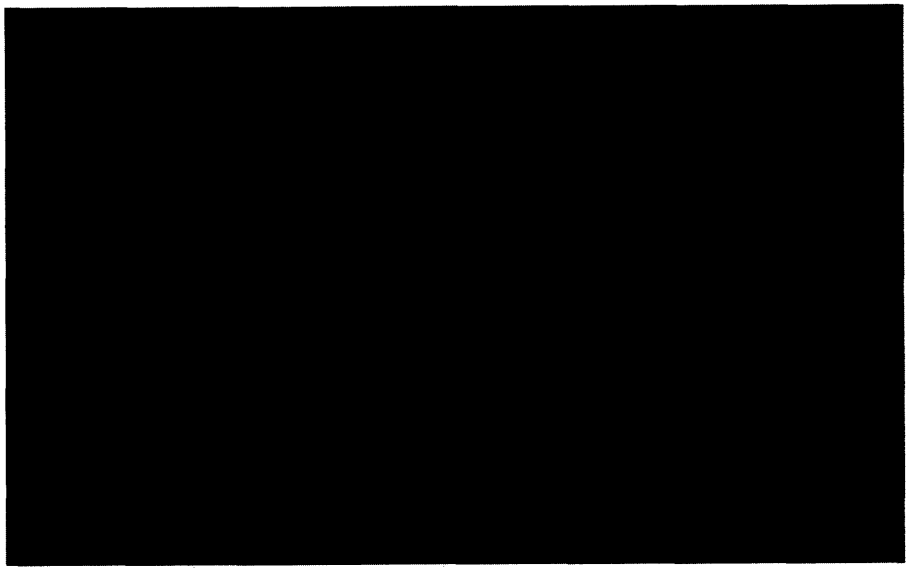
and Cindy take care of this for reports signed by the AGC or DAGC, but there may be times when we are responsible for doing so.

Requesting Extensions for File Preps (MS) 6/20/08
Paralegals seeking extensions on CELA file preps should make such requests through their team leaders, who would be in a position to know whether the deadline for other assignments was of a higher or lower priority than the file prep assignments.

Changes in SOL Dates in CMS may now be made by the staff Attorney & Change SOL dates when you receive tolling agreement
(MS) 6/20/08 and (JM) 6/12/08
In order to expedite the entry of correct/revised SOL Dates, staff attorneys now have the ability to make entries directly into CMS for their assigned matters, rather than having to transmit the information to CELA, and later checking to see that the updates have been made. Please pay particular attention to the SOL's in your cases.
Via email on 6/13/08 staff was told to remember to e-mail CELA with a new SOL date every time a tolling agreement is received. However, now that staff are allowed to change SOL dates in CMS, staff attorneys (not CELA) should change the date when tolling agreements are received..



Executive Session Prep Meetings are now at 2:30 pm (MA) 8/7/08
In the future, prep meetings before Tuesday Executive Sessions will usually be held on Mondays at **2:30** p.m. in room 417. Note the change in time.

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Executive Session Summaries are due two (2) days after the Executive Session (MA) 8/7/08
Now that the Commission is back, this is a reminder that Executive Session summaries are due from attorneys to Maura Callaway within two days after their matter is considered at an Executive Session. This summary, which is included in the Enforcement Weekly email update, should describe the subject matter of the case, the actions taken by the Commission, and any significant issues raised at the Executive Session. The focus is less on the play-by-play at the table and more on the impact the discussion and/or decision may have on future cases. Please remember to do these summaries. Everyone finds them very helpful.

Summaries of Recent AOs and Litigation can be found in the Record (JM 9/5/08)
Reminder that summaries of recent advisory opinions and litigation are published in The Record each month and can be accessed in PDF at http://www.fec.gov/pages/record.shtml.

Consult with Policy and Litigation in Express Advocacy Cases (MS 10/9/08)
In all cases involving questions of express advocacy, it is important to consult with both Policy and Litigation so as to coordinate the Commission's legal positions in various ongoing matters.

Changes in Special Press Release Policy (MS 10/9/08)
The Commission's Press Committee is studying possible revisions to the Special Press Release Policy. This may include raising the threshold as to the amount of penalty that triggers a Special Press Release. Until further notice as to when Special Press Releases are appropriate, it appears that we will be releasing all cases through as ordinary, rather than special, press releases.

Send Objection Memos electronically and include Secretaries (MS 10/9/08)
Please send out electronic copies of all objection memos; and include the three Enforcement Team Secretaries (Donna, Kathy and Lien).

Send e-mail after Executive Session if Statement of Reason (SOR) is required (MS 10/9/08)
As noted in last week's e-mail, staff attorneys are responsible for sending out an e-mail immediately after an Executive Session if Commission action (such as 3-3 split, or decision to reject a recommendation) in one of their matters requires a Statement of Reasons.

Touch Base with Commission Offices on Matters Held-over (AW 10/16/08)
If you have cases held over from a previous executive session, please remember to touch base with the Commissioners offices again to see if they have any new

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information to impart regarding their objections or concerns. And if you have new information to provide them about a matter that has been held over from a previous session, please do that as well.

Make Brief Opening Statements at Executive Session (AW 10/16/08)
We continue to have lengthy executive session agendas to get through, so please make opening statements very brief. A brief statement of the type of violations concerned and only the essential background facts or information about the case (maybe one short paragraph of facts) should be enough and allow the Commissioners to progress through more cases.

Follow Proper Routing when Transmitting Signed Conciliation Agreements (AW 10/16/08)
On a similar note, please make executive session summaries very brief. Just a few sentences to impart what happened with the case at the exec session should suffice.

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Revised 3/5/07

EXAMPLES OF INADEQUATE PURPOSES

1. Administrative Expenses
2. Admin.
3. Advance
4. Benefits *(if to an individual)*
5. Bonus
6. Bounty
7. Campaign Expense
8. Campaign Material
9. Caucus
10. Charges
11. Coalition Building
12. Collateral
13. Collateral Materials
14. Commission
15. Compensation
16. Constituent Outreach
17. Consultant
18. Consulting
19. Consulting Non-FEA
20. Consultant – Political
21. Consulting Service
22. Contract
23. Contract Labor
24. Contractual Services
25. Convention Expenses
26. Convention Services
27. Costs
28. Delegate
29. Delegate Expenses
30. Design
31. Discount Fees
32. Election Day Expense
33. Election Night Venue
34. Entertainment
35. Equipment or Equipment Rental *(if to an individual)*
36. Event
37. Event Expense
38. Event Reimbursement
39. Event Supplies *(if to an individual)*
40. Expenses
41. Expense Reimbursement
42. Fees
43. Fundraising *(if to an individual)*
44. Fundraising Event
45. Fundraising Expense *(if to an individual)*
46. Fundraising Fees *(if to an individual)*
47. Fundraising Supplies *(if to an individual)*
48. General Advice
49. General Consulting
50. Generic Campaign Activity
51. Generic Consulting
52. General GOTV
53. Get-Out-The-Vote or GOTV
54. Gifts
55. GOTV Expenses
56. GOTV Labor
57. Grassroots Materials
58. Invoice
59. Issue Advocacy
60. Labor
61. Literature
62. Meeting *(if to an individual)*
63. Meeting Expenses *(if to an individual)*
64. Meeting Supplies *(if to an individual)*
65. Miscellaneous or Misc.
66. Miscellaneous Expense
67. Office Expense *(if to an individual)*
68. Office Services
69. Office Supplies *(if to an individual)*
70. Operating Expenses
71. Other Expenses
72. Outreach
73. Outside Services
74. Overhead
75. Party Development
76. Production
77. Professional Fees
78. Professional Fees – Consulting
79. Professional Services
80. Promotional Material
81. Publication
82. Push Card
83. Reimbursement
84. Rendered Service
85. Services
86. Services Rendered

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Revised 3/5/07

87. State Convention
88. Supplies *(if to an individual)*
89. Technology
90. Transfer *(Based on type of committee and relationship with the recipient)*
91. Utilities *(if to an individual)*
92. Voter Bounty
93. Voter Contact
94. Voter Drive
95. Voter ID or Voter Identification
96. Voter Registration
97. Voter Turnout
98. Worker

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ENFORCEMENT PROCEDURE 2007-26

COMPILATION OF PROCEDURES DISCUSSED IN ENFORCEMENT MANAGERS MEETINGS' NOTES

Explaining Smaller than Normal Civil Penalties (MS) 5/4/07

[redacted] The Commission rejected a proposed conciliation agreement in the [redacted] matter, which, due to a number of mitigating factors, as well as the practical consideration relating to the Committee simply not having any more funds, contained a civil penalty that was substantially less [redacted] Several Commissioners expressed the thought that in cases where the civil penalty was so low that it obviously did not correspond to the amount in violation (as reflected by a dramatic reduction from the opening offer), the conciliation agreement should set forth specific reasons for the reduction in the penalty. We need to be careful to inform the public as to the Commission's reasons for accepting a smaller than normal penalty, without giving too precise a road map that would allow groups to "game the system" in order to avoid penalties. Keep in mind that including a provision describing the reasons for a lower penalty is not an absolute rule, just a provision that we should consider on a case-by-case basis, keeping in mind the preference for inclusion recently expressed by the Commission.

Utilization of Investigators (MS) 5/4/07 & (KG) 5/14/07

On cases where it appears that we will be utilizing the Investigators (cases where we are likely to recommend RTB and there are factual issues where it would be efficient to assign an Investigator), we should try to involve them immediately after case activation, so that they could provide input and perspective at the activation meeting.

Use of Investigators: Ann Marie reiterated that we need to involve the Investigator(s) immediately after case activation where it appears that we will be utilizing them down the road. This is essential so that they may provide their input and perspective at the activation meeting, and so that they may have a better understanding of the issues in the case. Also, in cases that require more than isolated assistance from investigators, attorneys are asked to make a concerted effort to keep investigators "in the loop" on case updates and invite them to meetings, where practicable.

[redacted]

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EMAIL Commissioners Before Closing Letters Are Mailed (SR) 6/14/07

We are slightly modifying our case closing procedure. In all future cases, please send the standard e-mail to Commissioner's offices regarding case closure a few hours before the closing letters go out. This will give the Commissioners some opportunity to respond before notification is sent to complainants and respondents.

Preparing F&LAS for all Dispositions at FGCR Stage (SR) 6/14/07

We discussed the recent changes regarding the use of F&LAs and the placement of FGCRs on the public record. There has been some confusion about this, but one thing that appears clear is that F&LAs should be prepared for all dispositions (RTB, no RTB, and dismissal) at the FGCR stage. This will alleviate the need to place the FGCR on the public record and thus the burden of redacting the FGCR. It will also allow us to include information in the FGCR that may not be appropriate for the public record. We discussed the separate issue of whether F&LAs or some other method should be used to alleviate the need for placing later GCRs on the public record to explain NFA dispositions. We will be following up with GLA for their guidance on this issue.

Supplement Objection Memos by Email (MS) 7/26/07

Ordinarily, Ann Marie would like to have objection memos submitted by COB on the Thursday preceding the Executive Session. If more information becomes available on Friday, the staff attorney can supplement the memo with an e-mail to all recipients of the memo. An exception will be granted if a matter is not even objected to until sometime on Thursday, in which case the memo is due by noon on Friday. In such cases, the staff attorney should send an e-mail by COB Thursday notifying Tommie, Ann Marie, Dora and Cynthia of the fact that there is an objection and that the memo will be forthcoming by noon on Friday.

Requesting Commission Secretary to Make Changes(MS) 7/26/07

The Commission Secretary's Office has expressed concern about minor errors in CAs and F&LAs that the Commission is being asked to approve on an "as is" basis. The Commission Secretary's Office believes that such corrections need to be approved by the Commission via errata or via vote at the Executive Session. All personnel need to show the same vigilance in reviewing and proofreading such attachments, as they put into reviewing and proofreading the main GCRs.

RTB Findings in Millionaire Amendment Cases (SL)9/7/07

We have not been completely consistent in Millionaire's Amendment cases in recommending reason to believe findings as to the candidate; sometimes we have recommended findings of violations of the relevant statutory provisions only and sometimes we have also recommended findings of 11 CFR 400.25, which gives the candidate the responsibility of ensuring that his or her committee timely files the appropriate Form 10s. From now on in these matters, please recommend reason to believe findings as to the candidate only for violating the statutory provisions, although you should continue to cite to section 400.25 in the text.

Meetings with Associate GC to discuss additional recommendations and planned investigation (SL)9/7/07

Ann Marie would like to meet to discuss the "game plan" before we draft GCR #2's or other GCR summarizing investigations and making recommendations so we can resolve the possible judgment calls sooner rather than later

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SOL Timeline (SL) 9/7/07

We need to remain very sensitive to impending SOL's. For example, if after the investigation is done, and before we draft a ppcc report, there is only 6 months until the SOL lapses, we need to get tolling for all extensions. Even that may not be enough, because we estimate it could take up to a year from the end of an investigation to filing a court complaint in some matters. If the SOL is short from the outset (even before the investigation), or running short thereafter, we need to stop and work backwards from the SOL to figure out how long we have to investigate; under the circumstances we may not be able to follow every lead. If the SOL is a known problem when you get a case, make this "backwards timeline" a part of your investigative plan to discuss with Ann Marie. Please keep your team leaders informed thereafter if you have any concerns about SOL jeopardy well in advance.

Preparing Summaries of Executive Session Discussions (CT 5/18/07) (JM 10/15/07)

If you have a case discussed at an Executive Session please prepare a short discussion of the "lessons learned" from the matter and email the summary to Maura Callaway, who will include it in the Enforcement Weekly. Please see Mark Shonkwiler's team leaders summary from May 4, 2007 for an example of "lessons learned" from the last Executive Session.

When you have a matter before the Commission, please remember to e-mail Maura with a summary of the table discussion at the Executive Session, highlighting the main points to take away from the discussion. This information is included in Enforcement Weekly and helps other attorneys and team leaders who were unable to attend the Executive Session.

Admonishment Language (JM) 10/15/07

The form letter for admonishments is being updated. Ann Marie would like us to use something stronger than the prior "the Commission reminds you" language when the Commission authorizes dismissal or no further action with admonishment.

Tracking PCTB Hearing Requests (JM) 10/15/07

When a Respondent has requested a probable cause hearing, please include Maura on the distribution list for the e-mail informing the Commission of the request so that she can keep track of the number of requests and whether they are granted or denied.

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2007-25

Title—7 Agriculture

PART 24—[Removed and reserved]

■ 1. Remove and reserve part 24, consisting of §§ 24.1 through 24.21.

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

■ 2. Revise the authority citation for part 400 to read as follows:

Authority: 40 U.S.C. 121, 41 U.S.C. 421.

■ 3. Amend § 400.169 by revising the last sentence of paragraph (c) and paragraph (d) to read as follows:

§ 400.169 Disputes.

* * * * *

(c) * * * Such determinations will not be appealable to the Civilian Board of Contract Appeals.

(d) Appealable final administrative determinations of the Corporation under paragraph (a) or (b) of this section may be appealed to the Civilian Board of Contract Appeals in accordance with 48 CFR part 6102.

Title 36—Parks, Forests, and Public Property

PART 223—SALE AND DISPOSAL OF NATIONAL FOREST SYSTEM TIMBER

■ 4. The authority citation for part 223 continues to read as follows:

Authority: 90 Stat. 2958, 16 U.S.C. 472a; 98 Stat. 2213, 16 U.S.C. 618, 104 Stat. 714–726, 16 U.S.C. 620–620j; unless otherwise noted.

■ 5. Amend § 223.138 by removing paragraph (b)(8) and revising paragraphs (b)(7)(i)(C) and (D) and by removing paragraph (b)(7)(i)(E) to read as follows:

§ 223.138 Procedures for Debarment.

* * * * *

(b) * * *

(7) * * *

(i) * * *

(C) State the period of debarment, including effective dates (see § 223.139); and

(D) Specify any limitations on the terms of the debarment.

* * * * *

Title 48—Federal Acquisition Regulations System, chapter 4, Department of Agriculture.

PART 409—CONTRACTOR QUALIFICATIONS

■ 6. Revise the authority citation for part 409 to read as follows:

Authority: 40 U.S.C. 121, 41 U.S.C. 421.

■ 7. Remove § 409.470.

PART 432—CONTRACT FINANCING

■ 8. Revise the authority citation for part 432 to read as follows:

Authority: 40 U.S.C. 121, 41 U.S.C. 421.

■ 9. Revise § 432.616 to read as follows:

§ 432.616 Compromise Actions.

Compromise of a debt within the proceedings under appeal to the Civilian Board of Contract Appeals is the responsibility of the contracting officer.

PART 433—PROTESTS, DISPUTES AND APPEALS

■ 10. Revise the authority citation for part 433 to read as follows:

Authority: 40 U.S.C. 121, 41 U.S.C. 421.

■ 11. Revise § 433.203–70 to read as follows:

§ 433.203–70 Civilian Board of Contract Appeals.

The organization, jurisdiction, and functions of the Civilian Board of Contract Appeals, together with its Rules of Procedure, are set out in 48 CFR part 6101.

Done in Washington, DC, this 25th day of May 2007.

Mike Johanns,

Secretary of Agriculture.

[FR Doc. 07–2702 Filed 6–6–07; 8:45 am]

BILLING CODE 3410–01–M

FEDERAL ELECTION COMMISSION

11 CFR Part 104

[Notice 2007–13]

Statement of Policy Regarding Treasurers' Best Efforts To Obtain, Maintain, and Submit Information as Required by the Federal Election Campaign Act

AGENCY: Federal Election Commission.

ACTION: Statement of Policy.

SUMMARY: The Federal Election Commission (the "Commission") is issuing a Policy Statement to clarify its enforcement policy with respect to the circumstances under which it intends to consider a political committee and its treasurer to be in compliance with the recordkeeping and reporting requirements of the Federal Election Campaign Act, as amended ("FECA"). Section 432(i) of FECA provides that when the treasurer of a political committee demonstrates that best efforts were used to obtain, maintain, and submit the information required by FECA, any report or records of such committee shall be considered in compliance with FECA or the statutes governing the public financing of Presidential candidates. In the past, the Commission has interpreted this section to apply only to a treasurer's efforts to obtain required information from contributors to a political committee, and not to maintaining information or to submitting reports. However, the district court in *Lovely* v. *FEC*, 307 F. Supp. 2d 294 (D. Mass. 2004), held that the Commission should consider whether a treasurer used best efforts under FECA with regard to efforts made to submit a report in a timely manner. This Policy Statement makes clear that the Commission intends to apply FECA's best efforts provision to treasurers' and committees' efforts to obtain, maintain, and submit information and records to the Commission consistent with the holding of the Federal court in *Lovely*. Further information is provided in the supplementary information that follows.

DATES: *Effective Date:* June 7, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. Ron B. Katwan, Assistant General Counsel, or Ms. Margaret G. Perl, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory and Regulatory Provisions

FECA states the "best efforts defense" in 2 U.S.C. 432(i) as follows:

> When the treasurer of a political committee shows that best efforts have been used to obtain, maintain, and submit the information required by this Act for the political committee, any report or any records of such committee shall be considered in compliance with this Act or chapter 95 or chapter 96 of title 26.

The Commission implemented this provision in 11 CFR 104.7(a) with regulatory language virtually identical to the statutory provision:

> When the treasurer of a political committee shows that best efforts have been used to obtain, maintain and submit the information required by the Act for the political committee, any report of such committee shall be considered in compliance with the Act.

Paragraph (b) of 11 CFR 104.7 specifies the actions that treasurers of a political committee must take to demonstrate that they have exercised best efforts to obtain and report the "identification" of each person whose contribution(s) to the political committee and its affiliated political committees aggregate in excess of $200 in a calendar year (or in an election

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cycle in the case of an authorized committee).[1] "Identification" includes the person's full name, mailing address, occupation, and name of employer. *See* 11 CFR 100.12.

Both the language of FECA and the Commission's regulation at 11 CFR 104.7(a) apply the best efforts defense broadly to efforts by treasurers to "obtain, maintain and submit" the information required to be disclosed by FECA. In past enforcement actions, however, the Commission has interpreted this statutory and regulatory language to apply only to efforts to "obtain" contributor information.[2] This interpretation draws from an example contained in the provision's legislative history. *See* H.R. Rep. No. 96–422, at 14 (1979) ("One illustration of the application of this [best efforts] test is the current requirement for a committee to report the occupation and principal place of business of individual contributors who give in excess of $100").

B. The Lovely Decision

In *Lovely*, a political committee challenged an administrative fine the Commission had assessed for failing to file timely a report. The committee argued that it had made best efforts to file the report and that this constituted a complete defense to the fine. The court concluded that the plain language of the Act requires the Commission to entertain a best efforts defense in the Administrative Fine Program ("AFP"), and that it was unclear from the record if the Commission had done so.

In so holding, the court drew on the legislative history of the best efforts provision, and specifically noted the 1979 amendments to FECA that made the best efforts defense "applicable to the entirety of FECA, rather than merely to one subsection." *Lovely*, 307 F. Supp. 2d at 299. The court quoted the provision's legislative history:

> The best efforts test is *specifically made applicable to recordkeeping and reporting requirements in both Title 2 and Title 26.* The test of whether a committee has complied with the statutory requirements is whether its treasurer has exercised his or her best efforts to obtain, maintain, and submit the information required by the Act. If the treasurer has exercised his or her best efforts, the committee is in compliance. Accordingly, *the application of the best efforts test is central to the enforcement of the recordkeeping and reporting provisions of the Act.* It is the opinion of the Committee that the Commission has not adequately incorporated the best efforts test into its administration procedures, such as the systematic review of reports.

Id. (emphasis added) (quoting H.R. Rep. No. 96–422, at 14 (1979), *reprinted in* 1979 U.S.C.C.A.N. 2860, 2873).

After remand of the *Lovely* case, the Commission acknowledged in its Statement of Reasons that "[t]he Court held that FECA's 'best efforts' provision . . . requires the Commission to *consider* whether a committee's treasurer exercised best efforts to submit timely disclosure reports." *Statement of Reasons in Administrative Fines Case #549* at 1 (Oct. 4, 2005), available at *http://www.fec.gov/law/law_rulemakings.shtml* under the heading "Best Efforts in Administrative Fine Challenges." ("*Lovely Statement of Reasons*"). Upon further review, the Commission determined that the committee's treasurer had not made best efforts in filing the report in question and assessed a civil money penalty. *Id.* at 5.

C. Proposed Policy Statement

The Commission sought public comment on a Proposed Statement of Policy that would clarify the Commission's current enforcement practice to consider whether the treasurer and committee made best efforts to obtain, maintain or submit the required information under 11 CFR 104.7(a). *See Proposed Statement of Policy Regarding Treasurer's Best Efforts to Obtain, Maintain, and Submit Information as Required by the Federal Election Campaign Act*, 71 FR 71084 (Dec. 8, 2006). The Commission received two comments, which are available at *http://www.fec.gov/law/policy.shtml* under the heading "Best Efforts." One comment made several recommendations as to how the Commission could further clarify the best efforts defense by incorporating the business management concept of "best practices" regarding corporate operation, financial controls, risk prevention and risk assessment. The comment also suggested that the Policy Statement provide guidance to political committees and treasurers regarding what conduct would qualify under the best efforts defense, and not rely solely on examples of conduct that would not qualify under the defense. The other comment was not relevant to this Policy Statement.

II. Policy Regarding the Best Efforts Defense

Although the court decision in *Lovely* only concerned permissible defenses within the AFP, the Commission has decided to adopt the court's interpretation of the best efforts defense with regard to other enforcement matters. While the Commission's enforcement practices formerly reflected the view that the best efforts defense was limited to obtaining certain contributor identification information (*see* note 2 above) the Commission recognizes that this narrow application of the defense in previous enforcement matters derives from a single example of the defense's application in its 1979 legislative history.[3] In light of these considerations, the Commission hereby notifies the public and the regulated community through this Policy Statement that henceforth it intends to apply the best efforts defense of 2 U.S.C. 432(i), as promulgated at 11 CFR 104.7, not only to efforts made to obtain contributor information as currently set forth in section 104.7(b),[4] but also to

[1] The U.S. Court of Appeals for the District of Columbia Circuit referred to 11 CFR 104.7(b) as a "Commission regulation interpreting what political committees must do under [FECA] to demonstrate that they have exercised their 'best efforts' to encourage donors to disclose certain personally identifying information." *Republican Nat'l Comm. v. FEC*, 76 F.3d 400, 403 (D.C. Cir. 1996).

[2] In 1980, the Commission explained that "[i]n determining whether or not a committee has exercised 'best efforts,' the Commission's primary focus will be on the system established by the committee for *obtaining* disclosure information." *Amendments to Federal Election Campaign Act of 1971; Regulations Transmitted to Congress*, 45 FR 15080, 15086 (Mar. 7, 1980) (emphasis added). In 1993, the Commission referred to "the requirement of [FECA] that treasurers of political committees exercise best efforts to obtain, maintain and report the complete identification of each contributor whose contributions aggregate more than $200 per calendar year." *Final Rule on Recordkeeping and Reporting by Political Committees: Best Efforts*, 58 FR 57725, 57725 (Oct. 27, 1993). And in 1997, the Commission stated that "[t]reasurers of political committees must be able to show they have exercised their best efforts to obtain, maintain and report [contributor identification information]." *Final Rule on Recordkeeping and Reporting by Political Committees: Best Efforts*, 62 FR 23335, 23335 (Apr. 30, 1997). In 2003, the Commission asserted in the *Lovely* litigation: "the Commission has long interpreted the best efforts provision as creating a limited safe harbor regarding committees' obligations to report substantive information that may be beyond their ability to obtain." FEC Supplemental Brief at 1, *Lovely* (Civil Action No. 02–12496–PBS). Furthermore, "when Congress originally enacted the 'best efforts' provision, it could not have been more clear that it was creating a limited defense regarding the inability to obtain specific information that was supposed to be disclosed, not the failure to file reports on time." *Id.* at 12–13. The *Lovely* court summarized the Commission's argument: "The FEC in its briefing claims that it limits the reach of the best efforts statute to best efforts to 'obtain' contributor information." *Lovely*, 307 F. Supp. 2d at 300.

[3] A respondent's assertion in an enforcement matter that best efforts were made to maintain and/or submit required information was formerly considered by the Commission to be a mitigating factor, but not an outright defense to an alleged violation of the recordkeeping and reporting requirements.

[4] As stated above, the standards for determining whether the best efforts defense is applicable in the context of obtaining specific contributor information are set forth at current 11 CFR 104.7(b). This Policy Statement does not affect or modify those standards.

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efforts made to obtain other information, to maintain all information required by the statute, and to submit required information on disclosure reports.

This Policy Statement does not affect the Commission's AFP, but applies only to matters in the Commission's traditional enforcement and audit programs, and in the Alternative Dispute Resolution program ("ADR"). The Commission recently completed a rulemaking adding a best efforts defense to the enumerated defenses available in the AFP. *See Final Rules for Best Efforts in Administrative Fines Challenges*, 72 FR 14662 (Mar. 29, 2007). In that rulemaking, the Commission incorporated the statutory best efforts standard, while taking into account the unique streamlined nature of the AFP. *See id.* at 14666.

The Commission considers best efforts to be "a standard that has diligence as its essence." E. Allan Farnsworth, *On Trying to Keep One's Promises: The Duty of Best Efforts in Contract Law*, 46 U. Pitt. L. Rev. 1, 8 (1984). As the Commission explained in its *Lovely Statement of Reasons* at 2:

> Section 432(i) creates a safe harbor for treasurers who "show[] that best efforts" have been made to report the information required to be reported by the Act. "Best" is an adjective of the superlative degree. "Best efforts" must therefore require more than "some" or "good" efforts. Congress's choice of a "best efforts" standard, rather than a "good faith" standard, suggests that a treasurer cannot rely upon his or her earnestness or state of mind to gain the shelter of Section 432(i)'s safe harbor. Rather, a treasurer has the burden of showing that the actions taken—the efforts he or she made to comply with applicable reporting deadlines—meet the statute's demanding benchmark.

With respect to 11 CFR 104.7(a), the Commission intends to consider a committee's affirmative steps to keep adequate records and make accurate reports, as well as the reasons for its failure to obtain, maintain, or submit information properly. The Commission generally intends to consider the following: (1) The actions taken, or systems implemented, by the committee to ensure that required information is obtained, maintained, and submitted; (2) the cause of the failure to obtain, maintain, or submit the information or reports at issue; and (3) the specific efforts of the committee to obtain, maintain, and submit the information or reports at issue. This general policy does not modify other guidance and policy standards issued by the Commission addressing specific circumstances, such as the *Internal Controls for Political Committees*, and *Policy Statement Regarding Safe Harbor for Misreporting Due to Embezzlement*, 72 FR 16695 (Apr. 5, 2007), both available at *http://www.fec.gov/law/policy.shtml*.

The Commission will generally conclude that a committee has shown best efforts if the committee establishes the following:

- At the time of its failure, the committee took relevant precautions such as double checking recordkeeping entries, regular reconciliation of committee records with bank statements, and regular backup of all electronic files;
- The committee had trained staff responsible for obtaining, maintaining, and submitting campaign finance information in the requirements of the Act as well as the committee's procedures, recordkeeping systems, and filing systems;
- The failure was a result of reasonably unforeseen circumstances beyond the control of the committee, such as a failure of Commission computers or Commission-provided software; severe weather or other disaster-related incidents; a widespread disruption of information transmission over the Internet not caused by any failure of the committee's computer systems or Internet service provider; or delivery failures caused by mail/courier services such as U.S. Postal Service or Federal Express; and
- Upon discovering the failure, the committee promptly took all reasonable additional steps to expeditiously file any unfiled reports and correct any inaccurate reports.

In contrast, the Commission will generally conclude that a committee has not met the best efforts standard if the committee's failure to obtain, maintain, or submit information or reports is due to any of the following:

- Unavailability, inexperience, illness, negligence or error of committee staff, agents, counsel or connected organization(s);
- The failure of a committee's computer system;
- Delays caused by committee vendors or contractors;
- A committee's failure to know or understand the recordkeeping and filing requirements of the Act, or the Act's filing dates; or
- A committee's failure to use Commission-or vendor-provided software properly.

Under this policy, the Commission intends to consider the best efforts of a committee under section 432(i) when reviewing all violations of the recordkeeping and reporting requirements of FECA, whether arising in its traditional enforcement docket (Matters Under Review), audits, or the ADR Program. The best efforts standard is an affirmative defense and the burden rests with the political committee and its treasurer to present evidence sufficient to demonstrate that best efforts were made. The Commission does not intend to consider the best efforts defense in any enforcement or ADR matter, or in an audit unless a respondent or audited committee asserts the facts that form the basis of that defense.

Effective as of this date, the Commission intends to apply the best efforts standard to all matters currently before the Commission in which a respondent has already asserted such a defense, and any matters in the future involving treasurers' and political committees' obligation to obtain, maintain, and submit information or reports. When treasurers make a sufficient showing of best efforts, the treasurers or committees shall be considered in compliance with FECA.

The above provides general guidance concerning the applicability of the Commission's best efforts defense and announces the general course of action that the Commission intends to follow. This Policy Statement sets forth the Commission's intentions concerning the exercise of its discretion in its enforcement and audit programs. However, the Commission retains that discretion and will exercise it as appropriate with respect to the facts and circumstances of each matter or audit it considers. Consequently, this Policy Statement does not bind the Commission or any member of the general public. As such, it does not constitute an agency regulation requiring notice of proposed rulemaking, opportunities for public participation, prior publication, and delay in effective date under 5 U.S.C. 553 of the Administrative Procedure Act ("APA"). The provisions of the Regulatory Flexibility Act, which apply when notice and comment are required by the APA or another statute, are not applicable.

Dated: June 1, 2007.

Robert D. Lenhard,

Chairman, Federal Election Commission.

FR Doc. E7–10997 Filed 6–6–07; 8:45 am]

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2007-24

Rules and Regulations

Federal Register
Vol. 72, No. 65
Thursday, April 5, 2007

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL ELECTION COMMISSION

11 CFR Part 104

[NOTICE 2007-9]

Statement of Policy; Safe Harbor for Misreporting Due to Embezzlement

AGENCY: Federal Election Commission.

ACTION: Statement of policy.

SUMMARY: The Commission is issuing a Statement of Policy to announce that it is creating a safe harbor for the benefit of political committees that have certain internal controls in place to prevent misappropriations and associated misreporting. Specifically, the Commission does not intend to seek civil penalties against a political committee for filing incorrect reports due to the misappropriation of committee funds if the committee has the specified safeguards in place.

EFFECTIVE DATE: April 5, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Stoltz, Assistant Staff Director, Audit Division, 999 E Street, NW., Washington, DC 20463, (202) 694-1200.

SUPPLEMENTARY INFORMATION: The Commission has encountered a dramatic increase in the number of cases where political committee staff misappropriates committee funds. Misappropriations are often accompanied by the filing of inaccurate disclosure reports with the FEC, leaving committees vulnerable to a FEC enforcement action and potential liability for those reporting errors. In response to the rise in this activity, the Commission has concluded that the following internal controls are minimal safeguards a committee should implement to prevent misappropriations and associated misreporting.

This policy does not impose new legal requirements on political committees; rather it creates a safe harbor. If the following internal controls are in place at the time of a misappropriation, and the post-discovery steps described below are followed by the committee, the FEC will not seek a monetary penalty on the political committee for filing incorrect reports due to the misappropriation of committee funds.[1] The Commission will also consider the presence of some, but not all, of these practices, or of comparable safeguards, as a mitigating factor in considering any monetary liability resulting from a misappropriation.[2]

A. Internal Controls

- ☐ All bank accounts are opened in the name of the committee, never an individual, using the committee's Employer Identification Number, not an individual's Social Security Number.
- ☐ Bank statements are reviewed for unauthorized transactions and reconciled to the accounting records each month. Further, bank records are reconciled to disclosure reports prior to filing. The reconciliations are done by someone other than a check signer or an individual responsible for handling the committee's accounting.
- ☐ Checks in excess of $1000 are authorized in writing and/or signed by two individuals. Further, all wire transfers are authorized in writing by two individuals. The individuals who may authorize disbursements or sign checks should be identified in writing in the committee's internal policies.
- ☐ An individual who does not handle the committee's accounting or have banking authority receives incoming checks and monitors all other incoming receipts. This individual makes a list of all committee receipts and places a restrictive endorsement, such as: For Deposit Only to the Account of the Payee" on all checks.
- ☐ If the committee has a petty cash fund, an imprest system[3] is used, and the value of the petty cash fund should be no more than $500.

B. Post-Discovery of Misappropriation Activity

As soon as a misappropriation is discovered, the political committee:

- ☐ Notifies relevant law enforcement of the misappropriation.
- ☐ Notifies the FEC of the misappropriation.
- ☐ Voluntarily files amended reports to correct any reporting errors due to the misappropriation, as required by the FEC.

This notice represents a general statement of policy announcing the general course of action that the Commission intends to follow. This policy statement does not constitute an agency regulation requiring notice of proposed rulemaking, opportunities for public participation, prior publication, and delay in effective date under 5 U.S.C. 553 of the Administrative Procedures Act ("APA"). As such, it does not bind the Commission or any member of the general public. The provisions of the Regulatory Flexibility Act, 5 U.S.C. 605(b), which apply when notice and comment are required by the APA or another statute, are not applicable.

Dated: March 22, 2007.

Robert D. Lenhard,

Chairman, Federal Election Commission.

[FR Doc. E7-6299 Filed 4-4-07; 8:45 am]

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[1] The internal controls set forth here represent the minimum efforts a committee must take to qualify for this safe harbor. The FEC provides additional guidance on internal controls best practices at *http://www.fec.gov/law/policy.shtml#guidance.*

[2] This policy does not absolve or mitigate FEC liability for individuals responsible or complicit in the misappropriations.

[3] An imprest fund is one in which the sum of the disbursements recorded in the petty cash log since the last replenishment and the remaining cash always equals the stated amount of the fund. When the fund is replenished the amount of the replenishment equals the amounts recorded since the prior replenishment and should bring the cash balance back to the stated amount. Only one person should be in charge of the fund.

FEDERAL ELECTION COMMISSION

11 CFR Part 111

[Notice 2007-8]

Policy Regarding Self-Reporting of Campaign Finance Violations (Sua Sponte Submissions)

AGENCY: Federal Election Commission.

ACTION: Statement of Policy.

SUMMARY: In order to encourage the self-reporting of violations about which the Commission would not otherwise have learned, the Commission will generally

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Internal Controls and Political Committees

Under the Federal Election Campaign Act (FECA) and the Commission's regulations all political committees are required to file accurate and complete disclosure reports. A system of internal controls can contribute to the accuracy of a committee's disclosure reports. While neither FECA nor the regulations require any particular set of internal controls, implementing effective internal controls plays an important role in meeting those requirements, since misappropriation of funds or unintentional error generally lead to the filing of inaccurate disclosure reports. Conversely, a lack of internal control and oversight can create an environment that contributes to misappropriation of funds, a lack of concern for the accuracy of committee accounting records, and misreporting to the Commission. With respect to misappropriations, in recent years the Commission has noticed an increasing number of instances where committee assets are misappropriated, generally by committee staff. In most of these cases, the staff person who engaged in the misappropriation was a trusted individual who was not properly supervised. There were often no systems of internal control in place that provided an independent check on the activity of those who process the committee's transactions. Absent some basic checks and balances, some people will inevitably give in to temptation. Finally, a system of internal controls, including policies, procedures and budgets, can contribute to the efficient and effective use of committee funds.

As a result, effective internal controls provide the triple benefit of assisting the committee in meeting its goals, protecting committee assets, and facilitating the filing of accurate disclosure reports. To that end, the Commission has prepared the following best practices recommendations. These are not mandatory requirements but are intended to assist committees in protecting their assets and complying with the requirements of the FECA.

We have noted that when the issue of internal control is raised with political committees, often their representatives' respond that they are small operations staffed by volunteers and can't afford elaborate systems of controls. It is, however, in the interest of both the committee and its staff, volunteer or paid, to establish a system of internal controls that will prevent or quickly detect any misappropriation while getting the maximum benefit from the funds that are available. The amount of money involved in the political process has grown rapidly over the past election cycles and it appears that trend will continue. This trend suggests that. as with any business, as the volume of activity grows, the risks and the need to control those risks grow with it.

The responsibility of establishing the necessary control procedures falls to a political committee's treasurer. Internal controls need not be elaborate or expensive to provide reasonable assurance that funds will not be misappropriated. Most importantly, costs associated with recovery from misappropriations, both monetary and non-monetary, are likely to be greater than the cost of prevention. The cost of inefficient use of committee resources may not be recoverable.

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This guide should not be the only resource that is consulted. In addition to accounting professionals, there are numerous resources that can be found on the Internet. For example the Small Business Administration offers an internal control check list that can be used as a starting point. A copy can be located at http://www.prescott.edu/faculty_staff/faculty/scorey/documents/sba_2004a.pdf. The Government Accountability Office has published a guide for Government Agencies titled Standards for Internal Control in the Federal Government that explains the components and principles of internal control (http://www.gao.gov/special.pubs/ai00021p.pdf). There are also many other organizations that have posted their control procedures on the Web ranging from State and local government agencies, to educational institutions, to religious organizations. For example, the Comptroller of the State of Connecticut (http://www.osc.state.ct.us/manuals/AcctDirect/contents.htm) has an Accountability Directive that, in Appendix B, **SECTIONS APPLICABLE TO ALL AGENCY PROGRAMS,** includes not only internal control checklists, but flow charts. Much has been written on internal control by experts in the field, the material in this document borrows from a number of those sources.

Naturally, no one set of controls will be right for all political committees. Small organizations that have only a few people involved will have very different needs and resources than a large corporate or union Separate Segregated Fund that has a significant staff and access to the internal auditing resources of the connected organization. This document is aimed at the smaller organizations. Of course, effective internal control depends heavily on the separation of key functions among more than one person.

What are Internal Controls?

Internal control is a *process* designed to ensure that an organization's goals are met with respect to:

- Effective and efficient operations
- Reliable financial reporting,
- Compliance with laws and regulations, and
- Protection of the organization's assets

The best internal control system can provide only *reasonable*, not absolute, assurance that these goals are met. Any system may be defeated either by accident or intentionally through collusion. However, a well-designed system will reduce the risk that errors or intentional acts will occur or go undetected.

The internal control process typically includes the following elements:

- Control Environment
- Risk Assessment
- Control Activities
- Information and Communication
- Monitoring

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Although this may sound complicated, in a small organization it is actually very simple. The following describes each of the elements:

Control Environment. At the core of any organization are its people with their individual attributes such as integrity and competence, and the environment in which they operate. There are three key aspects to controlling the environment: 1) Limiting the number of people who have access to any accounting function, assets or records system, 2) Maintaining a separation of functions so that no single individual has complete control over financial transactions, and 3) Providing proper instruction and guidance to relevant staff. Ideally, a committee should utilize the smallest number of individuals needed to accomplish the work and still maintain a separation of duties. These individuals should have an understanding of the importance of control procedures and the role they play in ensuring accurate reporting of all financial activities.

Risk Assessment. The committee must be aware of, and deal with, the risks it faces both monetary and non-monetary. Naturally some assets, such as cash, are more easily diverted than others and the control procedures should take into account the risk that each type of asset presents. Then the committee can establish cost effective ways of managing the related risks.

Control Activities. Control policies and procedures must be established to ensure that risks are minimized. Depending on the size of the organization these procedures may be simple and limited, or complex and more extensive. A simple example would be to assign one person to record transactions and file disclosure reports, while another to review and reconcile them to reports and accounting records.

Information and Communication. Information and communication systems surround all of these activities. They enable people to gather and share the information needed to conduct, manage, and control operations.

Monitoring. The entire process must be monitored, and modifications must be made as necessary. In this way, the system can react dynamically, changing as conditions warrant. In many political committees this is a critical part of the equation. Staff and structures change often and sometimes radically. Therefore it is necessary to reconsider the procedures in place to assure they are still effective and appropriate to the current circumstances.

Follow-up. Once a deficiency in internal control is identified, it is incumbent upon committee management to take steps to minimize the risk. After identifying a potential problem, it is expected that action will be taken to reasonably assure that the committee's affairs will be conducted in a manner that meets the internal control and organizational goals discussed above.

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Selected Procedures for Internal Controls

As alluded to earlier, separation of duties is the key ingredient in any internal control system. Without that separation, it is virtually impossible to be reasonably assured that the organization's internal control goals are met. In a small organization there may be as few as two or three individuals involved in the processing, recording and reporting of transactions. With careful planning and assigning of duties it is possible to establish an elementary internal control system with very few people. If the committee staff is very small maintaining some level of separation of duties and independent review is of prime importance. The Treasurer can provide independent review so long as he or she does not process transactions on a day to day basis or prepare disclosure reports.

The controls discussed below include those over cash and non-cash assets that are readily convertible into cash (e.g., liabilities whose liquidation will require the use of cash, such as accounts payable and notes payable). The areas discussed below represent particular vulnerabilities the Commission has identified based on its regulatory experience. They do not represent an exhaustive list of assets to be safeguarded.

Bank Accounts

A. Limit the number of bank accounts to those absolutely required to manage the committee's business. It may, for example, be more convenient to have separate accounts for the primary and general elections and/or receipts and disbursements. Obviously, the fewer the accounts, the greater the control and the smaller the opportunity for errors or wrongdoing.

B. A political committee should obtain from the Internal Revenue Service an employer identification number ("EIN") in the name of the committee and all committee bank accounts should be in the name of the committee and utilize the committee EIN. Never approve the opening of an account in the name of an individual or using an individuals Social Security Number. The mailing address should be a committee address and the statements should be delivered unopened to a person not charged with processing transactions. Only the treasurer or his designee should be permitted to open and close bank accounts. Those with such authority should be specifically named in writing.

C. Limit the number of persons authorized to sign checks. In addition, checks in excess of a certain dollar amount should require the signature of two responsible individuals. The recommended threshold is $1,000. Facsimile signatures should be prohibited unless controlled by a check-signing machine with a numerical sequence counter. No signature stamps should be allowed.

D. Debit and credit cards must be carefully controlled since they represent easy access to committee assets. The committee's bank or credit card issuer may be helpful in this regard. It may be possible to place dollar restrictions on cards, both on a per transaction basis and a cumulative limit. Once expenditures are approved, the limit can be re-established. Limits or prohibitions can also be placed on cash withdrawals.

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E. Review the transactions on bank statements and reconcile the statements to the accounting records each month in a timely manner. Many committees find that the use of one of the commercially available small business accounting software packages is useful in this process. They often include a simplified pre-programmed process for reconciling the accounts and locating differences. The review and reconciliation are essential to determining if any errors occurred, unauthorized checks were issued or receipts were stolen. Someone should reconcile the bank statement other than the check signers and those controlling the checking account and processing transactions. The individual responsible for reconciling the account should receive the bank statement unopened. This one step of segregating the processing of transactions and the reconciliation of accounts would have prevented or quickly revealed a number of the misappropriations and the associated false reporting that the Commission has observed in recent years. It is also an excellent technique for discovering errors and omissions that occur accidentally.

F. Prior to filing each report, a reconciliation between bank and accounting records and the disclosure reports should be undertaken. The use of electronic banking can contribute to the timely reconciliation process and allow reconciliations to be easily done when reports do not coincide with bank statement dates. Access to the electronic banking system should be limited.

G. Require all wire transfers to be pre-authorized by two responsible individuals and immediately recorded in the accounting records. A committee sequential identification number (similar to a check number) is often helpful in recording and controlling wire transfers. A gap in the sequence number indicates a wire transfer that was not recorded. The Commission has encountered situations where the failure to record wire transfers has resulted in substantial misstatements in disclosure reports. Naturally, the reconciliation of the checking accounts to the accounting records and the disclosure reports will help prevent the filing of erroneous reports.

H. Finally, investigate other control related services that the committee's bank may be able to provide. With electronic banking, information is available instantly that can contribute to a more secure control environment. Also banks may be able to screen checks that are drawn on committee accounts during their processing for compliance with agreed upon criteria.

Receipts

A. Make a list of receipts when the mail is opened. Ideally, the person opening the mail and preparing the list should be independent of the accounting function. A responsible official should periodically (during the monthly bank reconciliation if not more often) compare the list with the recorded amount for the deposit and the deposit amount on the bank statement. Some committee's have found using a lockbox service (to independently open mail, record the contributions, and make bank deposits) to perform this part of receipt processing beneficial. Such services may be available through the bank.

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B. The employee responsible for opening the mail should complete to following:
   — Place restrictive endorsements, such as For Deposit Only to the Account of the Payee, on all checks received. Account number can be added but that addition may cause a security concern by providing each contributor the committee's account number..
   — Prepare a list of the money, checks, and other receipts.
   — Forward all receipts to the person responsible for preparing and making the daily bank deposits. Cash and check receipts should be deposited intact daily.

C. If the committee receives contributions via debit and credit card, the same type of information described above for checks and cash should be assembled for those contributions[1]. The same verification to bank deposits should also be performed. The procedure will depend on the system that the credit card processor has in place. These control issues should be taken into account before selecting a firm to process the committee's credit card contributions. Commission Advisory Opinion 1999-9 (available on the Commission's Web Site) provides guidance concerning the solicitation and receipt of credit card contributions. Although the Opinion was issued in the context of the Presidential Primary Matching Fund program, it is useful guidance for credit card contributions in non-pubicliy funded campaigns as well.

D. Prohibit delivery of unopened business mail to employees having access to the accounting records.

E. Contributions that are received by committee personnel at events and in person should be subject to the same procedures as those received via mail. Lists should be made and the checks submitted to the person(s) doing other contribution processing.

F. Secure undeposited receipts in a locked cabinet at all times.

G. Cash refunds should require approval.

H. Locations where the physical handling of cash takes place should be reasonably safeguarded.

Disbursements

A. Generally, disbursements should be made with pre-numbered checks, with the exception of petty cash. Using checks for all major cash payments ensures that there is a permanent record of the disbursement. The check should be pre-numbered so that it is accounted for properly. This procedure helps to prevent the issuance of a check that is not recorded in the cash disbursement records. As noted above, it is good practice to require checks in amounts greater than a specified amount to require two signatures. Additionally, pre-signed checks should not be allowed. The use of credit and debit cards should be very carefully controlled and detailed records of the transactions should be required of all users. Avoid using credit and debit cards to withdraw cash. Wire transfers should

[1] Be aware that credit card processing fees may be netted against the contribution amounts when deposited into the committee's accounts. If so, the gross amount of the contributions must be recorded with the processing fees shown as an expense.

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require dual authorization and each wire should be assigned a sequential number to help assure that all such payments have been recorded. Wire transfers should be recorded in the accounting records immediately.

B. If a mistake is made when preparing a check, void the check before preparing a new one. The voided check should then be altered to prevent its use, retained to make sure all pre-numbered checks are accounted for, and filed with other checks for a permanent record. The stock of unused checks should be safeguarded and regularly inventoried.

C. If possible, check signing should be the responsibility of individuals having no access to the accounting records.

D. Draw checks according to procedures prescribing adequate supporting documentation and authorization. It is in a committee's best interest to ensure that invoices that have been properly authorized support disbursements. This documentation should include (1) a proper original invoice; (2) evidence that the goods or services were received; and (3) evidence that the purchase transaction was properly authorized. Some committees find the use of a check authorization form to be useful. The signatures required for such authorizations can vary based on the size and nature of the transaction.

E. All supporting documents should be canceled or marked "paid" once a disbursement is made to avoid double payments. In the past the Commission has observed instances where failure to take these steps has resulted in many costly duplicate payments. Payments should not be made on statements or balance-due billings unless underlying invoices are included.

F. Mail all checks promptly and directly to the payee or if they are to be delivered by committee staff, require that the person taking control of the checks signs for them. The person mailing the check should be independent of those requesting, writing, and signing it.

Petty Cash.

Use an imprest petty cash fund with one custodian. The imprest fund involves replenishing petty cash only when properly approved vouchers and/or petty cash log entries are presented justifying all expenditures. The amount of the replenishment is equal to the difference between the stated amount of the fund and the remaining balance. For accountability, only one person should be in charge of the fund. The amount to be placed in the petty cash fund will need to be determined by the committee based on its operating needs, but should be kept to the minimum amount needed to make small disbursements. A petty cash fund of not more than $500 should be adequate in most cases. If that proves not to be the case, the committee should review its policies concerning which disbursements may be paid from petty cash. No cash disbursement in excess of $100 is permitted

Payroll

Many committees use a payroll service for much of the payroll function. Where there are more than a few employees; a service can be a very effective way of handling payroll and maintaining a separation of duties within the payroll operation. As an additional benefit,

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the service will often take care of the preparation and filing of the necessary tax returns, and thereby help avoid errors and associated penalties.

If the committee chooses to handle payroll in-house, the signing and distribution of the checks must be properly handled to prevent their theft. The controls should include limiting the authorization for signing the checks to a responsible person who does not have access to timekeeping or the preparation of the payroll, the distribution of the payroll by someone who is not involved in the other payroll functions, and the immediate return of unclaimed checks for redeposit

If the committee has more than a few employees, it is advisable that it use an imprest payroll account to help prevent the payment of unrecorded payroll transactions. An imprest payroll account is a separate checking account in which a small balance is maintained. A check for the exact amount of each net payroll is transferred from the general account to the payroll checking account immediately prior to the distribution of the payroll. The advantages of an imprest account are that it limits the organization's exposure to payroll fraud, allows the delegation of payroll check-signing duties, separates routine payroll expenditures from other expenditures, and facilitates cash management.

Payables

The accounts payable/notes payable procedures are clearly related to the procedures for cash disbursements and payroll. The control concern is to make certain that all liabilities are properly recorded and ultimately paid. There should be a proper segregation of duties over the performance of the functions of comparing receiving reports, purchase orders and invoices and the handling of the actual disbursement functions. As noted previously, invoices should be stamped "paid" and payments should not be made from statements of account unless accompanied by the related bills and invoices. These procedures prevent accidentally paying the same charges more than once. For disbursements that are not normally accompanied by an invoice (e.g., payment on a note or office rent), the authorization should come from a responsible official.

Computerized Systems

Most political committees are required to file their reports electronically and therefore many of their accounting records are automated. All of the same control considerations that apply to a manual transaction system apply to an automated system. In particular, separating functions so that data files are reconciled to other records by someone independent of the transaction processing and reporting functions is critical. In addition, in electronic systems the selection of software, the training of staff in the use of that software, limiting access to the system, and security of the data are important considerations.

In many cases, the electronic filing software is separate from accounting software. If this is the situation, determine if data can be exported from the accounting software to the filing software. Not only is it more efficient than entering the data twice, it reduces the opportunity for error.

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

There is an additional safeguard that is important and sometimes overlooked. The electronic data must be regularly backed up to avoid a loss of data that can interfere with a committee's ability to file timely and accurate disclosure reports. Regardless of whether such a data loss stems from a hardware failure, a software failure, human error, or a disaster such as a fire or flood, the result is the same. There are several ways to accomplish a data back up. In some instances the software supplier will "host" the data meaning that it resides on the supplier's server and is backed up by the supplier. If back up is to be done locally, it can be accomplished by copying the data to a tape or CD and storing the back up off site. Ideally the back up should be done daily.

Conclusion

While no system of internal controls can ever be foolproof and one set of controls is not a good fit for all types of committees, the elements identified above can significantly reduce the opportunity for intentional misappropriation of funds and any related false reporting. Furthermore, many of these internal controls can also reduce the likelihood of inadvertent errors that can result in reporting problems. This discussion of internal controls is not intended to be exhaustive or to prescribe any one set of controls. It is up to each political committee to carefully consider what internal controls are valuable and feasible.

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1 on the basis of a referral from an agency of the United States or any state. If the
2 Commission determines by an affirmative vote of four members that it has "reason to
3 believe" that a respondent violated the Act or Commission regulations, the respondent
4 must be notified by letter of the Commission's finding(s). 11 CFR 111.9(a).[5] The Office
5 of General Counsel will also provide the respondent with a Factual and Legal Analysis,
6 which will set forth the bases for the Commission's finding of reason to believe.
7 After the Commission makes a "reason to believe" finding, an investigation is
8 conducted by the Office of General Counsel, in which the Commission may undertake
9 field investigations, audits, and other methods of information-gathering. 11 CFR 111.10.
10 Additionally, the Commission may issue subpoenas to order any person to submit sworn
11 written answers to written questions, to provide documents, or to appear for a deposition.
12 11 CFR 111.11 – 111.12. Any person who is subpoenaed may submit a motion to the
13 Commission for it to be quashed or modified. 11 CFR 111.15.
14 Following a "reason to believe" finding, the Commission may attempt to reach a
15 conciliation agreement with the respondent(s) prior to reaching the "probable cause"
16 stage of enforcement (*i.e.*, a pre-probable cause conciliation agreement). See 11 CFR
17 111.18(d). If the Commission is unable to reach a pre-probable cause conciliation
18 agreement with the respondent, or determines that such a conciliation agreement would
19 not be appropriate, upon completion of the investigation referenced in the preceding
20 paragraph, the Office of General Counsel prepares a brief setting forth its position on the
21 factual and legal issues of the matter and containing a recommendation on whether or not

[5] If the Commission finds no "reason to believe," or otherwise terminates its proceedings, the Office of General Counsel shall advise the complainant and respondent(s) by letter. 11 CFR 111.9(b).

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1 the Commission should find "probable cause to believe" that a violation has occurred or
2 is about to occur. 11 CFR 111.16(a).
3 The Office of General Counsel notifies the respondent(s) of this recommendation
4 and provides a copy of the probable cause brief. 11 CFR 111.16(b). The respondent(s)
5 may file a written response to the probable cause brief within fifteen days of receiving
6 said brief. 11 CFR 111.16(c). After reviewing this response, the Office of General
7 Counsel shall advise the Commission in writing whether it intends to proceed with the
8 recommendation or to withdraw the recommendation from Commission consideration.
9 11 CFR 111.16(d).
10 If the Commission determines by an affirmative vote of four members that there
11 is "probable cause to believe" that a respondent has violated the Act or Commission
12 regulations, the Commission authorizes the Office of General Counsel to notify the
13 respondent by letter of this determination. 11 CFR 111.17(a). Upon a Commission
14 finding of "probable cause to believe," the Commission must attempt to reach a
15 conciliation agreement with the respondent. 11 CFR 111.18(a). If no conciliation
16 agreement is finalized within the time period specified in 11 CFR 111.18(c), the Office of
17 General Counsel may recommend to the Commission that it authorize a civil action for
18 relief in the appropriate court. 11 CFR 111.19(a). Commencement of such civil action
19 requires an affirmative vote of four members of the Commission. 11 CFR 111.19(b).
20 The Commission may enter into a conciliation agreement with respondent after
21 authorizing a civil action. 11 CFR 111.19(c).

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Policy Regarding Self-Reporting of Campaign Finance Violations (*Sua Sponte* Submissions)	)	Agenda Document No. 07-25
	)	
	)	

CERTIFICATION

I, Mary W. Dove, recording secretary for the Federal Election Commission open meeting on March 22, 2007, do hereby certify that the Commission decided by a vote of 5-0 to approve the proposed Policy Regarding Self-Reporting of Campaign Finance Violations (*Sua Sponte* Submissions), as set forth in Agenda Document No. 07-25.

Commissioners Lenhard, Mason, von Spakovsky, Walther, and Weintraub voted affirmatively for the decision.

Attest:

March 22, 2007
Date

Mary W. Dove
Mary W. Dove
Secretary of the Commission

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

2007-23

Rules and Regulations

Federal Register
Vol. 72, No. 65
Thursday, April 5, 2007

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL ELECTION COMMISSION

11 CFR Part 104

[NOTICE 2007-9]

Statement of Policy; Safe Harbor for Misreporting Due to Embezzlement

AGENCY: Federal Election Commission.

ACTION: Statement of policy.

SUMMARY: The Commission is issuing a Statement of Policy to announce that it is creating a safe harbor for the benefit of political committees that have certain internal controls in place to prevent misappropriations and associated misreporting. Specifically, the Commission does not intend to seek civil penalties against a political committee for filing incorrect reports due to the misappropriation of committee funds if the committee has the specified safeguards in place.

EFFECTIVE DATE: April 5, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Stoltz, Assistant Staff Director, Audit Division, 999 E Street, NW., Washington, DC 20463, (202) 694-1200.

SUPPLEMENTARY INFORMATION: The Commission has encountered a dramatic increase in the number of cases where political committee staff misappropriates committee funds. Misappropriations are often accompanied by the filing of inaccurate disclosure reports with the FEC, leaving committees vulnerable to a FEC enforcement action and potential liability for those reporting errors. In response to the rise in this activity, the Commission has concluded that the following internal controls are minimal safeguards a committee should implement to prevent misappropriations and associated misreporting.

This policy does not impose new legal requirements on political committees; rather it creates a safe harbor. If the following internal controls are in place at the time of a misappropriation, and the post-discovery steps described below are followed by the committee, the FEC will not seek a monetary penalty on the political committee for filing incorrect reports due to the misappropriation of committee funds.[1] The Commission will also consider the presence of some, but not all, of these practices, or of comparable safeguards, as a mitigating factor in considering any monetary liability resulting from a misappropriation.[2]

A. Internal Controls

- ☐ All bank accounts are opened in the name of the committee, never an individual, using the committee's Employer Identification Number, not an individual's Social Security Number.
- ☐ Bank statements are reviewed for unauthorized transactions and reconciled to the accounting records each month. Further, bank records are reconciled to disclosure reports prior to filing. The reconciliations are done by someone other than a check signer or an individual responsible for handling the committee's accounting.
- ☐ Checks in excess of $1000 are authorized in writing and/or signed by two individuals. Further, all wire transfers are authorized in writing by two individuals. The individuals who may authorize disbursements or sign checks should be identified in writing in the committee's internal policies.
- ☐ An individual who does not handle the committee's accounting or have banking authority receives incoming checks and monitors all other incoming receipts. This individual makes a list of all committee receipts and places a restrictive endorsement, such as: "For Deposit Only to the Account of the Payee" on all checks.
- ☐ If the committee has a petty cash fund, an imprest system[3] is used, and the value of the petty cash fund should be no more than $500.

B. Post-Discovery of Misappropriation Activity

As soon as a misappropriation is discovered, the political committee:

- ☐ Notifies relevant law enforcement of the misappropriation.
- ☐ Notifies the FEC of the misappropriation.
- ☐ Voluntarily files amended reports to correct any reporting errors due to the misappropriation, as required by the FEC.

This notice represents a general statement of policy announcing the general course of action that the Commission intends to follow. This policy statement does not constitute an agency regulation requiring notice of proposed rulemaking, opportunities for public participation, prior publication, and delay in effective date under 5 U.S.C. 553 of the Administrative Procedures Act ("APA"). As such, it does not bind the Commission or any member of the general public. The provisions of the Regulatory Flexibility Act, 5 U.S.C. 605(b), which apply when notice and comment are required by the APA or another statute, are not applicable.

Dated: March 22, 2007.

Robert D. Lenhard,

Chairman, Federal Election Commission.

[FR Doc. E7-6299 Filed 4-4-07; 8:45 am]

BILLING CODE 6715-01-P

[1] The internal controls set forth here represent the minimum efforts a committee must take to qualify for this safe harbor. The FEC provides additional guidance on internal controls best practices at *http://www.fec.gov/law/policy.shtml#guidance.*

[2] This policy does not absolve or mitigate FEC liability for individuals responsible or complicit in the misappropriations.

[3] An imprest fund is one in which the sum of the disbursements recorded in the petty cash log since the last replenishment and the remaining cash always equals the stated amount of the fund. When the fund is replenished the amount of the replenishment equals the amounts recorded since the prior replenishment and should bring the cash balance back to the stated amount. Only one person should be in charge of the fund.

FEDERAL ELECTION COMMISSION

11 CFR Part 111

[Notice 2007-6]

Policy Regarding Self-Reporting of Campaign Finance Violations (Sua Sponte Submissions)

AGENCY: Federal Election Commission.

ACTION: Statement of Policy.

SUMMARY: In order to encourage the self-reporting of violations about which the Commission would not otherwise have learned, the Commission will generally

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offer penalties between 25% and 75% lower than the Commission would otherwise have sought in identical matters arising by other means. The Commission will also use a new expedited procedure through which the Commission may allow individuals and organizations that self-report violations and that make a complete report of their internal investigation to proceed directly into conciliation prior to the Commission determining whether their conduct may have violated statutes or regulations within its jurisdiction. This policy also addresses various issues that can arise in connection with parallel criminal, administrative or civil proceedings.

DATES: Effective April 5, 2007.

FOR FURTHER INFORMATION CONTACT: Mark Shonkwiler, Assistant General Counsel, or April J. Sands, Attorney, Enforcement Division, Federal Election Commission, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION:

I. Goals and Scope of the Policy

The Commission periodically receives submissions from persons who self-report statutory or regulatory violations of which the Commission had no prior knowledge. The Commission considers such self-reports (which also are referred to as *sua sponte* submissions) as information ascertained in the normal course of carrying out its supervisory responsibilities pursuant to 2 U.S.C. 437g(a)(2), and may investigate if it determines there is reason to believe a violation has occurred. The Commission also investigates complaints reporting the potentially illegal conduct of another, submitted pursuant to 2 U.S.C. 437g(a)(1), but which also, by implication, provide a basis for investigating the complainant itself.[1] As a general proposition, self-reported matters, when accompanied by full cooperation, will be resolved more quickly and on more favorable terms than identical matters arising by other means (*e.g.*, those arising via external complaints, referrals from other government agencies, or referrals from the Commission's Audit or Reports Analysis Divisions).[2]

The Commission recently has seen an increase in self-reported violations, which may be attributable, at least in part, to greater attention being placed on compliance programs for areas of potential organizational liability, and recognition that addressing a problem through self-auditing and self-reporting may help minimize reputational harm. The increase in the number of self-reported matters has highlighted the need to increase the transparency of Commission policies and procedures. Moreover, the Commission seeks to provide appropriate incentives for this demonstration of cooperation and responsibility.

On December 8, 2006, the Commission published a proposed policy statement on self-reporting of violations. See Proposed Policy Regarding Self-Reporting of Campaign Finance Violations (Sua Sponte Submissions), 71 FR 71090 (December 8, 2006). The comment period ended on January 29, 2007. Two comments were received. One of the comments supported the proposed policy and suggested some minor revisions. The other comment opposed the proposed policy.

This policy provides an overview of the factors that influence the Commission's handling and disposition of self-reported matters. It should be noted that while cooperation in general, and self-reporting in particular, will be considered by the Commission as mitigating factors, they do not excuse a violation of the Act or end the enforcement process. Also, this policy does not confer any rights on any person and does not in any way limit the right of the Commission to evaluate every case individually on its own facts and circumstances.[3]

II. Self-Reporting of FECA Violations

Self-reporting of violations typically allows respondents to resolve their civil liability in a manner which has the potential to: (1) Reduce the investigative burden on both the Commission and themselves; (2) demonstrate their acceptance of organizational or personal responsibility and commitment to internal compliance; and (3) conclude their involvement in the Commission's enforcement process on an expedited basis. As a result, a person who brings to the Commission's attention violations of the FECA and Commission regulations and who cooperates with any resulting investigation will also generally receive appropriate consideration in the terms of an eventual conciliation agreement. For example, the Commission may do one or more of the following:

- Take no action against particular respondents;
- Offer a significantly lower penalty than what the Commission otherwise would have sought in a complaint-generated matter involving similar circumstances or, where appropriate, no civil penalty;
- Offer conciliation before a finding of probable cause to believe a violation occurred, and in certain cases proceed directly to conciliation without the Commission first finding reason to believe that a violation occurred;
- Refrain from making a formal finding that a violation was knowing and willful, even where the available information would otherwise support such a finding;
- Proceed only as to an organization rather than as to various individual agents or, where appropriate, proceed only as to individuals rather than organizational respondents;
- Include language in the conciliation agreement that indicates the level of cooperation provided by respondents and the remedial action taken.

Additionally, in cases where the submission includes privileged or sensitive information, the Commission may work with the submitter to protect privileged information from public disclosure while still allowing the Commission to verify the sufficiency of the submission.

III. Factors Considered in Self-Reported Matters

The Commission may take into account various factors in considering how to proceed regarding self-reported violations. In general, more expedited processing and a more favorable outcome will result when the self-reporting party can show that upon discovery of the potential violations, there was an immediate end to the activity giving rise to the violation(s); the respondent made a timely and complete disclosure to the Commission and fully cooperated in the disposition of the matter; and the respondent implemented appropriate and timely corrective measures, including internal safeguards necessary to prevent any recurrence. Further detail as to these factors is supplied below.

[1] If a person who self-reports a violation of the FECA also makes specific allegations as to other persons not joining in the submission, and particularly where the person making the submission seeks to assign primary responsibility for the violations to another person (including an organization's former officers or employees), the Commission, acting through its Office of General Counsel, may advise the self-reporting person that a portion of the relevant materials should be re-submitted as a complaint to which other persons would be allowed to respond prior to any findings by the Commission.

[2] When violations are found, FECA requires the Commission to attempt to correct or prevent violations through conciliation agreements before suit may be filed in federal district court.

[3] Some violations, for instance, are subject to a mandatory minimum penalty prescribed by statute. See 2 U.S.C. 437g(a)(6)(C).

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Nature of the Violation

(1) *The type of violation:* Whether the violation was knowing and willful, or resulted from reckless disregard for legal requirements or deliberate indifference to indicia of wrongful conduct; negligent; an inadvertent mistake; or based on the advice of counsel;[4]

(2) *The magnitude of the violation:* Whether the violation resulted from a one-time event or an ongoing pattern of conduct repeated over an extended period of time (and whether there was a history of similar conduct); how many people were involved in or were aware of the violation and the relative level of authority of these people within the organization; whether individuals were coerced into participating in the violation; the amount of money involved either in terms of absolute dollar amount or in terms of the percentage of an entity's activity; and the impact the violation may have had on any federal election;

(3) *The origin of the violation:* Whether the conduct was intended to advance the organization's interests or to defraud the organization for the personal gain of a particular individual; whether there were compliance procedures in place to prevent the type of violation now uncovered and, if so, why those procedures failed to stop or deter the wrongful conduct; and whether the persons with knowledge of the violation were high-level officials in the organization.

Extent of Corrective Action and New Self-Governance Measures

(4) *Investigative and corrective actions:* Whether the violation immediately ceased upon its discovery; how long it took after discovery of the violation to take appropriate corrective measures, including disciplinary action against persons responsible for any misconduct; whether there was a thorough review of the nature, extent, origins, and consequences of the conduct and related behavior; whether the respondent expeditiously corrected and clarified the public record by making appropriate and timely disclosures as to the source and recipients of any funds involved in a violation; whether a federal political committee promptly made any necessary refunds of excessive or prohibited contributions; and whether an organization or individual respondent waived its claim to refunds of excessive or prohibited contributions and instructed recipients to disgorge such funds to the U.S. Treasury;

(5) *Post-discovery compliance measures:* Whether there are assurances that the conduct is unlikely to recur; whether the respondent has adopted and ensured enforcement of more effective internal controls and procedures designed to prevent a recurrence of the violation; and whether the respondent provided the Commission with sufficient information for it to evaluate the measures taken to correct the situation and ensure that the conduct does not recur.

Disclosure and Cooperation

(6) *Full disclosure of the violation to the Commission:* Whether steps were taken upon learning of the violation; whether the disclosure was voluntary or made in recognition that the violation had been or was about to be discovered, or in recognition that a complaint was filed, or was about to be filed, by someone else; and whether a comprehensive and detailed disclosure of the results of its internal review was provided to the Commission in a timely fashion;

(7) *Full cooperation with the Commission:* Whether the respondent promptly made relevant records and witnesses available to the Commission, and made all reasonable efforts to secure the cooperation of relevant employees, volunteers, vendors, donors and other staff without requiring compulsory process; whether the respondent agreed to waive or toll the statute of limitations for activity that previously had been concealed or not disclosed in a timely fashion.

The Commission recognizes that all of the above-listed factors will not be relevant in every instance of self-reporting of potential FECA violations, nor is the Commission required to take all such factors into account. In addition, these factors should not be viewed as an exhaustive list.

IV. Reduction in Penalties for Self-Reporting Matters

The Commission will generally reduce opening civil penalty offers by between 25% and 75% compared with identical matters arising from a complaint or by other means. The amount of the reduction depends on the facts and circumstances of a particular case. The Commission will consider the factors set forth above.

Absent unusual circumstances, the Commission will grant a civil penalty reduction of 50% to respondents who meet the following criteria:

- Respondents alert the Commission to potential violations before the violation had been or was about to be discovered by any outside party, including the Commission;
- The violation immediately ceased and was promptly reported to the Commission upon discovery;
- Respondents take appropriate and prompt corrective action(s) (e.g., changes to internal procedures to prevent a recurrence of the violation; increased training; disciplinary action where appropriate);
- Respondents amend reports or disclosures to correct past errors, if applicable;
- Any appropriate refunds, transfers, and disgorgements are made and/or waived; and
- Respondents fully cooperate with the Commission in ensuring that the *sua sponte* submission is complete and accurate.

In addition, the Commission may grant a civil penalty reduction of up to 75% to respondents for violations in *sua sponte* submissions based on other factors such as submissions that were uncovered as a result of independent experts that were hired by respondents to conduct a thorough review, investigation or audit, or an equally comprehensive internal review, investigation or audit. In order to receive this reduction, respondents must also meet the above criteria for a 50% reduction and provide the Commission with all documentation of the experts' review, investigation, or audit.[5]

The required scope of the review, investigation or audit will depend on the circumstances. For example, if an organization discovers that an employee, stockholder or member may have reimbursed political contributions with organization funds, the Commission would consider a thorough review to include: Identification of all political contributions made by the suspect employee subsequent to and for at least three years prior to the suspected reimbursement (and extending further if additional suspect contributions are found); a review of contributions by anyone associated with the organization (including, but not limited to, relatives and subordinates) corresponding in time or recipient to the suspected reimbursed contributions; a review of the organization's compensation (especially bonus) and expense reimbursement policies and

[4] A respondent seeking to defend conduct based on advice of counsel may not simultaneously withhold documentary or other evidence supporting that assertion based on the attorney-client privilege.

[5] As discussed above, the Commission will, where appropriate, work with the submitter to protect privileged information from public disclosure.

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practices for the relevant periods to identify potential contribution reimbursements. Similarly, if an organization discovers it has misstated financial information on its reports, the Commission would consider a through review to include: An audit reconciling bank and internal financial records with FEC reports for the period in which the error was discovered, any subsequent reporting periods, and prior reporting periods for at least a year prior to the error (and extending further if additional errors are found); a review addressing internal controls and reporting procedures and identifying weaknesses contributing to the errors and remedies for those weaknesses.

The Commission will be the sole arbiter of whether the facts of each case warrant a particular reduction in the penalty. The Commission will generally not give a respondent the benefit of this policy if the respondent is the subject of a criminal or other government investigation. In considering appropriate penalties, the Commission will also consider the presence of aggravating factors, such as knowing and willful conduct or involvement by senior officials of an entity.

V. Fast-Track Resolution

The Commission will generally not make a reason-to-believe finding or open a formal investigation for respondents that self-report violations, if: (1) All potential respondents in a matter have joined in a self-reporting submission that acknowledges their respective violations of the FECA; (2) those violations do not appear to be knowing and willful; (3) the submission is substantially complete and reasonably addresses the significant questions or issues related to the violation; and (4) the factual and legal issues are reasonably clear. Accordingly, the Commission is modifying its current practice to allow for an expedited Fast-Track Resolution ("FTR") for a limited number of matters involving self-reported violations. This procedure is available at the Commission's discretion, but may be requested by respondents.

Respondents eligible for the FTR process will meet with the Office of General Counsel to negotiate a proposed conciliation agreement before the Commission makes any formal findings in the matter. Although the Commission is always free to reject or seek modifications to a proposed conciliation agreement, it is expected that this process will allow for more expedited processing of certain types of violations where factual and legal issues are reasonably clear. It also will allow respondents to resolve certain matters short of the Commission finding that there is reason to believe that a violation has occurred. Examples of matters that might be eligible for such treatment include:

- Matters in which an individual contributor discovers that he or she inadvertently violated the individual aggregate election cycle contribution limit contained in 2 U.S.C. 441a(a)(3);
- Matters in which a political committee seeks to disclose and correct relatively straightforward reporting violations;
- Matters in which a contributor and a political committee jointly seek to resolve their liability for a simple and inadvertent excessive or prohibited contribution; and
- Matters in which the initial self-reporting submission by the respondents is sufficiently thorough that only very limited, if any, follow-up by the Office of the General Counsel is necessary to complete the factual record.

VI. Parallel Proceedings

The Commission recognizes that persons self-reporting to the Commission may face special concerns in connection with parallel criminal investigations, State administrative proceedings, and/or civil litigation. The Commission expects that persons who self-report to the Commission will inform the Commission of any existing parallel proceedings. The Commission encourages persons who self-report to the Commission also to self-report related violations to any law enforcement agency with jurisdiction over the activity. This will assist the Commission, where appropriate and possible, in working with other federal, state, and local agencies to facilitate a global and/or contemporaneous resolution of related violations by a self-reporting person. The possibility of such a resolution is enhanced when the self-reporting person expresses a willingness to engage other government agencies that may have jurisdiction over the conduct and to cooperate with joint discovery and disclosure of facts and settlement positions with respect to the different agencies.

In situations where contemporaneous resolution of parallel matters is not feasible, the Commission will consider whether terms contained in a conciliation agreement with the Commission may affect potential liability the same respondent realistically faces from another agency. In appropriate cases, where there has been self-reporting and full cooperation, the Commission may agree to enter into conciliation without requiring respondents to admit that their conduct was knowing and willful, even where there is evidence that may be viewed as supporting this conclusion. The Commission has followed this practice in several self-reported matters where the organizational respondents promptly self-reported and took comprehensive and immediate corrective action that included the dismissal of all individual corporate officers whose actions formed the basis for the organization's potential knowing and willful violation.

The Commission has the statutory authority to refer knowing and willful violations of the FECA to the Department of Justice for potential criminal prosecution, 2 U.S.C. 437g(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. 2 U.S.C. 437d(a)(9). The Commission will take into consideration the fact of self-reporting in deciding whether to refer a matter. However, the Commission will not negotiate whether it refers, reports, or otherwise discusses information with other law enforcement agencies. Although the Commission cannot disclose information regarding an investigation to the public, it can and does share information on a confidential basis with other law enforcement agencies.

VII. Conclusion

The Commission seeks to encourage the self-reporting of violations. To that end, the Commission has adopted this policy that explains that *sua sponte* submissions will, in general, receive more expedited processing and more favorable outcomes than identical matters arising by other means.

This notice represents a general statement of policy announcing the general course of action that the Commission intends to follow. This policy statement does not constitute an agency regulation requiring notice of proposed rulemaking, opportunities for public participation, prior publication, and delay in effective date under 5 U.S.C. 553 of the Administrative Procedures Act ("APA"). As such, it does not bind the Commission or any member of the general public. The provisions of the Regulatory Flexibility Act, 5 U.S.C. 605(b), which apply when notice and comment are required by the APA or another statute, are not applicable.

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

Dated: March 27, 2007.

Robert D. Lenhard,

Chairman, Federal Election Commission.

[FR Doc. E7–6185 Filed 4–4–07; 8:45 am]

BILLING CODE 6715–01–P

FARM CREDIT ADMINISTRATION

12 CFR Parts 611, 612, 614, 615, 618, 619, 620, and 630

RIN 3052–AC19

Organization; Standards of Conduct and Referral of Known or Suspected Criminal Violations; Loan Policies and Operations; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; General Provisions; Definitions; Disclosure to Shareholders; Disclosure to Investors in System-Wide and Consolidated Bank Debt Obligations of the Farm Credit System; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Announcement of effective date.

SUMMARY: The Farm Credit Administration (FCA) published a final rule under parts 611, 612, 614, 615, 618, 619, 620, and 630 on February 2, 2006. This final rule amended our regulations affecting the governance of the Farm Credit System and became effective on April 5, 2006 (71 FR 18168, April 11, 2006), except for the amendments to §§ 611.210(a)(2), 611.220(a)(2)(i) and (ii), 611.325, and 620.21(d)(2). This document announces the effective date of those delayed portions of the rule.

EFFECTIVE DATE: The effective date for the amendments to §§ 611.210(a)(2), 611.220(a)(2)(i) and (ii), 611.325, and 620.21(d)(2), published February 2, 2006, at 71 FR 5740, is April 5, 2007.

FOR FURTHER INFORMATION CONTACT: Gary Van Meter, Deputy Director, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4232, TTY (703) 883–4434; or Laura D. McFarland, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–4020.

(12 U.S.C. 2252(a)(9) and (10))

Dated: April 2, 2007.

Roland E. Smith,

Secretary, Farm Credit Administration Board.

[FR Doc. E7–6357 Filed 4–4–07; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27757; Directorate Identifier 2007–NM–030–AD; Amendment 39–15014; AD 2007–07–13]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Aerospace LP Model Galaxy Airplanes and Model Gulfstream 200 Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

> Avionics and electrical wire harnesses are routed behind the Primary Flight Displays (PFD) tray at the rear of the instrument panel. In some cases, the wire harness has been found to be chafing on the PFD tray. That could result in electrical arcing and shorting and subsequent loss of systems essential for safe flight.

This AD requires actions that are intended to address the unsafe condition described in the MCAI.

DATES: This AD becomes effective April 20, 2007.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of April 20, 2007.

We must receive comments on this AD by May 7, 2007.

ADDRESSES: You may send comments by any of the following methods:

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Fax:* (202) 493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5227) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Mike Borfitz, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2677; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Streamlined Issuance of AD

The FAA is implementing a new process for streamlining the issuance of ADs related to MCAI. This streamlined process will allow us to adopt MCAI safety requirements in a more efficient manner and will reduce safety risks to the public. This process continues to follow all FAA AD issuance processes to meet legal, economic, Administrative Procedure Act, and **Federal Register** requirements. We also continue to meet our technical decision-making responsibilities to identify and correct unsafe conditions on U.S.-certificated products.

This AD references the MCAI and related service information that we considered in forming the engineering basis to correct the unsafe condition. The AD contains text copied from the MCAI and for this reason might not follow our plain language principles.

Discussion

The Civil Aviation Authority of Israel (CAAI), which is the aviation authority for Israel, has issued Israeli Airworthiness Directive 31–07–01–12, dated February 15, 2007 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> Avionics and electrical wire harnesses are routed behind the Primary Flight Displays (PFD) tray at the rear of the instrument panel. In some cases, the wire harness has been found to be chafing on the PFD tray. That could result in electrical arcing and shorting and subsequent loss of systems essential for safe flight.

The corrective actions include inspecting the wiring harness for chafing, performing repairs if required; and inspecting the wire harnesses for

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2007-22

AGENDA DOCUMENT NO. 07-72

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

2007 OCT 23 A 10: 04

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 23, 2007

AGENDA ITEM
For Meeting of: 10-25-07

SUBMITTED LATE

MEMORANDUM:

To: The Commission

From: Commissioner Ellen L. Weintraub ELW

Re: Procedural Rules For Probable Cause Hearings

Attached please find procedural rules for probable cause hearings that I am offering for publication in the Federal Register. The procedural rules would make permanent a program for hearings for respondents prior to the Commission's consideration of the General Counsel's probable cause recommendations.

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

FEDERAL ELECTION COMMISSION

11 CFR Part 111

[NOTICE 2007-XX]

Procedural Rules For Probable Cause Hearings

AGENCY: Federal Election Commission.

ACTION: Rule of Agency Procedure.

SUMMARY: The Federal Election Commission ("Commission") is making permanent a program that allows respondents in enforcement proceedings under the Federal Election Campaign Act, as amended ("FECA"), to have a hearing before the Commission. Hearings will take place prior to the Commission's consideration of the General Counsel's recommendation on whether to find probable cause to believe that a violation has occurred. The Commission will grant a request for a probable cause hearing if any two commissioners agree to hold a hearing. The program will provide respondents with the opportunity to present arguments to the Commission directly and give the Commission an opportunity to ask relevant questions. Further information about the procedures for the program is provided in the supplementary information that follows.

EFFECTIVE DATE: [insert date of publication in Federal Register]

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

FOR FURTHER INFORMATION CONTACT: Mark D. Shonkwiler, Assistant General Counsel, 999 E Street, N.W., Washington, D.C. 20463, (202) 694-1650 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: The Federal Election Commission is making permanent a program to afford respondents in pending enforcement matters the opportunity to participate in hearings (generally through counsel) and present oral arguments directly to the Commissioners, prior to any Commission determination of whether to find probable cause to believe respondents violated FECA.[1]

I. Background

On June 11, 2003, the Commission held a hearing concerning its enforcement procedures. The Commission received comments from those in the regulated community, many of whom argued for increased transparency in Commission procedures and expanded opportunities to contest allegations.[2] In response to issues raised at the hearing, the Commission has made a number of changes and clarifications. These changes and clarifications include allowing respondents to have access to their deposition transcripts, See Statement of Policy Regarding Deposition Transcripts in Nonpublic Investigations, 68 FR 50688 (August 22, 2003), and clarifying questions concerning

[1] The Commission is appending to this statement a general description of its enforcement procedures ("Basic Commission Enforcement Procedure"). These procedures are prescribed by statute and regulation. See 2 U.S.C. 437g; 11 CFR Part 111.

[2] The comments from these 2003 proceedings are available online at http://www.fec.gov/agenda/agendas2003/notice2003-09/comments.shtml.

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treasurer liability for violations of the FECA, See Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings, 70 FR 3 (January 3, 2005).

On December 8, 2006, the Commission published a proposal for a pilot program for probable cause hearings, and sought comments from the regulated community. See Proposed Policy Statement Establishing Pilot Program for Probable Cause Hearings, 71 FR 71088 (Dec. 8, 2006). The comment period on the proposed policy statement closed on January 5, 2007. The Commission received four comments, all of which endorsed the proposed pilot program for probable cause hearings. These comments are available at http://www.fec.gov/law/policy.shtml#proposed under the heading "Pilot Program for Probable Cause Hearings."

On February 8, 2007, the Commission decided by a vote of 6-0 to institute the pilot program. The program went into effect on February 16, 2007. The pilot program was designed to remain in effect for at least eight months, after which time a vote would be scheduled on whether the program should continue. The Commission finds that the pilot program has been successful and hence, is issuing this notice to announce that the Commission has determined to make the program permanent.

II. Procedures for Probable Cause Hearings

A. Opportunity to Request a Hearing

A respondent may request a probable cause hearing when the enforcement process reaches the probable cause determination stage (see 11 CFR 111.16 – 111.17) and the respondent submits a probable cause response brief to the Office of General Counsel. The General Counsel will attach a cover letter to its probable cause brief to inform the respondent of the opportunity to request an oral hearing before the

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1 Commission. See 11 CFR 111.16(b). Hearings are voluntary and no adverse inference
2 will be drawn by the Commission based on a respondent's request for, or waiver of, such
3 a hearing. The respondent must include a written request for a hearing as a part of the
4 respondent's filed reply brief under 11 CFR 111.16(c). Each request for a hearing must
5 state with specificity why the hearing is being requested and what issues the respondent
6 expects to address. Absent good cause, to be determined at the sole discretion of the
7 Commission, late requests will not be accepted. Respondents are responsible for
8 ensuring that their requests are timely received. All requests for hearings, scheduling and
9 format inquiries, document submissions, and any other inquiries related to the probable
10 cause hearings should be directed to the Office of General Counsel.
11 The Commission will grant a request for an oral hearing if any two
12 Commissioners agree that a hearing would help resolve significant or novel legal issues,
13 or significant questions about the application of the law to the facts. The Commission
14 will inform the respondent whether the Commission is granting the respondent's request
15 within 30 days of receiving the respondent's brief.
16 B. Hearing Procedures
17 The purpose of the oral hearing is to provide a respondent an opportunity to
18 present the respondent's arguments in person to the Commissioners before the
19 Commission makes a determination as to whether there is "probable cause to believe"
20 that the respondent violated the Act or Commission regulations. Consistent with current
21 Commission regulations, a respondent may be represented by counsel, at the respondent's
22 own expense, or may appear pro se at a probable cause hearing. See 11 CFR 111.23.
23 Respondents (or their counsel) will have the opportunity to present their arguments, and

Additional Enforcement Materials

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1 Commissioners, the General Counsel, and the Staff Director will have the opportunity to
2 pose questions to the respondent, or respondent's counsel, if represented.
3 At the hearing, respondents are expected to raise only issues that were identified
4 in the respondent's hearing request. Such issues must have been previously presented
5 during the enforcement process, either in the response, during the investigation or pre-
6 probable cause conciliation, or in the reply brief. Respondents may discuss any issues
7 presented in the enforcement matter, including potential liability and calculation of a civil
8 penalty, and should be prepared to address questions related to the complaint, their initial
9 response, and any other material they have submitted to the Commission. The reply brief
10 should include specific citations to any authorities (including prior Commission actions)
11 on which the respondent is replying or intends to cite at the hearing. If respondents
12 discover new information after submission of the reply brief, or need to raise new
13 arguments for similarly extenuating circumstances, they should notify the Commission as
14 soon as possible prior to the hearing. Commissioners may ask questions on any matter
15 related to the enforcement proceedings and respondents are free to raise new issues
16 germane to any response.
17 Hearings are confidential and not open to the public; generally only respondents
18 and their counsel may attend. Attendance by any other parties must be approved by the
19 Commission in advance.
20 The Commission will determine the format and time allotted for each hearing at
21 its discretion. Among the factors that the Commission may consider are agency time
22 constraints, the complexity of the issues raised, the number of respondents involved, and
23 the extent of Commission interest. The Commission will determine the amount of time

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allocated for each portion of the hearing, and each time limit may vary from hearing to hearing. The Commission anticipates that most hearings will begin with a brief opening statement by respondent or respondent's counsel, followed by questioning from the Commissioners, General Counsel, and Staff Director. Hearings will normally conclude with the respondent or respondent's counsel's closing remarks.

Third party witnesses or other co-respondents may not be called to testify at a respondent's oral hearing, nor may a respondent's counsel call the respondent to testify. However, the Commission may request that the respondent submit supplementary information or briefing after the probable cause hearing. The Commission discourages voluminous submissions. Supplementary information may be submitted only upon Commission request and no more than ten days after such a request from the Commission, unless the Commission's request for information imposes a different, Commission-approved deadline. Materials requested by the Commission, and materials considered by the Commission in making its "probable cause to believe" determination, may be made part of the public record pursuant to the Commission's Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 FR 70426 (Dec. 18, 2003).

The Commission will have transcripts made of the hearings. The transcripts will become a part of the record of the enforcement matter and may be relied upon for determinations made by the Commission. Respondent may be bound by any representations made by respondent or respondent's counsel at a hearing. The Commission will make the transcripts available to the respondent as soon as practicable after the hearing, and the respondent may purchase copies of the transcript. Transcripts

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will be made public after the matter is closed in accordance with Commission policies on disclosure.[3]

C. Cases Involving Multiple Respondents

In cases involving multiple respondents, the Commission will decide on a case-by-case basis whether to structure any hearings separately or as joint hearings for all respondents. Respondents are encouraged to advise the Commission of their preferences. Co-respondents may request joint hearings if each participating co-respondent provides an unconditional waiver of confidentiality with respect to other participating co-respondents and their counsel and a nondisclosure agreement. If separate hearings are held, each respondent will have access to the transcripts from the hearing of that respondent, but transcripts of other co-respondents' hearings will not be made available unless co-respondents specifically provide written consent to the Commission granting access to such transcripts.

D. Scheduling of Hearings

The Commission will seek to hold the hearing in a timely manner after receiving respondents' request for a hearing. The Commission will attempt to schedule the hearings at a mutually acceptable date and time. However, if a respondent is unable to accommodate the Commission's schedule, the Commission may decline to hold a hearing. The Commission reserves the right to reschedule any hearing. Where necessary, the Commission reserves the right to request from a respondent an agreement tolling any upcoming deadline, including any statutory deadline or other deadline found in 11 CFR part 111.

[3] The Commission's Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 FR 70426 (Dec. 18, 2003) is hereby amended to include disclosure of transcripts from probable cause hearings.

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F. Conclusion

Probable cause hearings are optional and no negative inference will be drawn if respondents do not request a hearing. Currently, the majority of the Commission's cases are settled through pre-probable cause conciliation. Proceeding to probable cause briefing requires a substantial investment of the Commission's limited resources. Consistent with the goal of expeditious resolution of enforcement matters, the Commission encourages pre-probable cause conciliation. The Commission has a practice in many cases of reducing the civil penalty it seeks through its opening settlement offer in pre-probable cause conciliation. However, once pre-probable cause conciliation has been terminated, this reduction (normally 25%) is no longer available and the civil penalty will generally increase.

This notice establishes rules of agency practice or procedure. This notice does not constitute an agency regulation requiring notice of proposed rulemaking, opportunities for public participation, prior publication, and delay effective under 5 U.S.C. 553 of the Administrative Procedures Act ("APA"). The provisions of the Regulatory Flexibility Act, 5 U.S.C. 605(b), which apply when notice and comment are required by the APA or another statute, are not applicable.

Robert D. Lenhard
Chairman
Federal Election Commission

DATED: _____
BILLING CODE: 6715-01-U

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Appendix:

Basic Commission Enforcement Procedure

The Commission's enforcement procedures are set forth at 11 CFR part 111. An enforcement matter may be initiated by a complaint or on the basis of information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities. 11 CFR 111.3. If a complaint substantially complies with certain requirements set forth in 11 CFR 111.4, within five days of receipt the Office of General Counsel notifies each party determined to be a respondent that a complaint has been filed, provides a copy of the complaint, and advises each respondent of Commission compliance procedures. 11 CFR 111.5. A respondent then has 15 days from receipt of the notification from the Office of General Counsel to submit a letter or memorandum to the Commission setting forth reasons why the Commission should take no action on the basis of the complaint. 11 CFR 111.6.

Following receipt of such letter or memorandum, or expiration of the 15-day period, the Office of General Counsel may recommend to the Commission whether or not it should find "reason to believe" that a respondent has committed or is about to commit a violation of the Act or Commission regulations. 11 CFR 111.7(a).[4] With respect to internally-generated matters (e.g., referrals from the Commission's Audit or Reports Analysis Divisions), the Office of General Counsel may recommend that the Commission find "reason to believe" that a respondent has committed or is about to commit a violation of the Act or Commission regulations on the basis of information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities, or

[4] The Office of General Counsel may also recommend that the Commission find no "reason to believe" that a violation has been committed to is about to be committed, or that the Commission otherwise dismiss a complaint without regard to the provisions of 11 CFR 111.6(a). 11 CFR 111.7(b).

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1 on the basis of a referral from an agency of the United States or any state. If the
2 Commission determines by an affirmative vote of four members that it has "reason to
3 believe" that a respondent violated the Act or Commission regulations, the respondent
4 must be notified by letter of the Commission's finding(s). 11 CFR 111.9(a).[5] The Office
5 of General Counsel will also provide the respondent with a Factual and Legal Analysis,
6 which will set forth the bases for the Commission's finding of reason to believe.
7 After the Commission makes a "reason to believe" finding, an investigation is
8 conducted by the Office of General Counsel, in which the Commission may undertake
9 field investigations, audits, and other methods of information-gathering. 11 CFR 111.10.
10 Additionally, the Commission may issue subpoenas to order any person to submit sworn
11 written answers to written questions, to provide documents, or to appear for a deposition.
12 11 CFR 111.11 – 111.12. Any person who is subpoenaed may submit a motion to the
13 Commission for it to be quashed or modified. 11 CFR 111.15.
14 Following a "reason to believe" finding, the Commission may attempt to reach a
15 conciliation agreement with the respondent(s) prior to reaching the "probable cause"
16 stage of enforcement (*i.e.*, a pre-probable cause conciliation agreement). See 11 CFR
17 111.18(d). If the Commission is unable to reach a pre-probable cause conciliation
18 agreement with the respondent, or determines that such a conciliation agreement would
19 not be appropriate, upon completion of the investigation referenced in the preceding
20 paragraph, the Office of General Counsel prepares a brief setting forth its position on the
21 factual and legal issues of the matter and containing a recommendation on whether or not

[5] If the Commission finds no "reason to believe," or otherwise terminates its proceedings, the Office of General Counsel shall advise the complainant and respondent(s) by letter. 11 CFR 111.9(b).

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1 the Commission should find "probable cause to believe" that a violation has occurred or
2 is about to occur. 11 CFR 111.16(a).
3 The Office of General Counsel notifies the respondent(s) of this recommendation
4 and provides a copy of the probable cause brief. 11 CFR 111.16(b). The respondent(s)
5 may file a written response to the probable cause brief within fifteen days of receiving
6 said brief. 11 CFR 111.16(c). After reviewing this response, the Office of General
7 Counsel shall advise the Commission in writing whether it intends to proceed with the
8 recommendation or to withdraw the recommendation from Commission consideration.
9 11 CFR 111.16(d).
10 If the Commission determines by an affirmative vote of four members that there
11 is "probable cause to believe" that a respondent has violated the Act or Commission
12 regulations, the Commission authorizes the Office of General Counsel to notify the
13 respondent by letter of this determination. 11 CFR 111.17(a). Upon a Commission
14 finding of "probable cause to believe," the Commission must attempt to reach a
15 conciliation agreement with the respondent. 11 CFR 111.18(a). If no conciliation
16 agreement is finalized within the time period specified in 11 CFR 111.18(c), the Office of
17 General Counsel may recommend to the Commission that it authorize a civil action for
18 relief in the appropriate court. 11 CFR 111.19(a). Commencement of such civil action
19 requires an affirmative vote of four members of the Commission. 11 CFR 111.19(b).
20 The Commission may enter into a conciliation agreement with respondent after
21 authorizing a civil action. 11 CFR 111.19(c).

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ENFORCEMENT PROCEDURE 2007-21
(DO # 33439)

EMAIL

TO: Enforcement Staff

FROM: Ann Marie Terzaken

SUBJECT: Tracking Down Mailed Checks

DATE: October 9, 2007

Just fyi -- I learned a little tid-bit that I thought I would pass on. Reggie Watts, in the mail room, keeps a log of all incoming checks before they are forwarded to Finance. If you ever need to track down a check, you might want to start there.

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ENFORCEMENT PROCEDURE 2007-20
(DO # 33438)

EMAIL

TO: Enforcement Staff

FROM: Cynthia Myers

SUBJECT: Scanning documents for circulation to the Commission

DATE: October 4, 2007

All documents that are circulated to the Commission are being scanned. To help CELA with this process, when final documents are sent to CELA for circulation, a ***copy*** of the documents will ***also*** be attached to the original when given to CELA for processing. This will help speed up the scanning process. Please keep this new request in mind in cases where the team leader has signed the report and it is being sent to CELA directly. Cindy will make a copy of the reports that Ann Marie has signed before forwarding to CELA. Thank you for your help in this request.

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ENFORCEMENT PROCEDURE 2007-19
(DO #33437)

EMAIL

TO: Enforcement Staff

FROM: Kathleen Guith

SUBJECT: Footnote Language regarding Says III Decisio

DATE: September 27, 2007

UPDATED 11/27/07:
The activity in this case took place in >, and therefore the coordinated content regulations at 11 C.F.R. § 109.21(c) (2004) apply. The Factual and Legal Analysis in this case included a discussion of advertisements that ran within 120 days before both the 2004 general and Florida primary elections. Under then- prevailing law, a public communication that referred to a clearly identified Federal candidate that was disseminated or distributed within 120 days before an election, and was directed to voters in the jurisdiction of the clearly identified candidate, met the "content" standard for a coordinated communication. After the U.S. District Court for the District of Columbia found in 2005 that 11 C.F.R. § 109.21(c) was defective, the Commission revised its coordination rules, which became effective on July 10, 2006. Pursuant to revised section 109.21(c)(4)(i), for communications referring to House candidates, the period begins 90 days before each of the primary and the general elections. In this matter, all of the advertisements ran within 90 days before the 2004 Florida primary, but none ran within 90 days before the 2004 general election. At the briefing stage, we decided, in view of the revised regulations, to make probable cause recommendations regarding the pre-primary period only. *See* General Counsel's Brief at *n.* 1. The U.S. District Court for the District of Columbia, which once again considered this matter, recently held that the Commission's revised coordinated content regulations at 11 C.F.R. § 109.21(c) violated the Administrative Procedure Act, but while the appeal is pending, *we believe the relevant content standards are still in* effect. *See Shays v. FEC*, 508 F.Supp.2d 10 at 23-37, 40-43, 45 (D.D.C. Sept. 12, 2007) (NO. CIV.A. 06-1247 (CKK)) (granting in part and denying part the respective parties' motions for summary judgment).

As promised in Ann Marie's earlier e-mail, below is the Shays III footnote language included in the first report dealing with coordination to circulate after the opinion was issued. The footnote is contained in Ana Pena-Wallace's First GCR in MUR 5879 (Harry Mitchell for Congress), which is currently on circulation (see fn 6, Docs Open #31106). Please keep in mind that this particular version of the footnote was tailored to the facts of the Mitchell case, so it will need to be revised based on the facts and recommendations in your matter. Please let us know if you have any questions.

The language is as follows:

The activity at issue occurred in October 2006 and November 2006. Therefore, this report applies the Commission's amended coordinated communication regulations, which became effective on July 10, 2006. *Coordinated Communications*, 71 Fed. Reg. 33190 (June 8, 2006). The U.S. District Court for the District of Columbia recently held that the Commission's revisions of the content and conduct standards of the coordinated communications regulation at 11 C.F.R. § 109.21(c) and (d) violated the Administrative

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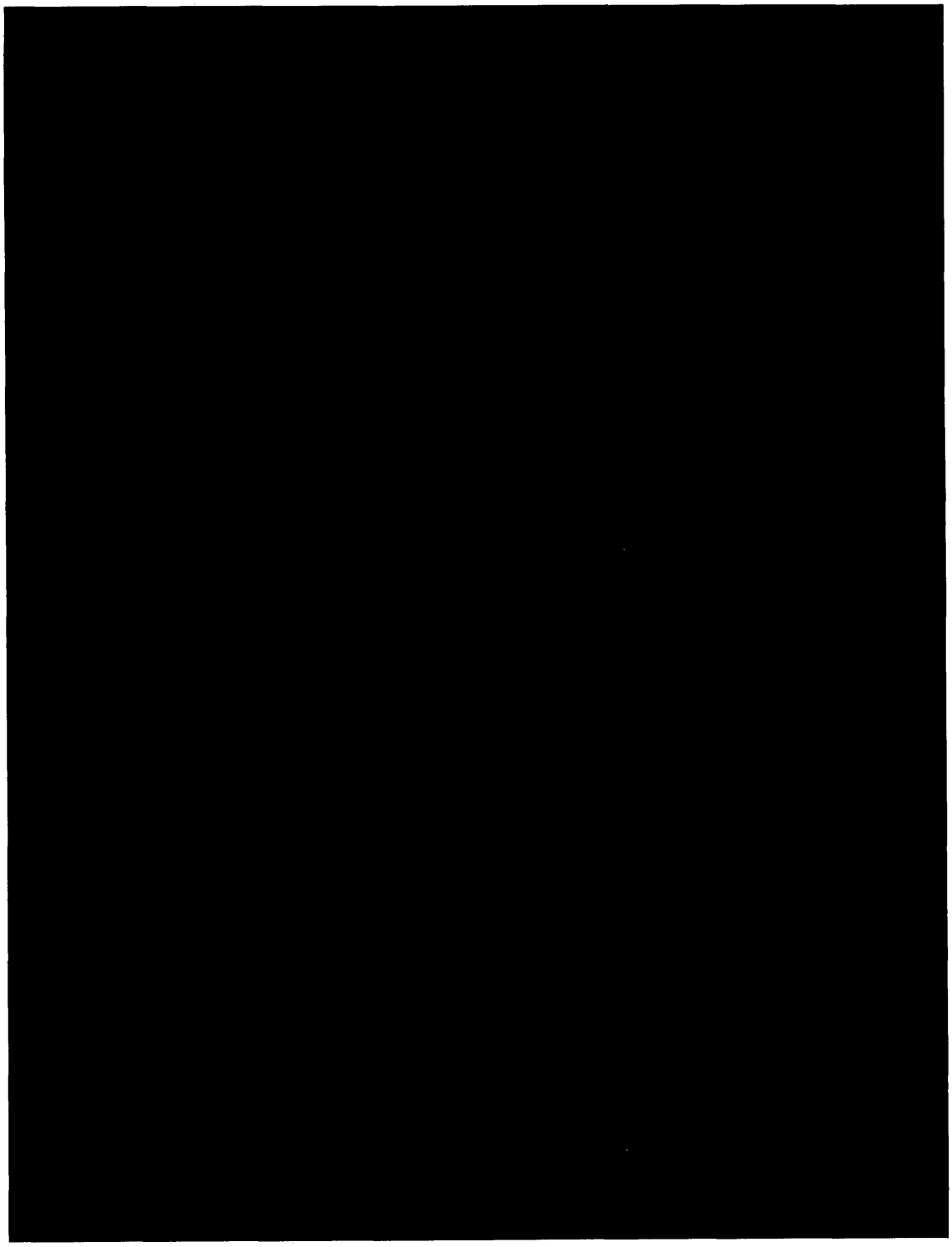

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David Kolker/FEC/US
09/12/2007 10:53 AM

To Commissioners Office
cc Thomasenia Duncan/FEC/US@FEC, Litigation Staff, Rosie Smith/FEC/US@FEC, Lawrence Calvert/FEC/US@FEC, Ann Marie Terzaken/FEC/US@FEC
Subject Decision in Shays III

We have just received a decision in *Shays III*. We will circulate the decision electronically in a few minutes. Below is a quotation from the opinion in which Judge Kollar-Kotelly summarizes her own conclusions:

Summary of Conclusions
The Court concludes that the revised coordinated communications content standard contained in 11 C.F.R. § 109.21(c)(4) survives *Chevron* analysis, but does not meet the Administrative Procedure Act's ("APA") requirement of reasoned decisionmaking. *See infra* at 35-55. With respect to the revised coordinated communications conduct standards at 11 C.F.R. § 109.21(d), the Court finds that the revised temporal limit for the common vendor and former employee conduct standards in 11 C.F.R. §§ 109.21(d)(4) and (d)(5) survives *Chevron* step two analysis but is nevertheless arbitrary and capricious, in violation of the APA. *See infra* at 55-61.
The Court further concludes that the new firewall safe harbor included in the conduct standards fails *Chevron* step two analysis and is also arbitrary and capricious, in violation of the APA. *See infra* at 61-69. As to the exemption for solicitation by federal candidates and officeholders at state, district, or local party fundraising events, found at 11 C.F.R. § 300.64(b), the Court concludes that the provision survives APA review. *See infra* at 69-79. Finally, the Court finds that the definitions of "voter registration activity" and "get-out-the-vote activity" contained in the Commission's regulations governing "Federal election activity," 11 C.F.R. §§ 100.24(a)(2)-(a)(3), fail both *Chevron* step two and APA analysis. *See infra* at 79-93. The Court therefore remands the following regulations to the Commission for further action consistent with this Memorandum Opinion and the accompanying Order: 11 C.F.R. § 109.21(c); 11 C.F.R. §109.21(d); 11 C.F.R. § 100.24(a)(2); and 11 C.F.R. § 100.24(a)(3).

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

ENFORCEMENT PROCEDURE 2007-18
(DO # 33435)

EMAIL

TO: Enforcement Staff

FROM: Ann Marie Terzaken

SUBJECT: Internal Controls--Mail Room

DATE: September 27, 2007

Just as the Commission is encouraging political committees to maintain adequate internal controls, the agency is also doing the same for itself, and at least one of the new controls will have some direct effect on us -- *it involves the mail.*

I have been advised that to insure the proper internal controls are in place to handle checks received through the mail, it has become necessary to develop clear, written instructions that upon opening mail, any and all checks are to be delivered to the Finance Office. Part of this process will require virtually every piece of mail to be opened to properly process checks received. Effective Monday October 1, 2007, the only mail that will remain on the "Do Not Open" list will be mail specifically addressed to the Commissioners, the Inspector General, the Staff Director, the General Counsel, and the Office of Equal Employment Opportunity.

I have been told that this new control is not expected to delay the distribution of the mail. If your experience suggests otherwise, please let me know. Thanks.

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

ENFORCEMENT PROCEDURE 2007-17
(DO #33434)

EMAIL

TO: Enforcement Staff

FROM: Ann Marie Terzaken

SUBJECT: Pre-RTB Notiflation Policy [redacted]

DATE: July 30, 2007

Commissioners,

We have taken the opportunity to consider further the issue raised during the Commission's discussion [redacted] ast week about whether to adopt a policy or practice of notifying all persons and entities of potential liability and giving them a chance to respond before we internally generate them and recommend RTB. While there are a few considerations, on balance, we believe this is an appropriate way to proceed in most cases.

There are two ways that this issue most often comes up. The first is when a party is identified in the complaint, but it does not become clear that the party faces potential liability such that it should be notified until after the case is activated and analyzed by an Enforcement attorney. In this situation, we have (at least in recent years) generally followed the practice of sending out notification of the complaint before circulating the First General Counsel's Report to give the party an opportunity to respond before the Commission considers whether to recommend RTB. The decision to do this is usually made at the time of the post-case activation meeting with the Associate General Counsel (although sometimes it happens earlier or later), and the notifications are usually sent out very shortly thereafter.

The second way this comes up in complaint generated matters (not nearly as often) is when a party is not identified in the complaint, but it nevertheless becomes clear from another source (e.g., disclosure reports or publicly available information) that a previously unknown party may have liability as a result of the activity described in the complaint. In this situation, it usually does not make sense to simply notify the party of the complaint because the party is nowhere mentioned in it. [redacted]

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[redacted]

The sending of this type of letter, allowing an appropriate time-frame to respond, and incorporating the response into the analysis and recommendations in the FGCR will, in some cases, delay the circulation of the FGCR. At the same time, providing an opportunity to respond in some fashion before an RTB finding is made by the Commission should also be an important consideration. On balance, we believe that pre-RTB notification letters is generally a good practice in situations like [redacted] though we may need to make exceptions if presented with special circumstances, such as a looming statute of limitations. With this understanding, we will plan to incorporate these letters into our procedures for the initial RTB stage and will use them for respondents, like [redacted] who are not named in a complaint or internal referral but who we plan to internally generate through an RTB recommendation.

If you have any questions or wish to discuss further, please let us know.

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ENFORCEMENT PROCEDURE 2007-16
(DO # 33433)

EMAIL

TO: Enforcement Staff

FROM: Ann Marie Terzaken

SUBJECT: Streamline Accept the CA memos

DATE: *August 29, 2007*

Good afternoon, everyone. I need to clarify previous guidance pertaining to our recommendations to accept the CA. Whether in a report or in a stream-line memo recommending that the Commission accept a conciliation agreement, please include in the recommendation the names of the respondents that are part of the agreement. This is necessary even when the acceptance of the CA closes the entire file. This is because the names need to appear in the certification in order for the vote to appear properly on the public record and in CMS.

Thanks for your cooperation.

EMAIL July 27, 2007
Good morning gang. I have been asked to modify our new "accept the CA" memos to include the names of the respondents in the recommendation to accept the CA. This may seem minor, but not doing so causing confusion on the record when the settling respondent is not the primary respondent. So, from now on, in the Recommendation section, please include the following:

RECOMMENDATIONS

1. Accept the attached conciliation agreement with Blank Committee and Jane Doe in her official capacity as treasurer.
2. Approve the appropriate letters.
3. Close the file.

Thanks!

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nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

ENFORCEMENT PROCEDURE 2007-15
(DO #33432)

EMAIL

TO: Enforcement Staff

FROM: Ann Marie Terzaken

SUBJECT: Objection Memos

DATE: July 20, 2007

Just a reminder to submit objection memos on the Thurs before the executive session. If you have a matter on the next agenda, and you haven't yet send around your memo, please do so before 5 pm today so that Tommie and I can take them home with us. Thank you!

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

ENFORCEMENT PROCEDURE 2007-14
(DO # 33431)

EMAIL

TO: Enforcement Staff

FROM: Ann Marie Terzaken

SUBJECT: Public Record Review for Closed MURs

DATE: July 16, 2007

Reminder for attorneys and team leaders -- when we receive the proposed public record from GLA requesting our review and comments, please make it a priority to do so as soon as possible -- within 2 days would be great. Thanks.

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nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

ENFORCEMENT PROCEDURE 2007-12
(DO #33429)

EMAIL

TO: Enforcement Staff

FROM: Cynthia Myers

SUBJECT: Case Activation Memos

DATE: May 18, 2007

Ann Marie is requesting that enforcement staff provide her with case activation memos at least TWO days before the scheduled meetings. This will give her time to read before the actual meeting date. Thanks so much in advance for your help in this.

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nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

ENFORCEMENT PROCEDURE 2007-11
(DO #33427)

EMAIL

TO: Enforcement Staff

FROM: Ann Marie Terzaken

SUBJECT: Recommendations to Authorize PPCTB Conciliation

DATE: May 17, 2007

Good morning everyone. As a friendly reminder, please make sure that, on the last page of a report, a recommendation to authorize conciliation include the names of the respondents. For example, Recommendations to "authorize pre-probable cause conciliation" without the "as to . . . " is not sufficient and causes issues later for CMS tracking. Thanks!

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

Enforcement Procedure 2007-10
(Docs Open #31137)

FEDERAL ELECTION COMMISSION
Washington, D.C. 20463

MEMORANDUM

TO: The Commission

FROM: Thomasenia P. Duncan
General Counsel

Ann Marie Terzaken
Acting Associate General Counsel for Enforcement

Cynthia E. Tompkins
Assistant General Counsel

Mark Allen
Attorney

Lynn Y. Tran
Attorney

DATE: June 25, 2007

SUBJECT: Procedures for Probable Cause Hearings Pilot Program

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On February 8, 2007, the Commission approved a Pilot Program to allow respondents in enforcement proceedings to have an oral hearing before the Commission prior to the Commission's consideration of the General Counsel's recommendation on whether to find probable cause to believe that a violation has occurred. *See Policy Statement Establishing a Pilot Program for Probable Cause Hearings*, 72 Fed. Reg. 7551 (Feb. 16, 2007) ("Policy Statement"). The Policy Statement provides that the Commission will grant a respondent's request for an oral hearing if any two Commissioners agree that a hearing would help resolve significant or novel legal issues, or significant questions about the application of the law to the facts. This memorandum sets forth the procedures that the Commission will use to conduct the hearings during the Pilot Program.

Docs #29270

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A. Requests for a Hearing

The Policy Statement provides that the General Counsel will inform a respondent of the opportunity to request an oral hearing before the Commission when issuing the probable cause brief to the respondent. The respondent must include a written request to the Office of General Counsel ("OGC") for a hearing as part of its properly and timely filed reply brief. The request for a hearing must state with specificity why the hearing is being requested and what issues the respondent expects to address at a hearing.

Upon receipt of a request for a hearing, OGC will notify the Commission via email of the request, attaching to the email a PDF copy of the request as well as the entire response brief. If at least two commissioners indicate that they support granting the request for a hearing, OGC will coordinate with the Chairman's office to provide the respondent with possible dates for the hearing and will serve as the liaison between the Commission and the respondent to schedule the hearing. The Policy Statement provides that the Commission will attempt to schedule the hearings at a mutually agreeable date and time; however, the Commission may decline to hold a hearing if the respondent is unable to accommodate the Commission's schedule. Although the Policy Statement provides that the Commission will inform the respondent whether the Commission is granting the respondent's request within 30 days, we anticipate that in most cases the respondent will be notified that the request has been granted in substantially less than 30 days from the date the request was received.

After reaching an agreement with the respondent on a date for the hearing, OGC will notify respondents in writing of the date and time of the scheduled hearing and provide respondents with a description of the procedures for the conduct of the hearing and post-hearing. OGC also will arrange for a court reporter to transcribe the hearing and coordinate this effort with the Commission Secretary.

In the event there are not two Commissioners who support granting a request for a hearing within five days of notification by OGC, or if the respondent is unable to accommodate the Commission's schedule, OGC will notify the respondent that a hearing will not be held.

B. Hearing Procedures

The Policy Statement provides that a respondent may appear at a hearing *pro se* or may be represented by counsel. The Staff Director, Commission, the General Counsel and appropriate staff will hold seats at the table during the hearing. Respondents will occupy the witness table. Commission staff are permitted to attend the hearing, but are encouraged to attend only if they are, or are likely to be, involved in the present matter or similar matters.

The Commission will conduct the hearing as follows:

1. The hearing will begin with the Chairman making a brief statement regarding the purpose of the hearing.

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2. The respondents will have 20 minutes for their statement. They may divide this time between an opening statement and a closing statement. The respondent's counsel shall inform the Chair at the beginning of the hearing how much time they would like to reserve, if any, for a closing statement.

3. After the respondents have made an opening statement, each Commissioner will have the opportunity to ask questions of the respondents, following which the General Counsel and Staff Director may also ask questions. Neither questioners nor respondents are time limited.

4. Staff attorneys should be available to answer questions by Commissioners regarding statements by respondents. Staff attorneys and respondents may not question each other.

5. The hearing will last one and one half hours. The hearing can end early if no one has any more questions.

Absent a request by a Commissioner at the hearing, or intervening events subsequent to the filing of respondent's brief, respondent may only present issues and arguments at the hearing that were raised in the respondent's reply brief.

Respondent should notify OGC at least one week prior to the scheduled date of the hearing if the respondent intends to use charts, handouts or audio-visual aids during its presentation to the Commission to allow OGC time to coordinate the handling of this material with the court reporter and the Commission Secretary. Respondent should produce at least twelve copies of any handouts it intends to present to the Commission at the hearing. Finally, witnesses, including any respondent, co-respondent or third-party witness, may not be called to testify at the probable cause hearing.

C. Post-Hearing Procedures

At the probable cause hearing, the Commission may request that a respondent submit supplementary information or brief additional issues. To the extent that the Commission requests such information or briefing from the respondent, the respondent will have generally 10 days after the hearing to submit these materials, unless the Commission imposes a different deadline for the submission.

A court reporter will prepare a transcript of the hearing. The transcript will be made available to respondent, who will have 20 days to submit an errata sheet correcting any errors in the transcript. The Commission may rely on the contents of the transcript in its determination on whether to find probable cause to believe that a violation has occurred or in any subsequent action.

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Enforcement Procedure 2007-9
(Docs Open #31136)

EMAIL

To: Enforcement Staff

From: Anne Marie Terzaken

Subject: Reminders re: notifying Litigation about possible cases; Case closings

Date: June 18, 2007

I've been asked to remind/advise attorneys about two things:

The first is that Litigation would appreciate being brought into the loop as soon as possible on cases that may be headed to court. They are now under shorter time constraints in terms of how many days they have to file a complaint in district court after the Commission authorizes suit authority. I think it's 10 or 15 days. It would be a good practice to send Litigation (David, Colleen, and Kevin at this point) an email after the GC brief is served so that they can assign an attorney to follow the case and, if necessary, be ready to go once suit authority is granted.

The second relates to case closings. After a case closes and the CELA file is given to the enforcement team for coding, please review the file before it goes to GLA to make sure all the necessary documents appear in the file. You may have had cases where the case file sent to GLA was missing key documents. This usually delays the preparation of the public record and sometimes leads to needless extra work for the GLA paralegals. While CELA has primary responsibility for ensuring that case documents get to the case file, it would also be helpful if the attorney assigned to the matter would take a quick inventory of the case file before it goes to GLA to make sure the necessary documents are in the file.

Thanks!

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Enforcement Procedure 2007-8
(Docs Open #31135)

EMAIL

TO: Enforcement Staff

FROM: Anne Marie Terzaken

DATE: April 30, 2007

I received a request from a Commissioner's office to send redline versions of recirculated F&LAs (by email should be fine) to Commissioners' offices so that they may more easily see the new changes. I think this makes sense. Please keep it in mind should you recirculate an F&LA. Thanks.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Opening Settlement Offers for Self-Reported Increased Activity Cases	)	Agenda Document No. X07-17
	)	

CERTIFICATION

I, Darlene Harris, recording secretary for the Federal Election Commission executive session on March 20, 2007, do hereby certify that the Commission decided by a vote of 5-0 to instruct the Office of General Counsel to use the formulas and guidelines set forth in Agenda Document No. X07-17, as a basis for calculating recommended, opening penalty offers in the cases outlined in the memorandum dated March 16, 2007.

Commissioners Lenhard, Mason, von Spakovsky, Walther, and Weintraub voted affirmatively for the decision.

Attest:

March 21, 2007
Date

Darlene Harris
Darlene Harris
Deputy Secretary of the Commission

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Lebeaux

AGENDA DOCUMENT X07-17

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SENSITIVE

March 16, 2007

MAR 2 0 2007

EXECUTIVE SESSION

SUBMITTED LATE

MEMORANDUM

To: The Commission

From: Chairman Robert Lenhard

Re: Opening Settlement Offers for Self-Reported Increased Activity Cases

Attached is the proposed policy on opening settlement offers for self-reported increased activity cases that I emailed on March 14, 2007. I request that this document be placed on the agenda for the Executive Session on March 20, 2007.

Attachment

Adopted 5-0 on 3/20/07.

SZL

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ENFORCEMENT PROCEDURE 2007-7

Approved March 20, 2007—see Agenda Document No. X-07-17 (Memorandum to the Commission from Chairman Robert Lenhard re: "Opening Settlement Offers for Self-Reported Increased Activity Cases") (copied below)

Opening Settlement Offers for Self-Reported Increased Activity Cases

The Commission has recently become concerned about the high penalties frequently reached by OGC for self-reported increased activity cases. Currently, for non-knowing-and-willful violations, OGC's recommended opening settlement offer is the greater of $5,500 or 20% of the aggregate amount of the increased activity. Some Commissioners have expressed concern that, in the increased activity context, this formula can lead to penalties that are disproportionate to the violation. Commissioners have also questioned the often sizable discrepancies between penalties for increased activity imposed in ADR and OGC.

We discussed at the Executive Session looking to the Administrative Fines Program's penalty formula on self-reported increased activity cases handled by OGC. I asked for 30 days to look at the implications of a change in OGC's policy. With that deadline approaching, I would like to suggest a way of addressing this problem.

I propose that, beginning with reports for the 2005-06 election cycle and reports for the 2003-04 election cycle for which the Commission has yet to approve pre-probable-cause conciliation or probable cause, both OGC and ADR base out-the-door settlement offers for self-reported increased activity cases on the Administrative Fines penalty formula. The result would be that OGC's penalties at all levels of increased activity would more closely track the Administrative Fines rate of between roughly 1% and 6% (depending on the amount in violation) rather than the current OGC rate of 20%. I suggest two important exceptions to this general formula. First, we should not cap these penalties for violations of more than $950,000, as is done in the Administrative Fines program. Second, OGC should make an opening settlement offer at 125% of the administrative fines level. This will ensure that the Commission has room to negotiate the penalty downward from its opening offer without having all cases settle for less that the penalty that would have been imposed in the Administrative Fines program. As a related matter, I also propose that RAD amend its referral thresholds so that it refers only the most severe or suspicious cases of self-reported increased activity to OGC.

Finally, I propose that we make no changes to the out-the-door penalty formula OGC now uses for knowing and willful increased activity cases. OGC would continue to recommend settlement offers in knowing and willful cases with a penalty which is the greater of $11,000 or 200% of the amount in violation. I also propose that we not change OGC's standard penalty formula for increased activity cases that are not a product of self-

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reporting. That formula would continue to set opening offers at the greater of $5,500 or 20% of the amount in violation.[1]

My proposal is provided for in more detail below. I look forward to everyone's thoughts on this.

Basing Penalty Formula on Administrative Fines

In order to alleviate the current substantial discrepancies in out-the-door penalties, OGC and ADR would use the same penalty structure in self-reported increased activity cases. Although both would use the same penalty framework, ADR would continue to have additional flexibility to consider any circumstances it considers relevant. In cases where ADR believes that the reporting problems are due to underlying systematic factors, ADR could opt to reduce the penalty in exchange for other remedial options. However, ADR could also choose to focus only on negotiating over penalty if it does not believe the circumstances warrant a more time-consuming, far-reaching negotiation process.

Both OGC and ADR would set the penalty at 125% of the Administrative Fines penalty for the amount in violation.[2] The addition of 25% above the Administrative Fines penalty would allow the Commission room to negotiate. Because we will be beginning negotiations with a reduced penalty formula, OGC would not deduct 25% for a pre-probable cause conciliation discount as it would in cases using a 20% formula. The Commission already follows the practice of not applying a pre-probable cause discount in cases involving the failure to file 24- and 48-hour independent expenditure reports. *See,*

One aspect of the Administrative Fines formula that would not be carried over into OGC's and ADR's penalty formula for self-reported increased activity cases is the penalty cap on amounts in violation greater than or equal to $950,000.[4] Otherwise, the Commission will impose the same penalty for a $3 million increased-activity case as it would for a $1 million case. In the increased activity context, though, OGC and ADR would apply the percentage of the Administrative Fines penalty for $950,000 in violation

[1] For instance, OGC would continue to use the standard penalty formula for increased activity cases where the Commission learned of the increased activity on its own (e.g., through an audit) or the committee only amended in response to a complaint or an RFAI.

[2] The Commission uses different Administrative Fines schedules for election-sensitive and non-election sensitive reports. ADR and OGC should use the appropriate schedule depending on the nature of the report at issue.

[3] In the rare cases involving increased activity on multiple reports, OGC and ADR will continue to calculate the civil penalty for each report separately.

[4] The Administrative Fines cap was initially adopted because the Commission was concerned that the use of a prior-violation multiplier in the Administrative Fines program would result in extremely high penalties for many committees. This has not proven to be the case. To date, the highest penalty assessed by the Administrative Fines program is $23,750, *see* AF 1086 (Philip Lowe for Congress). Less than 3% of all Administrative Fines assessed have exceeded $10,000.

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for larger amounts in violation. As a result, for increased activity of more than $950,000, OGC and ADR would calculate the penalty at 1.3% and 1.7% of the amount in violation for non-election-sensitive and election-sensitive reports, respectively.

I recommend OGC and ADR also follow the Administrative Fine's approach to increasing the penalty for recidivists. As in the Administrative Fines context, each previous increased-activity violation (whether included as part of a conciliation agreement or an ADR settlement) during the two-year election cycle in which the activity at issue took place and the prior cycle would result in a 25% increase in penalty.

In light of the substantially reduced penalties, the enforcement process for self-reported increased activity cases should be speedy and minimize consideration of mitigating and aggravating factors. To that end, no additional mitigation would be given by OGC for additional self-reporting (*sua sponte*) measures (e.g., self-audit; remedial measures; compliance training). Thus, if a committee informs the Commission of increased activity via a *sua sponte* submission rather than a self-amendment, the Commission will apply the reduced penalties in this policy rather than the reductions available for *sua sponte* submission.[5]

If OGC does not settle with the respondent during pre-probable cause conciliation, the penalty would be increased 25%, in line with OGC's policy on probable cause in 434(b) cases, in order to create an incentive for committees to settle prior to probable cause.

Timing of Implementation of Proposed Changes

The Commission is nearly finished resolving cases involving increased activity on 2004 cycle reports. To date, RAD has referred approximately 55 cases for increased activity on 2004 reports. OGC received 17 of the referrals, and ADR received 38. Of the 55 matters RAD has referred for increased activity on 2004 reports, the Commission has approved a settlement in 47 of them.

All open cases for the 2003-04 election cycle where OGC has engaged or is currently engaging in pre-probable-cause conciliation should continue under the current penalty formula in order to maintain the credibility of the staff with opposing counsel and to avoid creating perverse incentives for opposing counsel to delay in the future, but OGC should reduce the penalty in these cases by 25%. The new proposed penalty policy should apply to the remaining cases for the 2003-04 cycle where the Commission has not yet approve pre-probable-cause conciliation or probable cause.

[5] In contrast, other proposed policies (such as the embezzlement and best efforts policies) would still be applicable to self-reported increased activity cases. Thus, if a committee is embezzled despite having in place appropriate safeguards and self-amends its reports, the Commission would decide not to proceed with an enforcement action for misreporting pursuant to the Commission's proposed embezzlement policy.

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CALCULATING OPENING SETTLEMENT OFFERS FOR NON-KNOWING AND WILLFUL VIOLATIONS[1]

Policies and Practices[2]

[redacted]		
§ 432(b)(2) Collecting agent's failure to forward contributions to SSR in timely fashion	Based on recent practice: 20% penalty	[redacted]
§ 432(b)(3) Commingling of campaign funds	No standard practice for non-knowing and willful violations	All recent cases have involved knowing and willful violations. *See* [redacted] (200% of commingled funds). The following cases involved knowing and willful violations of both §§ 432(b)(3) and 439(a)(1) (personal use): [redacted] (200% of commingled funds converted to personal use).

[1] Opening settlement offers for knowing and willful violations are based on 200% of the amount in violation or twice the statutory penalty, whichever is greater with the exception of knowing and willful violations of 2 U.S.C. § 441f (name of another). The opening settlement offer for these violations is no less than 300% of amount in violation and not more than the greater of $60,000 [adjusted for inflation] or 1000% of the amount involved in the violation. 2 U.S.C. § 437g(a)(5)(B). *See* [redacted] (300%); [redacted] 400%) [redacted] 850%); [redacted] (900%); [redacted] (500% and 450% for superconduits and 350% for public officials).

[2] All opening settlement offers will be discounted by 25% for pre-probable cause to believe unless otherwise noted in the calculation method, and are subject to the following rounding policy approved by the Commission on May 20, 1994:

Penalties below $5,000: round to the nearest $100 increment
Penalties between $5,000 and $9,999: round to the closest $500 increment
Penalties of $10,000 and above: round to the nearest $1,000 increment

Pursuant to the policy, in the event a penalty computes to be exactly half of the applicable increment, the penalty should be rounded up, rather than down.

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[redacted]		
§ 432(c)(5) Recordkeeping—disbursements	Based on recent practice: statutory penalty when recordkeeping is part of more significant reporting violations	[redacted]
§ 432(d) Preservation of Records	No separate civil penalty for § 432(d) (preservation of records) violations arising out of same transactions	
§ 432(e)(1) Late Filing of Statement of Candidacy	Based on recent practice: $500	[redacted]
§ 432(h)(1) Campaign Depositories	No standard practice	*See* [redacted] (no separate penalty computed because combined with § 434(b) penalty)

Additional Enforcement Materials

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[redacted]		
§ 432(h)(2) **Excess cash disbursements**	Based on recent practice: a) Differing results based on whether § 432(h)(2) is principal violation: 50% of the amount in violation if § 432(h)(2) is principal violation; 15% of the amount in violation if § 432(h)(2) is not principal violation. b) Statutory penalty in public financing cases, given that the activity also constitutes a non-qualified campaign expense and is a basis for the Commission's determination that the Committee must make a repayment to the US Treasury. c) Statutory penalty where an individual makes undocumented ATM cash withdrawals that exceeded $100.	a) [redacted] (applied 15% for excess cash disbursements). [redacted] (50% of highest amount in violation--$126,765); [redacted] (50%) [redacted] c) [redacted] (applied the statutory penalty for excess cash disbursements totaling $7,042).
§ 433 **Late or non-filing of Statements of Organization**	Based on recent practice: a) When violation arises in context of late Statement of Candidacy and consequent late Statement of Organization and 0-1 reports late: $500 b) If arises in context of unauthorized committees having been found to be political committees: $0 for § 433 plus applicable § 434(a) penalty for failure to file reports	[redacted] [redacted]
§ 433(b)(2) **Statement of Organization—content of**	Based on recent practice: statutory penalty	[redacted] (failure to report affiliation); [redacted] (failure to report affiliation)

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§ 434(a) **Failure to Report; Failure to Report timely**	Practice since 2000 has been: Administrative Fines Calculation + 25% Note: 25%PPCTB discount does not apply	
§ 434(a)(6)(B) **Notification by Senate candidate of expenditure from personal funds**	Based on recent practice: a) 20% of the amount of expenditures of personal funds not reported timely b) 10% of the amount of expenditures of personal funds not reported timely if candidate is unopposed c) No civil penalty for failure to file a post election Form 10	

DRAFT

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[redacted]		
§ 434(b) Reporting	Policy approved 12/9/04 (Agenda Document X04-49; Erratum to X04-49, 12/9/04) **Consult the above policy for specific level delineations (excerpts below are very general)** **Policy** Level 1 (generally, failure to report a transaction)-- the *greater of* 20% or statutory penalty (Maximum cap is $250,000) Level 2 (generally, reporting a transaction incorrectly or incompletely)--the *greater of* 15% or statutory penalty (Maximum cap is $250,000) Consideration of Aggravating and Mitigating Factors and Anti-Double-Counting Rule	[redacted] (no mitigation); [redacted] (statutory penalty); [redacted] 15% less 10% due to filing of amended reports); [redacted] (15%--level 2)

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[redacted]		
§ 434(b) Reporting Overstatements and understatements of activity	Gross misstatements accounts for the committee's under and over reporting. Under a net basis, the committee's overstatements would offset its understatements, reducing the amount in violation. The Commission has used both bases in calculating opening settlement offers.	"Net" was used by the Commission in [redacted] "Gross" was used by the Commission i[redacted]
§ 434(b) Reporting errors resulting from misappropriation of committee funds (committees)	Administrative Fines + 25% Or Zero if they show they had 5 basic internal controls in place Note: 25% PPCTB discount does not apply Policy Statement--Safe Harbor for Misreporting Due to Embezzlement--72 *Fed Red* 16695, April 5, 2007 March 16, 2007 Memorandum to the Commission from Chairman Lenhard Re: Opening Settlement Offers for Self-Reported Increased Activity Cases. Approved 3/20/07. See Enforcement Procedure 2007-7	[redacted]

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§ 434(b) Reporting errors in Increased or Decreased Activity Cases	Administrative Fines + 25% if self-reported and the amount in violation is $950,000 or less. Note: 25% PPCTB discount does not apply For violations of more than $950,000, multiply the amount in violation by 1.3% for non-election sensitive reports, and by 1.7% for election sensitive reports. See March 16, 2007 **Memorandum to the Commission from Chairman Lenhard Re: Opening Settlement Offers for Self-Reported Increased Activity Cases. Approved 3/20/07. Enforcement Procedure 2007-7**	

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[redacted]		
§ 434(c) (24 hours) **§ 434(g) (48 hours)** **Reporting Independent Expenditures**	a) Recent practice has been: Administrative Fines calculation for failure to file 48 Hour Notices of contributions multiplied by 125% b) Recent practice when number of notices not known: Applied the above method, except did not multiply number of notices by $110 because number of notices not known Note: 25% PPCTB discount does not apply. Commission has approved CP's on other bases in recent cases [redacted]	[redacted]
§ 438(a)(4) **Violation of Sale/Use Restriction on Contributor Information**	No standard practice.	*See* [redacted] (involving solicitation of single pseudonym--$5,000 penalty) *But also see* [redacted] (major scheme to use contributor information for stockbroker cold calls–$100,000 civil penalty) *See* [redacted] (where the violation was knowing and willful; 50% of the total sales derived from the software—one software feature violated the Act)

Additional Enforcement Materials

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[redacted]		
§ 439a(b) **Personal Use of Campaign Funds**	100% of amount in violation [redacted]	[redacted] No recent cases involving only § 439a(b); see [redacted] statutory penalty for each instance of personal use of campaign funds (one half of penalty derived from candidate's personal funds). The following embezzlement cases involved knowing and willful violations of both §§ 439(a)(b) and 432(b)(3) (commingling): [redacted] (200% of commingled funds converted to personal use)
§ 441a(a)(1) **§ 441a(a)(2)** **Making Excessive contributions**	Longstanding practice has been: 50% of excessive amount when not refunded; and, 25% of excessive amount when refunded. [redacted]	[redacted] (50% of unrefunded excessives); [redacted] (50% of unrefunded excessives); [redacted] (statutory amount); [redacted] (50% of unrefunded excessives that were double (2x) or more the limit);

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[redacted]		
§ 441a(a)(3) Annual/Biennial Contribution Limit	a) 100% of each dollar over limit pursuant to policy Approved 6/7/94 Agenda Doc. X94-56 – Memo to Commission b) If other § 441a limits are also exceeded, then compute as 25% up to the limit (if repaid) + 100% of amount over limit	a) Most recent cases involving only § 441a(a)(3): [redacted] (b) No recent cases. This practice was recommended in [redacted] but not followed by the Commission (amount lowered). See *also* [redacted] where a different computation method was used (50% of excessives less refunds)

DRAFT

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[redacted]		
§ 441a(f) **Receipt of Excessive Contributions**	Longstanding practice has been: a) 50% of excessive amount when not refunded 25% of excessive amount when refunded <u>In Audit Referrals</u>: b) Where there is Redesignation/Reattribution: 1) <u>Curable & Not Refunded & Not Cured Late</u> Remedy: 50% civil penalty offer final opportunity for obtaining late reattribution or redesignation as alternative to requiring refund. 2) <u>Curable & Cured Late (60+ days following receipt)</u> Remedy: 20% civil penalty (since 2008) Note: previously, 25% civil penalty	a) [redacted] (50% of excessive amount not refunded) 1) [redacted] violation not mitigated) 2) [redacted] (50% of unrefunded excessives; 20% of excessives refunded untimely); [redacted] (2008) (20%); [redacted] (20%) [redacted] (25%); [redacted] (25%); [redacted] (25%)

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[redacted]

	3) Non-curable & Not Refunded in Audit Remedy: 50% civil penalty—refund required during enforcement (violation not mitigated)	
	[redacted]	[redacted]
	6) Curable & Cured within 60 days of receipt per § 110.1(k) Remedy: no violation 7) Non-curable & refunded within 60 days of receipt per § 103.3(b)(3) Remedy: no violation	

Additional Enforcement Materials

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[redacted]		
§ 441b **Making and Accepting Prohibited contributions/ expenditures (banks/corporations/ labor organizations)**	Longstanding practice has been: 50% when not refunded 25% when refunded Note: if combined with § 441c (contributions by government contractors), add statutory penalty for violation of § 441c. [redacted]	[redacted] (25% of refunded corporate contribution made); [redacted] (50% of unrefunded corporate contributions made); [redacted] (50% of unrefunded prohibited contributions accepted); [redacted] (2006) (50% of prohibited corporate independent expenditure made); [redacted] 25% of refunded prohibited contributions); [redacted] (25% of disgorged corporate contributions); [redacted] (50% of unrefunded corporate contributions; 25% of refunded corporate contributions); [redacted] (50%)
§ 441b **§ 114.2 (f)** **Corporate Facilitation**	Based on recent practice: a) 100% of amount of the facilitated contributions on the corporate facilitation side: 50% of unrefunded facilitated contributions accepted on the committee side	[redacted]
§ 441b(b)(3) **§ 114.5** **Improper Solicitations--Notices**	Based on recent practice: statutory penalty	[redacted] (3 solicitations times statutory penalty); [redacted]

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[redacted]		
§ 441b(b)(4) Improper Solicitations Outside Restricted Class; unauthorized	a) Based on recent practice: 50% of unrefunded improperly solicited contributions; b) Statutory penalty	[redacted] [redacted] (unable to determine number of impermissible contributions)
§ 441c Government Contractor Contributions	a) When combined with § 441b(a) violation, apply statutory penalty in addition to § 441b(a) penalty	[redacted] No recent cases involving only § 441c; see [redacted] (100% of prohibited amount)
§ 441d(a) Disclaimer--missing	Disclaimer Penalty Policy approved 3/7/06: 20% of cost *or* Statutory penalty if cost unavailable	[redacted]
§ 441d(c) Disclaimer--specific requirements lacking	Disclaimer Penalty Policy approved 3/7/06: 10% of cost *or* Half the statutory penalty if cost unavailable	[redacted]
§ 441d(d) Disclaimer—"Stand by your ad"	Based on recent practice: 25% of amount expended on advertisement	[redacted]

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ENFORCEMENT PROCEDURE 2007-5

(updated May 2009—see Enf Procedure 2009-4)

MEMO TO: Enforcement Staff

FROM: Maura Callaway
Special Assistant

DATE: July 26, 2007

The procedure for objection memos has changed.

Beginning immediately, objection memos are due by **Noon on Friday** [formerly "by 5 p.m. on the Thursday"] before the Executive Session. Please distribute **hard** copies to all recipients of these memos, including the General Counsel, Tommie Duncan, and Associate General Counsel, Ann Marie Terzaken. In addition, please provide e-mail copies to the Associate General Counsel's secretary, Cindy Myers, and the General Counsel's secretary, Dora Walls. If there are any future developments after you have submitted the memo, please follow-up with an e-mail to Tommie Duncan and Ann Marie Terzaken and a cc: to Dora Walls and Cindy Myers.

If you are unable to meet the [upate/delete Thursday 5 p.m.] deadline because the objection was made late or you are not able to determine its basis, send an email to Tommie Duncan, Ann Marie Terzaken, Dora Walls and Cindy Myers [delete "by 5 p.m. on Thursday explaining the delay."] Once the information is obtained and the memo is prepared, [delete "preferably before noon on Friday"], e-mail the memo to Tommie Duncan, Ann Marie Terzaken, Dora Walls and Cindy Myers.

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ENFORCEMENT PROCEDURE 2007-4 **DO #30113**

[redacted]

Lawrence Norton/FEC/US
01/09/2007 07:08 PM

To [redacted]
cc Rhonda Vosdingh/FEC/US@FEC
Subject Re: Exculpatory evidence(?)

This situation doesn't arise very often because exculpatory evidence usually is received from the respondents. However, if we obtain evidence from a source other than the respondent that tends to exculpate the respondent, and if there's any doubt in our minds about whether the respondent is already aware of that evidence, we will note the existence of the evidence in our Probable Cause Brief. We often address such evidence anyway (that is, even if we know respondent is aware of it) when we are uncertain what the respondent has to say about it, or when we think that expressly engaging the respondent on some particular point will assist in making a probable cause determination. Following the briefing, the probable cause report also will address any exclupatory evidence. We have been clear with the staff about these policies, and I believe we're adhering to them on a consistent basis. On a related note, the respondent has the ability to obtain copies of the evidence we rely on in our brief. In particular, if we rely on someone's deposition, the respondent may obtain a full transcript of the deposition (not just the excerpts we cite to) to see if there's anything the respondent considers exculpatory or, even if not exculpatory, helpful in some way.

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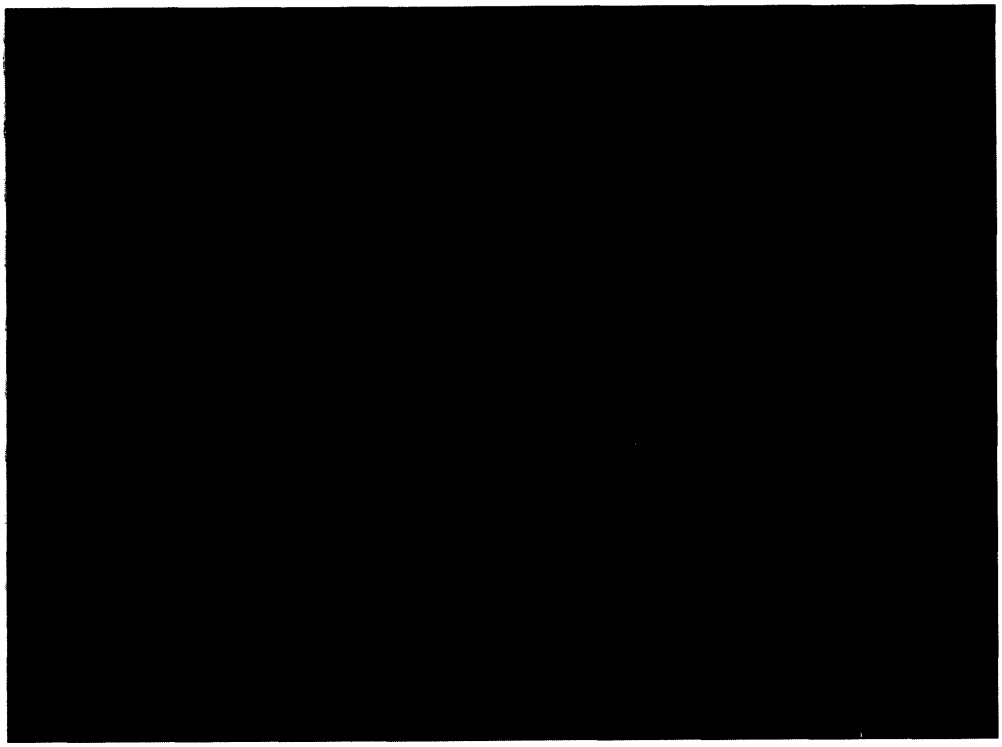
Just as a final note, the so-called Brady rule, which derives from the Supreme Court decision in Brady v. Maryland and requires prosecutors to disclose "arguably exculpatory evidence" has never been applied before an agency has evaluated the evidence after an investigation *and* decided to pursue charges (*i.e.*, prosecute).



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2007-3

Rules and Regulations

Federal Register
Vol. 72, No. 51
Friday, March 16, 2007

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL ELECTION COMMISSION

11 CFR Part 111

[Notice 2007-6]

Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process

AGENCY: Federal Election Commission.

ACTION: Statement of Policy.

SUMMARY: The Federal Election Commission ("Commission") is issuing a Policy Statement to clarify the various ways that the Commission addresses Matters Under Review ("MURs") at the initial stage of enforcement proceedings. The Commission may take any of the four following actions at this stage: find "reason to believe," "dismiss," "dismiss with admonishment," and find "no reason to believe."

DATES: *Effective Date:* March 16, 2007.

FOR FURTHER INFORMATION CONTACT: Mark Shonkwiler, Assistant General Counsel, or Lynn Tran, Attorney, Enforcement Division, Federal Election Commission, 999 E Street, NW., Washington, DC 20463, (202) 694-1650 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: The Federal Election Campaign Act of 1971, as amended, 2 U.S.C. 431 *et seq.* ("FECA" or "the Act"), grants the Commission "exclusive jurisdiction with respect to civil enforcement" of the provisions of the Act and Chapters 95 and 96 of Title 26. 2 U.S.C. 437c(b)(1). Enforcement matters come to the Commission through complaints from the public; information ascertained in the ordinary course of the Commission's supervisory responsibilities, including referrals from the Commission's Reports Analysis and Audit Divisions; referrals from other government agencies; and self-reported submissions.

The FECA provides that "upon receiving a complaint" or upon the basis of information ascertained in the course of carrying out its supervisory responsibilities, the Commission "shall make an investigation of such alleged violation" of the Act where the Commission, with the vote of four members, determines that there is "reason to believe that a person has committed, or is about to commit" a violation of the Act. 2 U.S.C. 437g(a)(2); *see also* 11 CFR 111.10(f). Commission "reason to believe" findings have caused confusion in the past because they have been viewed as definitive determinations that a respondent violated the Act. In fact, "reason to believe" findings indicate only that the Commission found sufficient legal justification to open an investigation to determine whether a violation of the Act has occurred. Indeed, the Commission has recommended that Congress modify the FECA to clarify this point. *See* Legislative Recommendations in 2003 and 2004 FEC Annual Reports. Other kinds of dispositions at this preliminary stage would also benefit from clarification to ensure consistency and promote understanding of the Commission's reasons for taking action. Thus, the Commission is issuing this policy statement to assist complainants, respondents, and the public in understanding the Commission's findings at this stage of the enforcement process.

Generally speaking, at the initial stage in the enforcement process, the Commission will take one of the following actions with respect to a MUR: (1) Find "reason to believe" a respondent has violated the Act; (2) dismiss the matter; (3) dismiss the matter with admonishment; or (4) find "no reason to believe" a respondent has violated the Act. This policy statement is intended to clarify the circumstances under which the Commission uses each of these dispositions.

A. "Reason To Believe"

The Act requires that the Commission find "reason to believe that a person has committed, or is about to commit, a violation" of the Act as a predicate to opening an investigation into the alleged violation. 2 U.S.C. 437g(a)(2). The Commission will find "reason to believe" in cases where the available evidence in the matter is at least sufficient to warrant conducting an investigation, and where the seriousness of the alleged violation warrants either further investigation or immediate conciliation. A "reason to believe" finding will always be followed by either an investigation or pre-probable cause conciliation. For example:

- A "reason to believe" finding followed by an investigation would be appropriate when a complaint credibly alleges that a significant violation may have occurred, but further investigation is required to determine whether a violation in fact occurred and, if so, its exact scope.
- A "reason to believe" finding followed by conciliation would be appropriate when the Commission is certain that a violation has occurred and the seriousness of the violation warrants conciliation.

A "reason to believe" finding by itself does not establish that the law has been violated. When the Commission later accepts a conciliation agreement with a respondent, the conciliation agreement speaks to the Commission's ultimate conclusions. When the Commission does not enter into a conciliation agreement with a respondent, and does not file suit, a Statement of Reasons, a Factual and Legal Analysis, or a General Counsel's Report may provide further explanation of the Commission's conclusions.

The Commission has previously used the finding "reason to believe, but take no further action" in cases where the Commission finds that there is a basis for investigating the matter or attempting conciliation, but the Commission declines to proceed for prudential reasons. As discussed below, the Commission believes that resolving these matters through dismissal or dismissal with admonishment more clearly conveys the Commission's intentions and avoids possible confusion about the meaning of a reason to believe finding.

B. Dismissal and Dismissal With Admonishment

Under *Heckler* v. *Chaney*, 470 U.S. 821 (1985), the Commission has broad discretion to determine how to proceed with respect to complaints or referrals. The Commission has exercised its prosecutorial discretion under *Heckler* to dismiss matters that do not merit the additional expenditure of Commission

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11 CFR Part 111

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DATES: *Effective Date:* March 16, 2007.

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The FECA provides that "upon receiving a complaint" or upon the basis of information ascertained in the course of carrying out its supervisory responsibilities, the Commission "shall make an investigation of such alleged violation" of the Act where the Commission, with the vote of four members, determines that there is "reason to believe that a person has committed, or is about to commit" a violation of the Act. 2 U.S.C. 437g(a)(2); *see also* 11 CFR 111.10(f). Commission "reason to believe" findings have caused confusion in the past because they have been viewed as definitive determinations that a respondent violated the Act. In fact, "reason to believe" findings indicate only that the Commission found sufficient legal justification to open an investigation to determine whether a violation of the Act has occurred. Indeed, the Commission has recommended that Congress modify the FECA to clarify this point. *See* Legislative Recommendations in 2003 and 2004 FEC Annual Reports. Other kinds of dispositions at this preliminary stage would also benefit from clarification to ensure consistency and promote understanding of the Commission's reasons for taking action. Thus, the Commission is issuing this policy statement to assist complainants, respondents, and the public in understanding the Commission's findings at this stage of the enforcement process.

Generally speaking, at the initial stage in the enforcement process, the Commission will take one of the following actions with respect to a MUR: (1) Find "reason to believe" a respondent has violated the Act; (2) dismiss the matter; (3) dismiss the matter with admonishment; or (4) find "no reason to believe" a respondent has violated the Act. This policy statement is intended to clarify the circumstances under which the Commission uses each of these dispositions.

A. "Reason To Believe"

The Act requires that the Commission find "reason to believe that a person has committed, or is about to commit, a violation" of the Act as a predicate to opening an investigation into the alleged violation. 2 U.S.C. 437g(a)(2). The Commission will find "reason to believe" in cases where the available evidence in the matter is at least sufficient to warrant conducting an investigation, and where the seriousness of the alleged violation warrants either further investigation or immediate conciliation. A "reason to believe" finding will always be followed by either an investigation or pre-probable cause conciliation. For example:

- A "reason to believe" finding followed by an investigation would be appropriate when a complaint credibly alleges that a significant violation may have occurred, but further investigation is required to determine whether a violation in fact occurred and, if so, its exact scope.
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The Commission has previously used the finding "reason to believe, but take no further action" in cases where the Commission finds that there is a basis for investigating the matter or attempting conciliation, but the Commission declines to proceed for prudential reasons. As discussed below, the Commission believes that resolving these matters through dismissal or dismissal with admonishment more clearly conveys the Commission's intentions and avoids possible confusion about the meaning of a reason to believe finding.

B. Dismissal and Dismissal With Admonishment

Under *Heckler* v. *Chaney*, 470 U.S. 821 (1985), the Commission has broad discretion to determine how to proceed with respect to complaints or referrals. The Commission has exercised its prosecutorial discretion under *Heckler* to dismiss matters that do not merit the additional expenditure of Commission

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ENFORCEMENT PROCEDURE 2007-2 **(DO #30103)**

FROM: Rhonda Vosdingh

TO: Enforcement Staff

DATE: 3/1/07

SUBJECT: RTB, No RTB, Dismissals

This morning the Commission adopted the attached policy statement which addresses the actions the Commission may take at the initial stage of the enforcement process, i.e., the 1st GCR stage. As you will see, there are 4 possible actions (and, of course, 4 possible recommendations for us to make). Probably the most significant change is that we will no longer have RTB/NFA; instead, we'll have either dismiss or dismiss with admonishment. Please take the time to read the attachment. We will send out emails shortly about training sessions to be held next week to address questions, etc.

[Note: The following policy statement was published on March 16, 2007]

FEDERAL ELECTION COMMISSION

11 CFR Part 111

[NOTICE 2007-6]

STATEMENT OF POLICY REGARDING COMMISSION ACTION IN MATTERS AT THE INITIAL STAGE IN THE ENFORCEMENT PROCESS

AGENCY: Federal Election Commission

ACTION: Statement of Policy

SUMMARY: The Federal Election Commission ("Commission") is issuing a Policy Statement to clarify the various ways that the Commission addresses Matters Under Review ("MURs") at the initial stage of enforcement proceedings. The Commission may take any of the four following actions at this stage: (1) find "reason to believe,"

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(2) "dismiss," (3) "dismiss with admonishment," and (4) find "no reason to believe."

EFFECTIVE DATE: [Insert Date of Publication in Federal Register]

FOR FURTHER INFORMATION CONTACT: Mark Shonkwiler, Assistant General Counsel, or Lynn Tran, Attorney, Enforcement Division, Federal Election Commission, 999 E Street N.W., Washington, D.C. 20463, (202) 694-1650 or (800) 424-9530.

SUPPLEMENTARY INFORMATION:

The Federal Election Campaign Act of 1971, as amended, 2 U.S.C. § 431 *et seq.* ("FECA" or "the Act"), grants the Commission "exclusive jurisdiction with respect to civil enforcement" of the provisions of the Act and Chapters 95 and 96 of Title 26. 2 U.S.C. § 437c(b)(1). Enforcement matters come to the Commission through complaints from the public; information ascertained in the ordinary course of the Commission's supervisory responsibilities, including referrals from the Commission's Reports Analysis and Audit Divisions; referrals from other government agencies; and self-reported submissions.

The FECA provides that "upon receiving a complaint" or upon the basis of information ascertained in the course of carrying out its supervisory responsibilities, the Commission "shall make an investigation of such alleged violation" of the Act where the Commission, with the vote of four members, determines that there is "reason to believe that a person has committed, or is about to commit" a violation of the Act. 2 U.S.C.

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§ 437g(a)(2); *see also* 11 C.F.R. § 111.10(f). Commission "reason to believe" findings have caused confusion in the past because they have been viewed as definitive determinations that a respondent violated the Act. In fact, "reason to believe" findings indicate only that the Commission found sufficient legal justification to open an investigation to determine whether a violation of the Act has occurred. Indeed, the Commission has recommended that Congress modify the FECA to clarify this point. *See* Legislative Recommendations in 2003 and 2004 FEC Annual Reports. Other kinds of dispositions at this preliminary stage would also benefit from clarification to ensure consistency and promote understanding of the Commission's reasons for taking action. Thus, the Commission is issuing this policy statement to assist complainants, respondents, and the public in understanding the Commission's findings at this stage of the enforcement process.

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sufficient to warrant conducting an investigation, and where the seriousness of the alleged violation warrants either further investigation or immediate conciliation. A "reason to believe" finding will always be followed by either an investigation or pre-probable cause conciliation. For example:

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Commission's intentions and avoids possible confusion about the meaning of a reason to believe finding.

B. Dismissal and Dismissal with Admonishment

Under *Heckler v. Chaney,* 470 U.S. 821 (1985), the Commission has broad discretion to determine how to proceed with respect to complaints or referrals. The Commission has exercised its prosecutorial discretion under *Heckler* to dismiss matters that do not merit the additional expenditure of Commission resources.[1] As with other actions taken by the Commission, dismissal of a matter requires the vote of at least four Commissioners.

Pursuant to the exercise of its prosecutorial discretion, the Commission will dismiss a matter when the matter does not merit further use of Commission resources, due to factors such as the small amount or significance of the alleged violation, the vagueness or weakness of the evidence, or likely difficulties with an investigation, or when the Commission lacks majority support for proceeding with a matter for other reasons. For example, a dismissal would be appropriate when:

- The seriousness of the alleged conduct is not sufficient to justify the likely cost and difficulty of an investigation to determine whether a violation in fact occurred; or
- The evidence is sufficient to support a "reason to believe" finding, but the violation is minor.

The Commission may also dismiss when, based on the complaint, response, and publicly available information, the Commission concludes that a violation of the Act did

[1] The FECA and Commission regulations also recognize the Commission's authority to dismiss enforcement matters. *See* 2 U.S.C. § 437g(a)(1); 11 C.F.R. §§ 111.6(b) and 111.7(b).

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or very probably did occur, but the size or significance of the apparent violation is not sufficient to warrant further pursuit by the Commission. In this latter circumstance, the Commission will send a letter admonishing the respondent. For example, a dismissal with admonishment would be appropriate when:

- A respondent admits to a violation, but the amount of the violation is not sufficient to warrant any monetary penalty; or
- A complaint convincingly alleges a violation, but the significance of the violation is not sufficient to warrant further pursuit by the Commission.

C. "No reason to believe"

The Commission will make a determination of "no reason to believe" a violation has occurred when the available information does not provide a basis for proceeding with the matter. The Commission finds "no reason to believe" when the complaint, any response filed by the respondent, and any publicly available information, when taken together, fail to give rise to a reasonable inference that a violation has occurred, or even if the allegations were true, would not constitute a violation of the law. For example, a "no reason to believe" finding would be appropriate when:

- A violation has been alleged, but the respondent's response or other evidence convincingly demonstrates that no violation has occurred;
- A complaint alleges a violation but is either not credible or is so vague that an investigation would be effectively impossible; or
- A complaint fails to describe a violation of the Act.

If the Commission, with the vote of at least four Commissioners, finds that there is "no reason to believe" a violation has occurred or is about to occur with respect to the

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allegations in the complaint, the Commission will close the file and respondents and the complainant will be notified.

D. Conclusion

This policy enunciates and describes the Commission's standards for actions at the point of determining whether or not to open an investigation or to enter into conciliation with respondents prior to a finding of probable cause to believe. The policy does not confer any rights on any person and does not in any way limit the right of the Commission to evaluate every case individually on its own facts and circumstances.

This notice represents a general statement of policy announcing the general course of action that the Commission intends to follow. This policy statement does not constitute an agency regulation requiring notice of proposed rulemaking, opportunities for public participation, prior publication, and delay effective under 5 U.S.C. 553 of the Administrative Procedures Act ("APA"). As such, it does not bind the Commission or any member of the general public. The provisions of the Regulatory Flexibility Act, 5 U.S.C. 605(b), which apply when notice and comment are required by the APA or another statute, are not applicable.

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ENFORCEMENT PROCEDURE 2007-1 **(DO #30107)**

FROM: Rhonda Vosdingh

TO: Enforcement Staff

DATE: February 8, 2007

SUBJECT: PCTB Hearings

At today's Open Session, the Commission unanimously approved a proposed 8-month pilot program to allow respondents an oral hearing before the Commission at the probable cause to believe stage. Under the policy, respondents who would like a hearing must make the request in writing as part of their reply to the GC's Brief recommending PCTB and explain why they are requesting a hearing and what issues they expect to address at the hearing. Respondents will be notified whether the Commission granted their request within 30 days of making their request. The program becomes effective on the date the "policy statement" is published in the Federal Register, which will probably be the middle or end of next week.

Here's the link to the agenda document. http://www.fec.gov/agenda/2007/mtgdoc07-08.pdf

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2006

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)
	)
Disclaimer Penalty Policy	)

CERTIFICATION

I, Darlene Harris, recording secretary of the Federal Election Commission executive session, do hereby certify that on March 07, 2006, the Commission took the following actions in the above-captioned matter:

1. Decided by a vote of 6-0 to:

   Direct the Office of General Counsel to establish general guidelines for opening penalty offers in disclaimer cases, as follows:

   a) In cases where there is no disclaimer, apply a formula equal to twenty percent (20%) of the cost of the communication(s) or $5500 if there is no information regarding the costs;
   b) In cases where there is a disclaimer but it fails 2 U.S.C. § 441d(c) specifications or other requirements, apply a formula equal to ten percent (10%) of the cost of the communication(s) or $2750 if we lack cost information;
   c) Authorize the Office of General Counsel to consider mitigating or aggravating factors to determine penalties; and
   d) Apply these guidelines to the enforcement process but not the Alternative Dispute Resolution (ADR) process; however, instruct the ADR Office to be sensitive to the policy established in this area.

   Commissioners Lenhard, Mason, Toner, von Spakovsky, Walther, and Weintraub voted affirmatively for the decision.

2. Decided by a vote of 6-0 to:

   Direct the Office of General Counsel to prepare a proposed document on the civil penalty framework for disclaimers that would be made publicly available; circulate the document for Commission approval on a tally vote basis; and, if there are objections to the approach outlined, the document would be placed on an executive session agenda for further discussion which would include the policy outlined and whether or not to publish the schedule.

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March 7, 2006

Commissioners Lenhard, Mason, Toner, von Spakovsky, Walther, and Weintraub voted affirmatively for the decision.

Attest:

March 9, 2006
Date

Darlene Harris
Darlene Harris
Deputy Secretary of the Commission

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Enforcement Procedure 2006-3
(Docs Open #22486)

MEMORANDUM

TO: Enforcement Staff

FROM: Maura Callaway
Special Assistant

SUBJECT: Civil Penalties in Disclaimer Cases

On March 7, 2006, the following 7 enforcement cases involving disclaimer issues were on the Executive Session agenda:
MUR 5526 Graf for Congress
MUR 5547 Martin Frost Campaign
MUR 5556 Porter for Congress
MUR 5629 Jim Newberry for Congress
MUR 5631 Alcona County Republican Committee
MUR 5632 Iosco County Republican Committee
MUR 5587R David Vitter for US Senate

Disclaimer Penalty Policy[1]

On March 7, 2006, the Commission directed OGC to establish general guidelines for opening penalty offers in disclaimer cases, as follows:

1.a) In cases where there is no disclaimer, apply a formula equal to twenty percent (20%) of the cost of the communication(s) or $5500 if there is no information regarding the costs;

b) In cases where there is a disclaimer but it fails 2 USC § 441d(c) specifications or other requirements, apply a formula equal to ten percent (10%) of the cost of the communication(s) or $2750 if we lack cost information;

c) Authorize OGC to consider mitigating or aggravating factors to determine penalties; and

d) Apply these guidelines to the enforcement process but not the ADR process; however, instruct the ADR Office to be sensitive to the policy established in this area.

2. Direct OGC to prepare a proposed document on the civil penalty framework for disclaimers that would be made publicly available; circulate the document for Commission approval on a tally vote basis; and, if there are objections to the approach outlined, the document would be placed on an executive session agenda for further discussion which would include the policy outlined and whether or not to publish the schedule.

[1] The certification for this policy is entitled "In the Matter of Disclaimer Penalty Policy," dated March 7, 2006.

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Enforcement Procedure 2006-2
(Docs Open #22051)

EMAIL TO: Rhonda Vosdingh

TO: Enforcement Staff

DATE: 01/24/2006 08:09 PM

Cc: Shelley Garr/FEC/US@FEC

Subject: Suit authorization

When the Commission has authorized (contingent) suit and then we end up settling the case so that litigation is not necessary, please be sure to notify Litigation (Shelly Garr) immediately. Thanks for your cooperation.

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ENFORCEMENT PROCEUDRE 2006-1
(Docs Open # 22050)

EMAIL TO: Enforcement Staff

FROM: Rhonda Vosdingh/FEC/US

DATE: 1/24/2006 08:04 PM

SUBJECT: Complaint summaries

Would you please be sure to include in your complaint summaries the amount alleged to be in violation, if known. Thanks.

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2005

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Rules and Regulations

Federal Register
Vol. 70, No. 1
Monday, January 3, 2005

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL ELECTION COMMISSION

11 CFR Part 111

[Notice 2004—20]

Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings

AGENCY: Federal Election Commission.

ACTION: Statement of policy.

SUMMARY: The Commission is issuing a Policy Statement to clarify when, in the course of an enforcement proceeding (known as a Matter Under Review or "MUR"), a treasurer is subject to Commission action in his or her official or personal capacity, or both. Under this policy, when the Commission investigates alleged violations of the Federal Election Campaign Act, as amended, the Presidential Election Campaign Fund Act, and the Presidential Primary Matching Payment Account Act (collectively "the Act" or "FECA") involving a political committee, the treasurer will typically be subject to Commission action only in his or her official capacity. However, when information indicates that a treasurer has knowingly and willfully violated a provision of the Act or regulations, or has recklessly failed to fulfill duties specifically imposed on treasurers by the Act, or has intentionally deprived himself or herself of the operative facts giving rise to the violation, the Commission will consider the treasurer to have acted in a personal capacity and make findings (and pursue conciliation) accordingly. This Policy Statement also addresses situations in which treasurers are subject to Commission action in both their official and personal capacities, and situations where successor treasurers are named.

The goal in adopting this policy is to clarify when a treasurer is subject to Commission action in a personal or official capacity, while at the same time preserving the Commission's ability to obtain an appropriate remedy that will satisfactorily resolve enforcement matters, or to seek relief in court, if necessary, against a live person. Importantly, the policy is grounded in the statutory obligations specifically imposed on treasurers and well-established legal distinctions between official and personal capacity proceedings.

DATES: December 16, 2004.

FOR FURTHER INFORMATION CONTACT: Peter G. Blumberg, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission is modifying its current practices to specify more clearly when a treasurer is subject to a Commission enforcement proceeding in his or her "official" and/or "personal" capacity.[1] Specifically, when a complaint asserts sufficient allegations to warrant naming a political committee as a respondent, the committee's current treasurer will also be named as a respondent in his or her official capacity. In these circumstances, reason-to-believe and probable cause findings against the committee will also be accompanied by findings against the current treasurer in his or her official capacity. When the complaint asserts allegations that involve a past or present treasurer's violation of obligations that the Act or regulations impose specifically on treasurers, then that treasurer may, in the circumstances described below, be named in his or her personal capacity, and findings may be made against the treasurer in that capacity. Thus, in some matters the current treasurer could be named in both official and personal capacities. Maintaining the Commission's ability to pursue a treasurer as a respondent in either official or personal capacity allows the Commission discretion to fashion an appropriate remedy for violations of the Act.[2]

Notably, political committees are artificial entities that can act only through their agents, such as their treasurers, and often can be, by their very nature, ephemeral entities that may exist for all practical purposes for a limited period, such as during a single election cycle. Due to these characteristics, identifying a live person who is responsible for representing the committee in an enforcement action is particularly important. Without a live person to provide notice to and/or to attach liability to, the Commission may find itself at a significant disadvantage in protecting the public interest and in ensuring compliance with the laws it is responsible for enforcing. By virtue of their authority to disburse funds and file disclosure reports and to amend those reports, treasurers of committees are in the best position to carry out the requirements of a conciliation agreement such as paying a civil penalty, refunding or disgorging contributions, and amending reports.

The Act designates treasurers to play a unique role in a political committee; indeed, a treasurer is the only office a political committee is required to fill. 2 U.S.C. 432(a). Without a treasurer, committees cannot undertake the host of activities necessary to carry out their mission, including receiving and disbursing funds and publicly disclosing their finances in periodic reports filed with the Commission. *Id.*; 2 U.S.C. 434(a)(1). Given this statutory role, especially the authority to receive and disburse funds (*e.g., pay a civil* penalty, refund improper contributions, disgorge ill-gotten funds) on behalf of the committee, designating the treasurer *as the representative of the committee* for purposes of compliance with the Act makes sense.

Although the Commission may be *entitled to take action as to a treasurer* in both an official and individual capacity, in the typical enforcement matter the Commission expects that it will proceed against treasurers only in their official capacities. However, the Commission will consider treasurers parties to enforcement proceedings in their personal capacities where information indicates that the treasurer

[1] The terms "official capacity" and "representative capacity" are generally interchangeable, as are the terms "personal capacity" and "individual capacity." *See McCarthy v. Azure*, 22 F.3d 351, 359 n.12 (1st Cir. 1994).

[2] In any scenario, the Commission will, of course, remain free to exercise its prosecutorial discretion not to pursue a respondent. For example, the Commission, in some cases, may decide not to pursue a predecessor treasurer who technically has personal liability where the committee, through its current treasurer, has agreed to pay a sufficient civil penalty and to cease and desist from further violations of the Act.

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knowingly and willfully violated an obligation that the Act or regulations specifically impose on treasurers or where the treasurer recklessly failed to fulfill the duties imposed by law, or where the treasurer has intentionally deprived himself or herself of the operative facts giving rise to the violation. In these circumstances, the Commission may decide to find reason to believe the treasurer has violated the Act in his or her personal capacity, as well as finding reason to believe the committee violated the Act.

This statement of policy is intended to provide clearer notice to respondents and the public as to the nature of the Commission's enforcement actions, improve the perception of fairness throughout the regulated community, and merge the Commission's treasurer designation into conceptually familiar legal principles for the federal judiciary.[3] The statement first surveys the law on the official/personal capacity distinction; next, addresses when the Commission will proceed as to treasurers in their official or personal capacity or both; and finally, resolves the reoccurring issues of successor treasurers and substitution.

The Commission's Proposed Statement of Policy Regarding Naming of Treasurers in Enforcement Matters was published in the January 28, 2004, **Federal Register**. 69 FR 4092 (January 28, 2004). One comment was received. The commenter stated that the Commission's effort to clarify its treasurer naming policy is welcome, but he made several recommendations for how the Commission could assist treasurers to better understand their potential personal liability, such as requiring separate notices in instances where a treasurer was named in his or her individual and official capacities, and by enacting the policy's proposals through a rulemaking, rather than a policy statement. The commenter's suggestions were considered, but in order to allow the Commission to retain flexibility in processing its cases, and because the policy statement combined with existing laws and Commission regulations provide sufficient notice to treasurers of their responsibilities, the suggested changes were not implemented.

[3] As discussed *infra* Part II., the phrases "official capacity" and "personal capacity" are legal terms of art that permeate such field as sovereign immunity, bankruptcy, corporations, and federal procedure. Their usage instantaneously identifies for the judiciary when the Commission is pursuing treasurers by virtue of their position, rather than by product of their actions.

II. The Official/Personal Capacity Distinction

In the seminal case of *Kentucky* v. *Graham*, 473 U.S. 159 (1985), the United States Supreme Court discussed the distinction between official capacity and personal capacity suits. The Court determined that a suit against an officer in her official capacity "generally represent[s] only another way of pleading an action against an entity of which an officer is an agent." *Id.* at 165. In other words, an official capacity proceeding "is not a suit against the official but rather is a suit against the official's office." *Will* v. *Mich. Dept. of State Police*, 491 U.S. 58, 71 (1989). Accordingly, "an official-capacity suit is, in all respects other than name, to be treated as a suit against the entity." *Graham*, 473 U.S. at 166. Therefore, in an official capacity suit, the plaintiff seeks a remedy from the entity, not the particular officer personally.

A "personal-capacity action is * * * against the individual defendant, rather than * * * the entity that employs him." *Id.* at 167'68. Since a "[p]ersonal-capacity suit[] seek[s] to impose personal liability upon" a particular individual, the individual is the true party in interest. *Id.* Liability lies with the particular officer personally, not with the officer's position. *See id.* at 166 n.11 ("Should the official die pending final resolution of a personal-capacity action, the plaintiff would have to pursue his action against the decedent's estate."); *see also Hafer* v. *Melo*, 502 U.S. 21, 27 (1991) ("officers sued in their personal capacity come to court as individuals").

The "distinction between claims aimed at a defendant in his individual as opposed to representative capacity can be found across the law." *McCarthy*, 22 F.3d at 360 (citing numerous Supreme Court, lower court, and state cases referencing differences between individual and official capacity claims in multiple fields of law).[4] The official capacity/individual capacity distinction also carries societal significance. As the *McCarthy* court explained:

> The ubiquity of the [official capacity/individual capacity] distinction is a reflection of the reality that individuals in our complex society frequently act on behalf of other parties—a reality that often makes it unfair to credit or blame the actor, individually, for such acts. At the same time, the law strikes a wise balance by refusing automatically to saddle a principal with total responsibility for a representative's conduct, come what may, and by declining mechanically to limit an injured party's recourse to the principal alone, regardless of the circumstances.
>
> *Id.*

[4] *See Graham*, 473 U.S. at 165 (42 U.S.C. 1983); *Stafford* v. *Briggs*, 444 U.S. 527, 544 (1980) (venue determination); *Ex Parte Young*, 209 U.S. 123, 159 (1908) (Eleventh Amendment); *Northeast Fed. Credit Union* v. *Neves*, 837 F.2d 531, 534 (1st Cir. 1988) (jurisdictional purposes); *Pelkoffer* v. *Deer*, 144 B.R. 282, 285–86 (W.D. Pa. 1992) (bankruptcy); *Estabrook* v. *Wetmore*, 529 A.2d 956, 958 (N.H. 1987) (applying doctrine that acts of a corporate employee performed in his corporate capacity generally do not form the basis for personal jurisdiction over him in his individual capacity).

III. Treasurers in Their Official Capacity

Clearly indicating that the current treasurer is a party to an enforcement proceeding in his or her official capacity will improve the Commission's enforcement of the law in a number of ways. Most importantly, it clarifies that findings by the Commission (whether "Reason To Believe" or "Probable Cause To Believe") or the signing of a conciliation agreement only concerns the treasurer in his or her capacity as representative of the committee, not personally. The practice also ensures that a named individual who signs the conciliation agreement on behalf of the committee (or obtains legal representation on behalf of the committee) is the one empowered by law to disburse committee funds to pay a civil penalty, disgorge funds, make refunds, and carry out other monetary remedies that the committee agrees to through the conciliation agreement.[5] Also, naming a treasurer (in his or her official capacity), as opposed to naming simply the office of treasurer or just the committee, not only provides the Commission with an individual in every instance to serve with notices throughout the proceeding, but also results in more accountability on behalf of the committee—that is, a particular person who will ensure that a committee is responsive to Commission findings.[6] Finally, specifying whether a treasurer is a party to an enforcement proceeding in his or her official or personal capacity is consistent with use of these terms as pleading conventions in court actions. A probable cause finding against a treasurer in his or her official capacity makes clear to a district court in enforcement litigation that the Commission is seeking relief against the committee, and would only entitle the

[5] In the absence of a treasurer, "the financial machinery of the campaign grinds to a halt * * *" *FEC* v. *Toledano*, 317 F.3d 939, 947 (9th Cir. 2003), *reh'g denied; see* 2 U.S.C. 432(a) ("No expenditure shall be made * * * without the authorization of the treasurer or *his or her* designated agent."); 11 CFR 102.7(a) (designation of assistant treasurer).

[6] Such accountability may be especially helpful in matters involving committees that tend to be ephemeral—existing for only a short time before permanently disbanding operations.

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Commission to obtain a civil penalty from the committee. See Graham, 473 U.S. at 165.

IV. Treasurers in Their Personal Capacities

The Act places certain legal obligations on committee treasurers, the violation of which makes them personally liable.[7] *See, e.g.*, 2 U.S.C. 432(c) (keep an account of various committee records), 432(d) (preserve records for three years), 434(a)(1) (file and sign reports of receipts and disbursements). The Commission's regulations further require treasurers to examine and investigate contributions for evidence of illegality. *See* 11 CFR 103.3. Due to their "pivotal role," treasurers may be held personally liable for failing to fulfill their responsibilities under the Act and the Commission's regulations. *See Toledano*, 317 F.3d at 947 ("The Act requires every political committee to have a treasurer, 2 U.S.C. 432(a), and holds him personally responsible for the committee's recordkeeping and reporting duties, id. 432(c)–(d), 434(a). * * * Federal law makes the treasurer responsible for detecting [facial contribution] illegalities, 11 CFR 103.3(b), and holds him personally liable if he fails to fulfill his responsibilities, see 2 U.S.C. 437g(d). * * *"); *see also FEC* v. *John A. Dramesi for Cong. Comm.*, 640 F. Supp. 985 (D.N.J. 1986) (holding treasurer responsible for failing to "make * * * best efforts to determine the legality of" an excessive contribution); *FEC* v. *Gus Savage for Cong. '82 Comm.*, 606 F. Supp. 541, 547 (N.D. Ill. 1985) ("It is the treasurer, and not the candidate, who becomes the named defendant in federal court, and subjected to the imposition of penalties ranging from substantial fines to imprisonment."); 104.14(d) ("Each treasurer of a political committee, and any other person required to file any report or statement under these regulations and under the Act shall be personally responsible for the timely and complete filing of the report or statement and for the accuracy of any information or statement contained in it.").

Thus, a treasurer may be named as a respondent in a Matter Under Review in his or her personal capacity, and findings may be made against a treasurer in the same capacity, when the MUR involves the treasurer's violation of a legal obligation that the statute or regulations impose specifically on committee treasurers or when a reasonable inference from the alleged violation is that the treasurer knew, or should have known, about the facts constituting a violation.[8] In practice, however, the Commission intends to consider a treasurer the subject of an enforcement proceeding in his or her personal capacity only when available information (or inferences fairly derived therefrom) indicates that the treasurer had knowledge that his or her conduct violated a duty imposed by law, or where the treasurer recklessly failed to fulfill his or her duties under the act and regulations, or intentionally deprived himself or herself of facts giving rise to the violations. If, at any time in the proceeding, the Commission is persuaded that the treasurer did not act with the requisite state of mind, subsequent findings against the treasurer will only be made in his or her official capacity.[9]

Should the Commission file suit in district court following a finding of probable cause against a treasurer in his or her personal capacity, judicial relief, including an injunction and payment of a civil penalty, could be obtained against the treasurer personally. *Graham*, 473 U.S. at 166–168. Likewise, when the Commission obtains relief from a treasurer personally, the obligation will follow the individual. Thus, when a treasurer in his or her personal capacity agrees to pay a civil penalty through a conciliation agreement, or is ordered to pay a civil penalty by a district court, a personal obligation exists to pay the civil penalty. (A separate civil penalty would likely be assessed against the committee itself.) Likewise, a cease and desist provision (negotiated through conciliation) or an injunction (imposed by a district court) against a treasurer in his or her personal capacity will still apply to that treasurer in the event he or she subsequently becomes treasurer with another committee. *Cf. Sec'y Exch. Comm'n* v. *Coffey*, 493 F.2d 1304, 1311 n.11 (6th Cir. 1974) ("The significance of naming an officer * * * personally is that 'otherwise he is bound only as long as he remains an officer * * *, whereas if he is named [personally] he is personally enjoined without limit of time.'") (quoting 6 L. Loss, *Securities Regulation* 4113 (1969, supp. to 2d ed.)).

V. Treasurers in Both Capacities

There will likely be cases in which the treasurer is subject to Commission action in both his or her official and personal capacity, as explained in *supra* sections III. and IV. In such cases, the Commission will clearly designate that the findings are being made against the treasurer in both capacities. *See, e.g.*, *United States* v. *Johnson*, 541 F.2d 710, 711 (8th Cir. 1976) (applying a similar standard in an action involving the Federal Trade Commission when finding that "[t]he propriety of including a person both as an individual and as a corporate officer in a cease and desist order has consistently been upheld in instances where the person included was instrumental in formulating, directing and controlling the acts and practices of the corporation") (citing *Fed. Trade Comm'n* v. *Standard Ed. Soc'y*, 302 U.S. 112 (1937); *Standard Distrib.* v. *Fed. Trade Comm'n*, 211 F.2d 7 (2d Cir. 1954); *Benrus Watch Co.* v. *Fed. Trade Comm'n*, 352 F.2d 313 (8th Cir. 1965)).

For example, if a complaint alleges a violation such as coordination or receipt of contributions in the name of another, the Commission intends initially to name the treasurer as a respondent only in his or her official capacity. Notably, in these cases the reporting violation stems from the same operative facts as the principal violation. Only if the Commission learns later that the treasurer had knowledge of the operative facts—for example, the treasurer knew that an in-kind contribution stemming from coordination went unreported—or acted recklessly, or intentionally deprived himself or herself of the relevant facts, might the Commission make findings

[7] If a past or present treasurer violates a prohibition that applies generally to individuals, the treasurer may be named as a respondent in his or her personal capacity, and findings may be made against the treasurer in that capacity. In this way, a treasurer would be treated no differently than any other individual who violates a provision of the Act. The Act and the Commission's regulations apply to any "person," which includes individuals. *See, e.g.*, 2 U.S.C. 432(b) (forward contributions to the committee's treasurer), 441e (receipt of contributions from foreign nationals), and 441f (making and knowingly accepting contributions in the name of another).

[8] Indeed, if FECA were construed to impose liability on treasurers only in their official capacities, it would effectively mean that only committees are liable for violations under the statute—which would have been easy enough for Congress to accomplish by writing the Act to impose reporting, recordkeeping, and other duties on "committees" rather than "treasurers." In fact, in some instances, the Act and the Commission's regulations specifically impose obligations on committees and committee officers and candidates. *See, e.g.*, 2 U.S.C. 441a(f) (receipt of excessive contributions), 11 CFR 104.7(b) (best efforts).

[9] Conversely, when a reason-to-believe finding is made against a treasurer in his or her official capacity only, but the potential violations at issue involve obligations specifically imposed by the Act or regulations on treasurers, the notice of the finding will be accompanied by a letter advising that the Commission could later decide to pursue the treasurer in a personal capacity if information shows that the treasurer knowingly and willfully violated the Act, or recklessly failed to fulfill the duties imposed by law, or intentionally deprived himself or herself of the operative facts giving rise to the violation.

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against the treasurer in his or her personal capacity.

In cases where the treasurer is subject to Commission action in both official and personal capacities, the respondents could be named as "John Doe for Congress and Joe Smith, in his official capacity as treasurer and in his personal capacity." Alternatively, the respondents could be named as "John Doe for Congress and Joe Smith, in his official capacity as treasurer" and "Joe Smith, in his personal capacity." Regardless of the form of the notification, where a treasurer has been named in both his or her official and personal capacities, any resulting conciliation agreement would be signed by the treasurer on behalf of both the committee and the treasurer in his or her personal capacity.

VI. Successor Treasurers/Substitution

An issue closely related to the official/personal capacity distinction is whether a successor treasurer may be substituted for a predecessor treasurer in a matter under review. Often the specific individual who was the treasurer at the time of a violation is no longer the treasurer during the enforcement process. Whether the successor treasurer or the predecessor treasurer should be named as the respondent depends on whether the Commission is pursuing the treasurer in his or her official capacity, personal capacity, or both.

Currently, when OGC discovers that a committee has changed treasurers after the date of the activity on which the finding was based, OGC typically notes the change of treasurer, the date of the change, the former treasurer's name, and indicates whether an amendment was made to the Statement of Organization in OGC's next report to the Commission. If a treasurer change is made after a finding of reason to believe, then OGC typically includes the new treasurer and notes the change in its next report on the matter. If a treasurer change is made after a finding of probable cause to believe, OGC sends the new treasurer a supplemental probable cause brief (incorporating the prior probable cause brief), which states that the Commission found probable cause to believe against the committee and the treasurer's predecessor and will recommend probable cause against the new treasurer. After receiving a response or waiting until the expiration of the response period, OGC typically returns to the Commission with a recommendation as to the new treasurer.

When the Commission pursues a current treasurer in his or her official capacity, successor treasurers will be substituted for the predecessor treasurer. In such cases, the Commission is pursuing the official position (and, therefore, the entity), not the individual holding the position. *See Will*, 491 U.S. at 71. Because an official capacity action is an action against the treasurer's position, the Commission may summarily substitute a new treasurer in his or her official capacity at any stage prior to a finding of probable cause to believe.[10]

When a predecessor treasurer may be personally liable, the Commission could pursue the predecessor treasurer individually, and not substitute the successor treasurer for the predecessor treasurer individually. *See* fn. 7; *Graham*, 473 U.S. at 167–68. There would be no legal basis for imputing personal liability from a predecessor treasurer's misconduct to a successor treasurer who did not personally engage in the misconduct.

If the Commission were to pursue a treasurer both officially and personally and this treasurer is later replaced, the Commission could pursue the predecessor treasurer for any violations for which he or she is personally liable, and substitute the successor treasurer for official capacity violations. Absent some independent basis of liability, the Commission does not intend to pursue intermediate treasurers.[11] *See Cal. Democratic Party* v. *FEC*, 13 F. Supp. 2d 1031, 1037 (E.D. Cal. 1998) (dismissing individual capacity claims against a former treasurer because "there is no allegation that [the treasurer] violated any personal obligation" and dismissing official capacity claims against him "since [he] is no longer treasurer * * * and thus, is not the appropriate person against whom an official capacity suit can be maintained. * * *").[12]

VII. Conclusion

Effective as of the date this Policy Statement is published in the **Federal Register**, and as more fully explained above, the Commission will consider treasurers of political committees subject to enforcement proceedings as follows:

1. In enforcement proceedings where a political committee is a respondent, the committee's current treasurer will be subject to Commission action "in (his or her) official capacity as treasurer."

2. In enforcement proceedings where information indicates that a treasurer (past or present) of a political committee (a) knowingly and willfully violated the Act or regulations, (b) recklessly failed to fulfill the duties imposed by a provision of the Act or regulations that applies specifically to treasurers, or (c) intentionally deprived himself or herself of the operative facts giving rise to a violation, the treasurer may be subject to Commission action "in (his or her) personal capacity."

3. In enforcement proceedings where information indicates that a treasurer of a political committee is subject to findings in both an official and personal capacity (*i.e.*, information indicates that the committee's current treasurer violated the Act or regulations with the requisite state of mind described in #2 above), the current treasurer may be subject to Commission action in both an official and personal capacity.

4. When the Commission makes findings as to a treasurer in his or her official capacity, successor treasurers will be substituted as if the findings had been made as to the successor.

5. In enforcement proceedings involving provisions of the Act or regulations that apply generally to individuals (*e.g.*, prohibitions against the making of an excessive contribution), the treasurer will be subject to Commission action in his or her personal capacity the same as any other individuals.

[10] Pursuant to the final policy, the Commission is not legally obligated to undertake the requirements of 2 U.S.C. 437g(a)(3) when a successor treasurer begins his or her position; although not legally required to do so, the Commission would intend to inform a new treasurer of the pending action and make copies of the briefs available to the successor treasurer.

[11] For example, while Treasurer A is the treasurer for *Joe Smith for Congress*, a violation occurs that subjects A to official liability and potentially to individual liability. Treasurer A would be named in his official capacity and notified in a reason-to-believe notification of the potential for personal liability. After the enforcement action has begun, Treasurer A resigns and Treasurer B takes over. The Commission would pursue Treasurer B in her official capacity, and if the circumstances warranted, Treasurer A in his individual capacity. If Treasurer B resigns and is succeeded by Treasurer C prior to the conclusion of the enforcement matter, the Commission would then continue to pursue Treasurer A in his individual capacity and pursue Treasurer C in her official capacity. Treasurer B would no longer be named in her official capacity.

[12] A deeper examination of the court file indicates that—despite the *California Democratic Party* court's assertion to the contrary—the Commission never actually pled that the treasurer in this case was personally liable. Rather, the complaint references the treasurer "as treasurer" and the Commission's response to the treasurer's motion to dismiss indicates that the Commission was pursuing the treasurer "in his official capacity." Compl., paragraphs 8, 58–59, Prayer paragraphs 1–5; Resp. to Def. Mot. to Dismiss, p. 21. However, the court's statement in *California Democratic Party* underscores the need for the Commission to delineate more clearly the capacity in which it pursues treasurers.

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

Dated: December 23, 2004.
Bradley A. Smith,
Chairman, Federal Election Commission.
[FR Doc. 04–28668 Filed 12–30–04; 8:45 am]
BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19969; Directorate Identifier 2004–SW–43–AD; Amendment 39–13923; AD 2004–26–11]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada Model 222, 222B, 222U, 230, and 430 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for the specified Bell Helicopter Textron (BHTC) model helicopters. This action requires certain checks and inspections of the tail rotor blades. If a crack is found, before further flight, this AD requires replacing the tail rotor blade (blade) with an airworthy blade. This amendment is prompted by three reports of cracked blades found during scheduled inspections. The actions specified in this AD are intended to detect a crack in the blade and prevent loss of a blade and subsequent loss of control of the helicopter.

DATES: Effective January 18, 2005.

Comments for inclusion in the Rules Docket must be received on or before March 4, 2005.

ADDRESSES: Use one of the following addresses to submit comments on this AD:

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically;
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically;
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590;
- Fax: (202) 493–2251; or
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may get the service information identified in this AD from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4, telephone (450) 437–2862 or (800) 363–8023, fax (450) 433–0272.

Examining the Docket

You may examine the docket that contains the AD, any comments, and other information on the Internet at *http://dms.dot.gov*, or in person at the Docket Management System (DMS) Docket Offices between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

FOR FURTHER INFORMATION CONTACT: Sharon Miles, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Guidance Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5122, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: This amendment adopts a new AD for the specified BHTC model helicopters. This action requires certain checks and inspections of the blades. If a crack is found, before further flight, this AD requires replacing the blade with an airworthy blade. This amendment is prompted by three reports of cracked blades found during scheduled inspections. This condition, if not detected, could result in loss of a blade and subsequent loss of control of the helicopter.

Transport Canada, the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on the specified BHTC model helicopters. Transport Canada advises of the discovery of cracked blades during scheduled inspections on three occasions. Two cracks originated from the outboard feathering bearing bore underneath the flanged sleeves. The third crack started from the inboard feathering bearing bore. Investigation found that the cracks originated from either a machining burr or a corrosion site in the bearing bore underneath the flanged sleeves.

BHTC has issued Alert Service Bulletin (ASB) No. 222–04–100 for Model 222 and 222B helicopters, No. 222U–04–71 for Model 222U helicopters, No. 230–04–31 for Model 230 helicopters, and No. 430–04–31 for Model 430 helicopters, all dated August 27, 2004. The ASBs specify a repetitive visual inspection every 3 hours time-in-service (TIS) and a 50-hour inspection of the blade root end around the feathering bearings for a crack. Transport Canada classified these ASBs as mandatory and issued AD CF–2004–21, dated October 28, 2004, to ensure the continued airworthiness of these helicopters in Canada.

These helicopter models are manufactured in Canada and are type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, Transport Canada has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

This unsafe condition is likely to exist or develop on other helicopters of the same type designs. Therefore, this AD is being issued to prevent loss of a blade and subsequent loss of control of the helicopter. This AD requires the following:

- Within 3 hours time-in-service (TIS), and at specified intervals, clean and visually check both sides of each blade for a crack in the area around the tail rotor feathering bearing. An owner/operator (pilot) may perform the check for cracked blades. Pilots may perform these checks because they require no tools, can be done by observation, and can be done equally well by a pilot or a mechanic. However, the pilot must enter compliance with these requirements into the helicopter maintenance records by following 14 CFR 43.11 and 91.417(a)(2)(v).
- Within 50 hours TIS and at specified intervals, clean and inspect both sides of each blade for a crack using a 10X or higher magnifying glass.
- If a crack is found even in the paint during a visual check or during a 50-hour TIS inspection, before further flight, a further inspection of the blade for a crack is required as follows:
- Remove the blade. Remove the paint to the bare metal in the area of the suspected crack by using Plastic Metal Blasting (PMB) or a nylon web abrasive pad and abrading the blade surface in a span-wise direction only.
- Using a 10X or higher power magnifying glass, inspect the blade for a crack.
- If a crack is found, before further flight, replace the blade with an airworthy blade.
- If no crack is found in the blade surface, refinish the blade by applying one coat of MIL–P–23377 or MIL–P–85582 Epoxy Polyamide Primer so that the primer overlaps the existing coats

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Enforcement Procedure 2005-5
(DO #22220)

SUBJECT: SOL Dates in CMS

DATE: December 31, 2005

(Note: This procedure replaces Enforcement Procedure 1999-6.)

As you know, CMS provides for the "earliest" and "latest" SOL dates in a case. It is the staff person's responsibility to ensure that CMS reflects the correct dates.

If the dates are incorrect or have changed as a result of a tolling agreement(s), it is the responsibility of the staff person to change the dates in CMS.* We no longer have to notify the Commission before we change the date in CMS.

*(updated in 2008 to reflect new policy)

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Enforcement Procedure 2005-4
(Docs Open #22048)

EMAIL TO: Enforcement Staff

FROM: Rhonda Vosdingh

DATE: December 13, 2005

SUBJECT: Case Closing Procedures

This is to remind you to follow the established procedures for closing out MURs. We depend on another area of the Office, as well as other parts of the agency to ensure that the close-outs go smoothly. And they depend on us to get them the materials in a timely way. So I particularly want to re-emphasize the importance of following the timelines in closing the matters. Please remember that GLA needs the file *before* the final GC report goes to the Commission in Special Press release cases, and that GLA needs the file no later than, and preferably before, the closing letters are sent in regular cases.

I know the majority of you do follow the procedures, and I appreciate your ability to work well with other parts of the Office and agency that are involved when we close a MUR.

If you have any questions about the procedures, please ask your team leader. Thanks.

EMAIL FROM Rhonda Vosdingh—February 28, 2006

In "special press release cases," please notify the Admin Law team (in GLA) as far in advance as possible that the final GCR has been prepared and will be sent to the Commission. Ideally, you should begin communicating with the Admin Law team about these cases before or when you expect the GCR to go to Larry Calvert or myself for review. That gives the Admin Law team time to request the file from docket, begin preparing it, etc. When the proper procedures are not followed, case processing can be unnecessarily delayed.

The current case closure procedures were implemented to help ensure that the important enforcement work you are doing gets the positive attention it deserves from the press and public. If you have any questions about the procedure, please talk to your team leader.

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Enforcement Procedure 2005-2
(see also Enf. Procedure 2003-10 (DO #5775))

October 28, 2005

MEMORANDUM

TO: Enforcement Staff
CELA Staff

FROM: Vincent J. Convery, Jr.
Assistant General Counsel
Administrative Law

SUBJECT: Revisions to Process for Transferring Enforcement Documents

As you may know, I will be leaving the Commission at the end of the year. We in the General Law and Advice Division concluded that now would be a good time to make some revisions to the procedure used in transferring documents to GLA at the conclusion of non-Special Press Release enforcement cases, and to the method of notification used in Special Press Release cases.

Essentially, Enforcement transfers documents to GLA on three occasions: a) when GC Reports must be reviewed and redacted for inclusion in closeout letters; b) when the case file is forwarded; and c) when closeout-related documents are forwarded.

For the past eighteen years, an informal handoff system has worked reasonably well. But, with the growth of the Enforcement Division and the increase in the responsibilities in the Administrative Law Team, it appears that a more formal system would be to our mutual benefit.

Beginning November 1, 2005, we request that you forward documents to us as follows:

1. In non-Special Press Release cases, when you have a General Counsel's Report that must be reviewed for inclusion in a closeout letter, please deliver the GCR to Jackie Crawford. Jackie's desk is located outside Office #401. If she is not present, please drop the document in the green box that is specially designated for Enforcement. Also, be sure to fill out, and leave behind, one of the index cards that you will find there. Your report will be logged in, assigned to a staff person, and reviewed. You will be notified when the report has been reviewed and, if necessary, redacted. Consistent with our current practice, we will give these Reports high priority, subject only to other time-sensitive assignments.

2. You should follow the same procedure with respect to forwarding the files in closed non-Special Press Release cases. When the case has been coded into the system, the attorney or paralegal should deliver the file to Jackie Crawford. It will be logged in,

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assigned to a staff person, and reviewed. If any of the documents associated with the closing of the case (*e.g.*, final GC Report; final Certification; closeout letters; or signed conciliation agreements) had not been included in the case file, they also should be routed through Jackie in the same fashion. Once our review has been completed, we will provide you with copies of the Public Record Index and the proposed Public Record File, as we do now. (We anticipate, in the near future, the installation of software that will permit us to provide the proposed Public Record File electronically.) When the Enforcement Staff Attorney and Team Leader have signed off on the Public Record Index, it should be returned to Jackie.

3. In addition, we request that all staff follow a uniform procedure for advising us that a Special Press Release Case is about to close. You should continue to notify GLA, as far in advance as possible, that the final General Counsel's Report has been prepared and is on track to be sent to the Commission. At that point, we will arrange with Docket for the transfer of the file. Now, some staff members are providing that notification informally. Beginning November 1, 2005, your notification as to a Special Press Release case should be sent by e-mail to Associate General Counsel Tommie Duncan, with "cc" to Jackie Crawford and, until the end of December, to me.

Your help in implementing these three revisions will be appreciated. The next two months should give us ample opportunity to test the process and make any adjustments necessary.

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Enforcement Procedure 2005-1

EMAIL FROM: Rhonda Vosdingh
Associate General Counsel

TO: Enforcement Statt

SUBJECT: Executive Session Prep Meetings

DATE: July 1, 2005

WHO: Staff attorneys who are assigned to cases scheduled for an Executive Session

WHEN: Mondays before Executive Sessions, 2:00

WHERE: 4th floor conference room

I am pleased to let you know that Larry Norton and I, along with all the Enforcement managers, would like to invite staff attorneys whose matters are scheduled for an Executive Session to attend the Monday afternoon prep meetings. Staff attorneys, of course, are expected to know the details of their assigned cases better than anyone else and are responsible for presenting their cases at the Executive Session and fielding questions, comments, etc. from Commissioners. Staff attorneys' presence and participation at the prep meetings can, we believe, facilitate those presentations and responses. An added benefit to assigned staff attending the prep meetings is that with the increased exposure to the General Counsel, you will hear directly from him how he is thinking about particular cases and how he would like to handle particular concerns of Commissioners. I've been told (and indeed this reflects my own experience) that "the information gleaned from those meetings was invaluable, not only with respect to cases on my team which were scheduled to be before the Commission but also about the way those cases fit into the larger scheme of currently active cases as discussed by other Managers and GC Staff."

As I believe most, if not all of you know, these meetings in the past have been limited to the GC, Deputy GC, myself, and other managers. In large part, this restriction was due to space limitations. However, we now have a conference room which will accommodate a larger group of people. For the time being, we will continue our current format, which is that team leaders will continue to present, in the first instance, the cases at the Monday meeting so that you can see how the meetings work. The meetings are held on Mondays before an Executive Session at 2:00 in the 4th floor conference room.

I look forward to the increased participation in these meetings. I think that this new arrangement will benefit everyone from the GC to the staff attorneys. Thanks to April Sands for raising this suggestion again.

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Enforcement Procedure 2004-5 (DO#13466)
(Policy approved 12/16/04—Agenda documents #04-115 and #04-115B)

FEDERAL ELECTION COMMISSION

11 CFR Part 111

[NOTICE 2004 -]

STATEMENT OF POLICY REGARDING

TREASURERS SUBJECT TO ENFORCEMENT PROCEEDINGS

AGENCY: Federal Election Commission.

ACTION: Statement of Policy.

SUMMARY: The Commission is issuing a Policy Statement to clarify when, in the course of an enforcement proceeding (known as a Matter Under Review or "MUR"), a treasurer is subject to Commission action in his or her official or personal capacity, or both. Under this policy, when the Commission investigates alleged violations of the Federal Election Campaign Act, as amended, the Presidential Election Campaign Fund Act, and the Presidential Primary Matching Payment Account Act (collectively "the Act" or "FECA") involving a political committee, the treasurer will typically be subject to Commission action only in his or her official capacity. However, when information indicates that a treasurer has knowingly and willfully violated a provision of the Act or regulations, or has recklessly failed to fulfill duties specifically imposed on treasurers by the Act, or has intentionally

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deprived himself or herself of the operative facts giving rise to the violation, the Commission will consider the treasurer to have acted in a personal capacity and make findings (and pursue conciliation) accordingly. This Policy Statement also addresses situations in which treasurers are subject to Commission action in both their official and personal capacities, and situations where successor treasurers are named.

The goal in adopting this policy is to clarify when a treasurer is subject to Commission action in a personal or official capacity, while at the same time preserving the Commission's ability to obtain an appropriate remedy that will satisfactorily resolve enforcement matters, or to seek relief in court, if necessary, against a live person. Importantly, the policy is grounded in the statutory obligations specifically imposed on treasurers and well-established legal distinctions between official and personal capacity proceedings.

DATE: December 16, 2004.

FOR FURTHER INFORMATION CONTACT: Peter G. Blumberg, Attorney, 999 E Street, NW, Washington, D.C. 20463, (202) 694-1650 or (800) 424-9530.

SUPPLEMENTARY INFORMATION:

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I. Introduction.

The Commission is modifying its current practices to specify more clearly when a treasurer is subject to a Commission enforcement proceeding in his or her "official" and/or "personal" capacity.[1] Specifically, when a complaint asserts sufficient allegations to warrant naming a political committee as a respondent, the committee's current treasurer will also be named as a respondent in his or her official capacity. In these circumstances, reason-to-believe and probable cause findings against the committee will also be accompanied by findings against the current treasurer in his or her official capacity. When the complaint asserts allegations that involve a past or present treasurer's violation of obligations that the Act or regulations impose specifically on treasurers, then that treasurer may, in the circumstances described below, be named in his or her personal capacity, and findings may be made against the treasurer in that capacity. Thus, in some matters the current treasurer could be named in both official and personal capacities. Maintaining the Commission's ability to pursue a treasurer as a respondent in either official or personal capacity allows the Commission discretion to fashion an appropriate remedy for violations of the Act.[2]

Notably, political committees are artificial entities that can act only through their agents, such as their treasurers, and often can be, by their very nature, ephemeral entities

[1] The terms "official capacity" and "representative capacity" are generally interchangeable, as are the terms "personal capacity" and "individual capacity." See McCarthy v. Azure, 22 F.3d 351, 359 n.12 (1st Cir. 1994).
[2] In any scenario, the Commission will, of course, remain free to exercise its prosecutorial discretion not to pursue a respondent. For example, the Commission, in some cases, may decide not to pursue a predecessor treasurer who technically has personal liability where the committee, through its current treasurer, has agreed to pay a sufficient civil penalty and to cease and desist from further violations of the Act.

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that may exist for all practical purposes for a limited period, such as during a single election cycle. Due to these characteristics, identifying a live person who is responsible for representing the committee in an enforcement action is particularly important. Without a live person to provide notice to and/or to attach liability to, the Commission may find itself at a significant disadvantage in protecting the public interest and in ensuring compliance with the laws it is responsible for enforcing. By virtue of their authority to disburse funds and file disclosure reports and to amend those reports, treasurers of committees are in the best position to carry out the requirements of a conciliation agreement such as paying a civil penalty, refunding or disgorging contributions, and amending reports.

The Act designates treasurers to play a unique role in a political committee; indeed, a treasurer is the only office a political committee is required to fill. 2 U.S.C. § 432(a). Without a treasurer, committees cannot undertake the host of activities necessary to carry out their mission, including receiving and disbursing funds and publicly disclosing their finances in periodic reports filed with the Commission. *Id.*; 2 U.S.C. § 434(a)(1). Given this statutory role, especially the authority to receive and disburse funds (*e.g.*, pay a civil penalty, refund improper contributions, disgorge ill-gotten funds) on behalf of the committee, designating the treasurer as the representative of the committee for purposes of compliance with the Act makes sense.

Although the Commission may be entitled to take action as to a treasurer in both an official and individual capacity, in the typical enforcement matter the Commission expects that it will proceed against treasurers only in their official capacities. However, the Commission will consider treasurers parties to enforcement proceedings in their

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personal capacities where information indicates that the treasurer knowingly and willfully violated an obligation that the Act or regulations specifically impose on treasurers or where the treasurer recklessly failed to fulfill the duties imposed by law, or where the treasurer has intentionally deprived himself or herself of the operative facts giving rise to the violation. In these circumstances, the Commission may decide to find reason to believe the treasurer has violated the Act in his or her personal capacity, as well as finding reason to believe the committee violated the Act.

This statement of policy is intended to provide clearer notice to respondents and the public as to the nature of the Commission's enforcement actions, improve the perception of fairness throughout the regulated community, and merge the Commission's treasurer designation into conceptually familiar legal principles for the federal judiciary.[3] The statement first surveys the law on the official/personal capacity distinction; next, addresses when the Commission will proceed as to treasurers in their official or personal capacity or both; and finally, resolves the reoccurring issues of successor treasurers and substitution.

The Commission's Proposed Statement of Policy Regarding Naming of Treasurers in Enforcement Matters was published in the January 28, 2004 *Federal Register*. 69 *Federal Register* 4092 (January 28, 2004). One comment was received. The commenter stated that the Commission's effort to clarify its treasurer naming policy is welcome, but he made several recommendations for how the Commission could assist

[3] As discussed infra Part II., the phrases "official capacity" and "personal capacity" are legal terms of art that permeate such fields as sovereign immunity, bankruptcy, corporations, and federal procedure. Their usage instantaneously identifies for the judiciary when the Commission is pursuing treasurers by virtue of their position, rather than by product of their actions.

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treasurers to better understand their potential personal liability, such as requiring separate notices in instances where a treasurer was named in his or her individual and official capacities, and by enacting the policy's proposals through a rulemaking, rather than a policy statement. The commenter's suggestions were considered, but in order to allow the Commission to retain flexibility in processing its cases, and because the policy statement combined with existing laws and Commission regulations provide sufficient notice to treasurers of their responsibilities, the suggested changes were not implemented.

II. The Official/Personal Capacity Distinction

In the seminal case of Kentucky v. Graham, 473 U.S. 159 (1985), the United States Supreme Court discussed the distinction between official capacity and personal capacity suits. The Court determined that a suit against an officer in her official capacity "generally represent[s] only another way of pleading an action against an entity of which an officer is an agent." Id. at 165. In other words, an official capacity proceeding "is not a suit against the official but rather is a suit against the official's office." Will v. Mich. Dept. of State Police, 491 U.S. 58, 71 (1989). Accordingly, "an official-capacity suit is, in all respects other than name, to be treated as a suit against the entity." Graham, 473 U.S. at 166. Therefore, in an official capacity suit, the plaintiff seeks a remedy from the entity, not the particular officer personally.

A "personal-capacity action is . . . against the individual defendant, rather than . . . the entity that employs him." Id. at 167–68. Since a "[p]ersonal-capacity suit[] seek[s] to impose personal liability upon" a particular individual, the individual is the true party in interest. Id. Liability lies with the particular officer personally, not with the officer's

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position. See id. at 166 n.11 ("Should the official die pending final resolution of a personal-capacity action, the plaintiff would have to pursue his action against the decedent's estate."); see also Hafer v. Melo, 502 U.S. 21, 27 (1991) ("officers sued in their personal capacity come to court as individuals").

The "distinction between claims aimed at a defendant in his individual as opposed to representative capacity can be found across the law." McCarthy, 22 F.3d at 360 (citing numerous Supreme Court, lower court, and state cases referencing differences between individual and official capacity claims in multiple fields of law).[4] The official capacity/individual capacity distinction also carries societal significance. As the McCarthy court explained:

> The ubiquity of the [official capacity/individual capacity] distinction is a reflection of the reality that individuals in our complex society frequently act on behalf of other parties—a reality that often makes it unfair to credit or blame the actor, individually, for such acts. At the same time, the law strikes a wise balance by refusing automatically to saddle a principal with total responsibility for a representative's conduct, come what may, and by declining mechanically to limit an injured party's recourse to the principal alone, regardless of the circumstances.

Id.

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[4] See Graham, 473 U.S. at 165 (42 U.S.C. 1983); Stafford v. Briggs, 444 U.S. 527, 544 (1980) (venue determination); Ex Parte Young, 209 U.S. 123, 159 (1908) (Eleventh Amendment); Northeast Fed. Credit Union v. Neves, 837 F.2d 531, 534 (1st Cir. 1988) (jurisdictional purposes); Pelkoffer v. Deer, 144 B.R. 282, 285–86 (W.D. Pa. 1992) (bankruptcy); Estabrook v. Wetmore, 529 A.2d 956, 958 (N.H. 1987) (applying doctrine that acts of a corporate employee performed in his corporate capacity generally do not form the basis for personal jurisdiction over him in his individual capacity).

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III. Treasurers in Their Official Capacity

Clearly indicating that the current treasurer is a party to an enforcement proceeding in his or her official capacity will improve the Commission's enforcement of the law in a number of ways. Most importantly, it clarifies that findings by the Commission (whether "Reason To Believe" or "Probable Cause To Believe") or the signing of a conciliation agreement only concerns the treasurer in his or her capacity as representative of the committee, not personally. The practice also ensures that a named individual who signs the conciliation agreement on behalf of the committee (or obtains legal representation on behalf of the committee) is the one empowered by law to disburse committee funds to pay a civil penalty, disgorge funds, make refunds, and carry out other monetary remedies that the committee agrees to through the conciliation agreement.[5] Also, naming a treasurer (in his or her official capacity), as opposed to naming simply the office of treasurer or just the committee, not only provides the Commission with an individual in every instance to serve with notices throughout the proceeding, but also results in more accountability on behalf of the committee – that is, a particular person who will ensure that a committee is responsive to Commission findings.[6] Finally, specifying whether a treasurer is a party to an enforcement proceeding in his or her official or personal capacity is consistent with use of these terms as pleading conventions

[5] In the absence of a treasurer, "the financial machinery of the campaign grinds to a halt . . . ." FEC v. Toledano, 317 F.3d 939, 947 (9th Cir. 2003), reh'g denied; see 2 U.S.C. 432(a) ("No expenditure shall be made . . . without the authorization of the treasurer or his or her designated agent."); 11 CFR 102.7(a) (designation of assistant treasurer).

[6] Such accountability may be especially helpful in matters involving committees that tend to be ephemeral – existing for only a short time before permanently disbanding operations.

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in court actions. A probable cause finding against a treasurer in his or her official capacity makes clear to a district court in enforcement litigation that the Commission is seeking relief against the committee, and would only entitle the Commission to obtain a civil penalty from the committee. See Graham, 473 U.S. at 165.

IV. Treasurers in Their Personal Capacities

The Act places certain legal obligations on committee treasurers, the violation of which makes them personally liable.[7] See, e.g., 2 U.S.C. 432(c) (keep an account of various committee records), 432(d) (preserve records for three years), 434(a)(1) (file and sign reports of receipts and disbursements). The Commission's regulations further require treasurers to examine and investigate contributions for evidence of illegality. See 11 CFR 103.3. Due to their "pivotal role," treasurers may be held personally liable for failing to fulfill their responsibilities under the Act and the Commission's regulations. See Toledano, 317 F.3d at 947 ("The Act requires every political committee to have a treasurer, 2 U.S.C. 432(a), and holds him personally responsible for the committee's recordkeeping and reporting duties, id. 432(c)–(d), 434(a) . . . . Federal law makes the treasurer responsible for detecting [facial contribution] illegalities, 11 CFR 103.3(b), and holds him personally liable if he fails to fulfill his responsibilities, see 2 U.S.C. 437g(d) . . . ."); see also FEC v. John A. Dramesi for Cong. Comm., 640 F. Supp. 985 (D.N.J.

[7] If a past or present treasurer violates a prohibition that applies generally to individuals, the treasurer may be named as a respondent in his or her personal capacity, and findings may be made against the treasurer in that capacity. In this way, a treasurer would be treated no differently than any other individual who violates a provision of the Act. The Act and the Commission's regulations apply to any "person," which includes individuals. See, e.g., 2 U.S.C. 432(b) (forward contributions to the committee's treasurer), 441e (receipt of contributions from foreign nationals), and 441f (making and knowingly accepting contributions in the name of another).

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1986) (holding treasurer responsible for failing to "make . . . best efforts to determine the legality of" an excessive contribution); FEC v. Gus Savage for Cong. '82 Comm., 606 F. Supp. 541, 547 (N.D. Ill. 1985) ("It is the treasurer, and not the candidate, who becomes the named defendant in federal court, and subjected to the imposition of penalties ranging from substantial fines to imprisonment."); 104.14(d) ("Each treasurer of a political committee, and any other person required to file any report or statement under these regulations and under the Act shall be personally responsible for the timely and complete filing of the report or statement and for the accuracy of any information or statement contained in it.").

Thus, a treasurer may be named as a respondent in a Matter Under Review in his or her personal capacity, and findings may be made against a treasurer in the same capacity, when the MUR involves the treasurer's violation of a legal obligation that the statute or regulations impose specifically on committee treasurers or when a reasonable inference from the alleged violation is that the treasurer knew, or should have known, about the facts constituting a violation.[8] In practice, however, the Commission intends to consider a treasurer the subject of an enforcement proceeding in his or her personal capacity only when available information (or inferences fairly derived therefrom) indicates that the treasurer had knowledge that his or her conduct violated a duty imposed

[8] Indeed, if FECA were construed to impose liability on treasurers only in their official capacities, it would effectively mean that only committees are liable for violations under the statute – which would have been easy enough for Congress to accomplish by writing the Act to impose reporting, recordkeeping, and other duties on "committees" rather than "treasurers." In fact, in some instances, the Act and the Commission's regulations specifically impose obligations on committees and committee officers and candidates. See, e.g., 2 U.S.C. 441a(f) (receipt of excessive contributions), 11 C.F.R. 104.7(b) (best efforts).

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by law, or where the treasurer recklessly failed to fulfill his or her duties under the act and regulations, or intentionally deprived himself or herself of facts giving rise to the violations. If, at any time in the proceeding, the Commission is persuaded that the treasurer did not act with the requisite state of mind, subsequent findings against the treasurer will only be made in his or her official capacity.[9]

Should the Commission file suit in district court following a finding of probable cause against a treasurer in his or her personal capacity, judicial relief, including an injunction and payment of a civil penalty, could be obtained against the treasurer personally. Graham, 473 U.S. at 166-168. Likewise, when the Commission obtains relief from a treasurer personally, the obligation will follow the individual. Thus, when a treasurer in his or her personal capacity agrees to pay a civil penalty through a conciliation agreement, or is ordered to pay a civil penalty by a district court, a personal obligation exists to pay the civil penalty. (A separate civil penalty would likely be assessed against the committee itself.) Likewise, a cease and desist provision (negotiated through conciliation) or an injunction (imposed by a district court) against a treasurer in his or her personal capacity will still apply to that treasurer in the event he or she subsequently becomes treasurer with another committee. Cf. Sec'y Exch. Comm'n v. Coffey, 493 F.2d 1304, 1311 n.11 (6th Cir. 1974) ("The significance of naming an officer . . . personally is that 'otherwise he is bound only as long as he remains an officer . . .,

[9] Conversely, when a reason-to-believe finding is made against a treasurer in his or her official capacity only, but the potential violations at issue involve obligations specifically imposed by the Act or regulations on treasurers, the notice of the finding will be accompanied by a letter advising that the Commission could later decide to pursue the treasurer in a personal capacity if information shows that the treasurer knowingly and willfully violated the Act, or recklessly failed to fulfill the duties imposed by law, or intentionally deprived himself or herself of the operative facts giving rise to the violation.

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whereas if he is named [personally] he is personally enjoined without limit of time.'") (quoting 6 L. Loss, Securities Regulation 4113 (1969, supp. to 2d ed.)).

V. Treasurers in Both Capacities

There will likely be cases in which the treasurer is subject to Commission action in both his or her official and personal capacity, as explained in supra sections III. and IV. In such cases, the Commission will clearly designate that the findings are being made against the treasurer in both capacities. See, e.g., United States v. Johnson, 541 F.2d 710, 711 (8th Cir. 1976) (applying a similar standard in an action involving the Federal Trade Commission when finding that "[t]he propriety of including a person both as an individual and as a corporate officer in a cease and desist order has consistently been upheld in instances where the person included was instrumental in formulating, directing and controlling the acts and practices of the corporation") (citing Fed. Trade Comm'n v. Standard Ed. Soc'y, 302 U.S. 112 (1937); Standard Distrib. v. Fed. Trade Comm'n, 211 F.2d 7 (2d Cir. 1954); Benrus Watch Co. v. Fed. Trade Comm'n, 352 F.2d 313 (8th Cir. 1965)).

For example, if a complaint alleges a violation such as coordination or receipt of contributions in the name of another, the Commission intends initially to name the treasurer as a respondent only in his or her official capacity. Notably, in these cases the reporting violation stems from the same operative facts as the principal violation. Only if the Commission learns later that the treasurer had knowledge of the operative facts -- for example, the treasurer knew that an in-kind contribution stemming from coordination went unreported – or acted recklessly, or intentionally deprived himself or herself of the

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relevant facts, might the Commission make findings against the treasurer in his or her personal capacity.

In cases where the treasurer is subject to Commission action in both official and personal capacities, the respondents could be named as "John Doe for Congress and Joe Smith, in his official capacity as treasurer and in his personal capacity." Alternatively, the respondents could be named as "John Doe for Congress and Joe Smith, in his official capacity as treasurer" and "Joe Smith, in his personal capacity." Regardless of the form of the notification, where a treasurer has been named in both his or her official and personal capacities, any resulting conciliation agreement would be signed by the treasurer on behalf of both the committee and the treasurer in his or her personal capacity.

VI. Successor Treasurers/Substitution

An issue closely related to the official/personal capacity distinction is whether a successor treasurer may be substituted for a predecessor treasurer in a matter under review. Often the specific individual who was the treasurer at the time of a violation is no longer the treasurer during the enforcement process. Whether the successor treasurer or the predecessor treasurer should be named as the respondent depends on whether the Commission is pursuing the treasurer in his or her official capacity, personal capacity, or both.

Currently, when OGC discovers that a committee has changed treasurers after the date of the activity on which the finding was based, OGC typically notes the change of treasurer, the date of the change, the former treasurer's name, and indicates whether an amendment was made to the Statement of Organization in OGC's next report to the

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Commission. If a treasurer change is made after a finding of reason to believe, then OGC typically includes the new treasurer and notes the change in its next report on the matter. If a treasurer change is made after a finding of probable cause to believe, OGC sends the new treasurer a supplemental probable cause brief (incorporating the prior probable cause brief), which states that the Commission found probable cause to believe against the committee and the treasurer's predecessor and will recommend probable cause against the new treasurer. After receiving a response or waiting until the expiration of the response period, OGC typically returns to the Commission with a recommendation as to the new treasurer.

When the Commission pursues a current treasurer in his or her official capacity, successor treasurers will be substituted for the predecessor treasurer. In such cases, the Commission is pursuing the official position (and, therefore, the entity), not the individual holding the position. See Will, 491 U.S. at 71. Because an official capacity action is an action against the treasurer's position, the Commission may summarily substitute a new treasurer in his or her official capacity at any stage prior to a finding of probable cause to believe.[10]

When a predecessor treasurer may be personally liable, the Commission could pursue the predecessor treasurer individually, and not substitute the successor treasurer for the predecessor treasurer individually. See fn. 7; Graham, 473 U.S. at 167–68. There

[10] Pursuant to the final policy, the Commission is not legally obligated to undertake the requirements of 2 U.S.C. 437g(a)(3) when a successor treasurer begins his or her position; although not legally required to do so, the Commission would intend to inform a new treasurer of the pending action and make copies of the briefs available to the successor treasurer.

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would be no legal basis for imputing personal liability from a predecessor treasurer's misconduct to a successor treasurer who did not personally engage in the misconduct.

If the Commission were to pursue a treasurer both officially and personally and this treasurer is later replaced, the Commission could pursue the predecessor treasurer for any violations for which he or she is personally liable, and substitute the successor treasurer for official capacity violations. Absent some independent basis of liability, the Commission does not intend to pursue intermediate treasurers.[11] See Cal. Democratic Party v. FEC, 13 F. Supp. 2d 1031, 1037 (E.D. Cal. 1998) (dismissing individual capacity claims against a former treasurer because "there is no allegation that [the treasurer] violated any personal obligation" and dismissing official capacity claims against him "since [he] is no longer treasurer . . . and thus, is not the appropriate person against whom an official capacity suit can be maintained . . . .").[12]

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[11] For example, while Treasurer A is the treasurer for Joe Smith for Congress, a violation occurs that subjects A to official liability and potentially to individual liability. Treasurer A would be named in his official capacity and notified in a reason-to-believe notification of the potential for personal liability. After the enforcement action has begun, Treasurer A resigns and Treasurer B takes over. The Commission would pursue Treasurer B in her official capacity, and if the circumstances warranted, Treasurer A in his individual capacity. If Treasurer B resigns and is succeeded by Treasurer C prior to the conclusion of the enforcement matter, the Commission would then continue to pursue Treasurer A in his individual capacity and pursue Treasurer C in her official capacity. Treasurer B would no longer be named in her official capacity.

[12] A deeper examination of the court file indicates that—despite the California Democratic Party court's assertion to the contrary—the Commission never actually pled that the treasurer in this case was personally liable. Rather, the complaint references the treasurer "as treasurer" and the Commission's response to the treasurer's motion to dismiss indicates that the Commission was pursuing the treasurer "in his official capacity." Compl., paragraphs 8, 58–59, Prayer paragraphs 1–5; Resp. to Def. Mot. to Dismiss, p. 21. However, the court's statement in California Democratic Party underscores the need for the Commission to delineate more clearly the capacity in which it pursues treasurers.

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VII. Conclusion

Effective as of the date this Policy Statement is published in the Federal Register, and as more fully explained above, the Commission will consider treasurers of political committees subject to enforcement proceedings as follows:

1. In enforcement proceedings where a political committee is a respondent, the committee's current treasurer will be subject to Commission action "in (his or her) official capacity as treasurer."
2. In enforcement proceedings where information indicates that a treasurer (past or present) of a political committee (a) knowingly and willfully violated the Act or regulations, (b) recklessly failed to fulfill the duties imposed by a provision of the Act or regulations that applies specifically to treasurers, or (c) intentionally deprived himself or herself of the operative facts giving rise to a violation, the treasurer may be subject to Commission action "in (his or her) personal capacity."
3. In enforcement proceedings where information indicates that a treasurer of a political committee is subject to findings in both an official and personal capacity (*i.e.*, information indicates that the committee's current treasurer violated the Act or regulations with the requisite state of mind described in #2 above), the current treasurer may be subject to Commission action in *both* an official and personal capacity.
4. When the Commission makes findings as to a treasurer in his or her official capacity, successor treasurers will be substituted as if the findings had been made as to the successor.

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ENFORCEMENT PROCEDURE 2004-4

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Proposals for Changes to the	)	Agenda Document No. X04-49
Civil Penalty Formula for	)	
Reporting Violations	)	

CERTIFICATION

I, Darlene Harris, recording secretary for the Federal Election Commission executive session on December 14, 2004, do hereby certify that the Commission decided by a vote of 5-0 to adopt the formula for calculating "out-the-door" penalties for violations of 2 U.S.C. § 434(b) and related provisions, as described in the General Counsel's memorandum dated December 8, 2004, and set forth in the document attached thereto, subject to the following revisions:

1. Include in the category "Examples of Mitigating Factors" a statement which reads: "Respondent lacks substantial knowledge of Commission rules and procedures;"
2. Delete from the category "Examples of Aggravating Factors" the statement which reads: "Respondent has substantial knowledge of Commission rules and procedures;"
3. Apply a civil penalty cap to matters in which there are no aggravating factors present.

Commissioners Mason, McDonald, Smith, Thomas, and Weintraub voted affirmatively for the decision. Commissioner Toner did not vote.

Attest:

December 15, 2004
Date

Darlene Harris
Darlene Harris
Deputy Secretary of the Commission

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Enforcement Procedure 2004-4 (Revised 7/09)

OPENING SETTLEMENT OFFER FORMULA FOR 2 U.S.C. § 434(b) REPORTING VIOLATIONS

(approved 12/14/04)

(Note: the statutory penalty amounts were revised on 7/1/09 pursuant to the Civil Monetary Penalties Inflation Adjustments)

KNOWING & WILLFUL REPORTING VIOLATIONS
• The opening settlement offer for all knowing & willful reporting violations is $16,000 (formerly $11,000) or 200% of the amount in violation, whichever is greater.

NON-KNOWING & WILLFUL REPORTING VIOLATIONS		
Category	Type of Violation	Opening Settlement Offer
Level 1	• Failure to report any transaction. • Reporting a transaction that did not occur. • Failure to report or itemize the existence of an outstanding debt or other obligation. • Failure to report total amount of receipts, disbursements, cash-on-hand, or contributions on summary page/detailed summary page. • Failure to itemize a contribution. • Failure to include occupation and name of employer information (where not rebutted by the "best efforts" safe harbor).	Base: The greater of $7,500 (formerly $5,500) or 20% of the aggregate amount of such violations ($250,000 maximum absent aggravating factors)
Level 2	• All other reporting violations not included in Level 1.	Base: The greater of $7,500 (formerly $5,500) or 15% of the aggregate amount of such violations ($250,000 maximum absent aggravating factors)

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OPENING SETTLEMENT OFFER FORMULA FOR 2 U.S.C. § 434(b) REPORTING VIOLATIONS (continued)

Pre-Probable Cause Discount

- Deduct 25% from the "Opening Settlement Offer" at the pre-probable cause to believe stage OR at probable cause where there was no attempt at pre-probable cause conciliation
  Note: In cases where the "Opening Settlement Offer" is calculated to be more than $250,000 and there are no aggravating factors, the 25% discount is applied to the maximum $250,000 cap, not to the total amount calculated. For example, if after applying the formula (15 or 20%) the "Opening Settlement Offer" is calculated to be $300,000, take the $300,000 and first apply the cap so that the penalty is now $250,000. Then, apply the 25% discount to the cap, resulting in an $187,500 opening offer civil penalty.

Examples of Mitigating Factors

- Respondent cooperates in rectifying the violations.
- Inaccurate or incomplete reports amended after complaint or referral but before RTB.
- Matter generated as a *sua sponte* submission.
- Disclosure of the information at issue was made before the election in one or more reports, but was omitted only from the report at issue.
- Respondent lacks knowledge of Commission rules and procedures.

Examples of Aggravating Factors

- Respondent previously entered into a conciliation agreement, or received an admonishment letter, regarding the same or similar violations.
- Reporting error/omission is on an election-sensitive (i.e., pre-primary, pre-general, or October quarterly) report.

Violations Warranting Dismissal

- Mathematical and typographical errors except in exceptional circumstances.
- Where the respondent takes complete and correct remedial action by amending a non-election sensitive report prior to a complaint or the next applicable election, absent exceptional circumstances, and the amendment has not triggered, or is not about to trigger, a Request for Additional Information.

Double Counting

- Where the reporting violation involved the same operative facts as a violation of another provision of the Act, the recommended out-the-door amount is based on the formula for the substantive violation plus the addition of *either* $7,500 (formerly $5,500) or the formula amount for the reporting violation, whichever is less. In knowing and willful cases, the reporting component of the opening settlement offer will be $16,000 (formerly $11,000).

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OPENING SETTLEMENT OFFER FORMULA FOR 2 U.S.C. § 434(b) REPORTING VIOLATIONS (continued)

- Where multiple reporting violations arise from the same transaction, only count once. Example: for failure to report a $6,000 in-kind contribution, amount in violation is only $6,000, not $12,000 (the amount of the misreported receipt and the misreported in-kind "disbursement").

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Enforcement Procedure 2004-2
Docs Open #9250

June 8, 2004

MEMORANDUM

TO: Enforcement Staff

FROM: Maura Callaway
Special Assistant

SUBJECT: Requests to RAD for assistance

Starting immediately, all requests to RAD for assistance should be sent to the appropriate branch chief, rather than directly to the RAD analyst. The branch chief for authorized committees is Barry Conway and the branch chief for unauthorized (party/non-party) committees is Debbie Chacona.

In addition, please do not ask RAD for copies of Requests for Additional Information ("RFAIs"), Informational Notices ("Ins"), or copies of reports. Since this information is on the public record, you can obtain it yourself from the Commission's webpage or locate it through the INQY process.

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Enforcement Procedure 2004-1
(updated 2/4/04, 3/11/04 and 3/06)

February 4, 2004

Email From: **Lawrence Calvert**

To: **Enforcement Staff**

Subject: **New Addition to Closeout Procedures re: emails to Commissioners when Cases Close**

Not long ago, in the wake of Sierra Club and other matters where the Commission split 3-3 on express advocacy, Rhonda and I discussed with the team leaders reinstating a practice that had fallen into disuse: sending a memo even in 3-3 split cases reminding the Commission that SORs were necessary.

This EM describes a new procedure, effective immediately, that supersedes that discussion. We have received feedback from the 9th floor indicating that some Commissioners would like reminders whenever **any** matter is closed so that they will know whether statements of reasons are required. So:

Effective immediately, when the letters to close the entire file in a matter are sent, the staff person must send an EM to Commissioners, Commissioner EAs, and Commissioner SAs -- with cc's to Deputy GC, Associate GC for Enforcement, and all GLA staff. This EM should state the case number, the name of the primary respondent, and the date the close-out letters were mailed. In addition, the EM should:

1. Remind Commissioners that the matter is now closed, and that the file in the matter may be made public within 30 days or less.

2. State whether or not a statement of reasons is required, and why. If the statement of reasons is one we will be drafting pursuant to the policy on statements of reasons set forth at Addendum O to the Enforcement Manual, the EM should state that a draft statement of reasons will be circulated shortly.

By all means, run the EM by your team leader before sending.

My understanding is that GLA will send a second EM when the file is about a week from going public.

Email from Larry Calvert on 2/4/04—Modification to Prior EM
I believe the earlier EM stated that you should EM the Commissioners, etc. when you get the closing cert. I should have said that you should EM the Commissioners once you've sent the closeout letters, and that the EM should state the date the letters when out (which you'll know when you get your dated filed copies). This is because under out reg's the GLA staff has 30 days from that date to make the file public. Sorry for the confusion.)

Email from Associate GC on3/11/04:
Please include both the case number and the primary respondent's name

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2003

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SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing that it will hold five workshops from September through October, 2003, to discuss the upcoming implementation of the interim final rule, "Control of Listeria monocytogenes in Ready-to-Eat Meat and Poultry Products," (68 FR 34208), which is effective on October 6, 2003. The provisions of the rule require official establishments that produce certain ready-to-eat (RTE) meat and poultry products to prevent product adulteration by the pathogenic environmental contaminant Listeria monocytogenes (L. monocytogenes).

The focus of the upcoming workshops will be on how small and very small plants can comply with the new regulations. Key elements of the implementation of the final rule will be addressed, and there will be an opportunity to ask questions and seek additional information. FSIS has held similar workshops in the past for small and very small plants as a means of helping such plants, which may have fewer resources than large plants, to comply with FSIS requirements.

DATES: The workshops will be held on September 13, 20, and October 4, 2003.

ADDRESSES: On September 13, workshops will be held in Raleigh, North Carolina and Bridgeport, Connecticut; on September 20, a workshop will be held in Kansas City, Kansas; and on October 4, workshops will be held in Albuquerque, New Mexico and Oakland, California. (Additional information will be provided at a later date.)

FOR FURTHER INFORMATION CONTACT: Pre-registration for the workshops is suggested. To register, please contact Ms. Sheila Johnson of the FSIS Strategic Initiatives, Partnership and Outreach Staff at (202) 690–6498, fax: (202) 690–6500, or e-mail: *Sheila.Johnson@fsis.usda.gov*. For technical information, please contact Michaelle Fisher at (401) 221–7400, or email: *michaelle.fisher@fsis.usda.gov*. If a sign language interpreter or other special accommodations are required, please contact Ms. Sheila Johnson, no later than September 5.

SUPPLEMENTARY INFORMATION: On June 6, 2003, FSIS published an interim final rule, "Control of Listeria monocytogenes in Ready-to-Eat Meat and Poultry Products," (68 FR 34208), which will become effective October 6, 2003. The rule establishes regulations that require official establishments that produce RTE meat and poultry products to prevent product adulteration by the pathogenic environmental contaminant L. monocytogenes. Under the new regulations, all establishments that produce RTE meat and poultry products that are exposed to the environment after lethality treatments and that support the growth of L. monocytogenes are to have controls that prevent product adulteration by L. monocytogenes in their hazard analysis and critical control point (HACCP) plans, in their sanitation standard operating procedures, or in prerequisite programs. Establishments are also required to maintain and share with FSIS data and information relevant to their controls for L. monocytogenes. Additionally, the new regulations permit an establishment to make claims on the labels of the RTE products regarding the processes used to eliminate or reduce L. monocytogenes or suppress or limit its growth in the products.

The workshops are designed to provide an overview of the final rule to owners and managers of small and very small Federal and State establishments. In addition, the workshops will give all stakeholders a more in-depth understanding of the three compliance alternatives, the sampling provisions, recordkeeping requirements, the use of labeling claims, how to comply with the validation provisions of the regulations, and how to prepare supporting documentation for their hazard analyses. The meeting will also provide the opportunity to discuss additional ways of ensuring that small and very small plants receive the assistance they need to successfully respond to the final rule.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it and make copies of this **Federal Register** publication available through the FSIS Constituent Update. FSIS provides a weekly Constituent Update, which is communicated via Listserv, a free e-mail subscription service. In addition, the update is available on-line through the FSIS Web page located at *http://www.fsis.usda.gov*. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent Listserv consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through the Listserv and Web page, FSIS is able to provide information to a much broader, more diverse audience.

For more information contact the Congressional and Public Affairs Office, at (202) 720–9113. To be added to the free e-mail subscription service (Listserv) go to the "Constituent Update" page on the FSIS Web site at *http://www.fsis.usda.gov/oa/update/update.htm*. Click on the "Subscribe to the Constituent Update Listserv" link, then fill out and submit the form.

Done in Washington, DC on August 18, 2003.

Garry L. McKee,

Administrator.

[FR Doc. 03–21483 Filed 8–21–03; 8:45 am]

BILLING CODE 3410–DM–P

FEDERAL ELECTION COMMISSION

11 CFR Part 111

[Notice 2003–15]

Statement of Policy Regarding Deposition Transcriptions in Nonpublic Investigations

AGENCY: Federal Election Commission.

ACTION: Statement of policy.

SUMMARY: The Federal Election Commission announces an alteration to its historic practice with regard to transcripts of depositions in enforcement matters to permit deponents to obtain a copy of the transcript of their own deposition so long as there is no good cause to limit the deponent to an opportunity to review and sign the transcript.

EFFECTIVE DATE: August 22, 2003.

FOR FURTHER INFORMATION CONTACT: Lawrence L. Calvert, Deputy Associate General Counsel for Enforcement, Federal Election Commission, 999 E Street NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: When Federal Election Commission attorneys take a deponent's sworn testimony at an enforcement deposition authorized by 2 U.S.C. 437d(a)(4), only the deponent and his or her counsel may attend. Under historic practice, the deponent has the right to review and sign the transcript. 11 CFR 111.12(c) (applying Fed. R. Civ. P. 30(e) to Commission enforcement depositions). However, a deponent who is also a respondent is not currently allowed to obtain a copy of, or take notes when reviewing, his or her own transcript unless and until the General Counsel has transmitted, pursuant to 2 U.S.C. 437g(a)(3), a brief

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recommending that the Commission find probable cause to believe that the respondent has violated or is about to violate the Federal Election Campaign Act of 1971, as amended ("the Act"), or Chapters 95 or 96 of Title 26, U.S. Code. The Office of General Counsel does not currently offer other deponents an opportunity to obtain their transcripts; once the entire matter has been closed, other deponents can copy the transcript at their own expense if the transcript is made part of the public record.

The Commission recently invited the public to comment on various aspects of the agency's enforcement practices, including whether and when transcripts of depositions should be released and to whom. *See* "Enforcement Procedures," Notice 2003-9, 68 FR 23311 (May 1, 2003). One possible change in practice included in the notice was for the Office of General Counsel to routinely allow deponents who are also respondents to procure immediately a copy of their own transcripts unless, on a case-by-case basis, the General Counsel concluded (or the Commission concluded, on the recommendation of the General Counsel) that it was necessary to the successful completion of the investigation to withhold the transcript until completion of the investigation.

On June 11, 2003, the Commission held a public hearing on its enforcement practices. At the hearing, counsel for the regulated community suggested changes to the agency's enforcement procedures, including its deposition policy. Some of those testifying suggested that deponents be allowed to obtain copies of their own depositions immediately after the deposition, contrary to the historic practice. Several of these commenters also noted that the Commission's practice regarding depositions contrasts with that of some other civil law enforcement agencies during the investigative stage of their proceedings.

The Commission is governed, in part, by the Administrative Procedure Act (APA). Under the APA, "[a] person compelled to submit data or evidence is entitled to retain or, on payment of lawfully proscribed costs, procure a copy or transcript thereof, except that in a nonpublic investigatory proceeding the witness may for good cause be limited to inspection of the official transcript of his testimony." 5 U.S.C. 555(c). One example of "good cause" recognized by courts is a concern that witnesses still to be examined might be coached. *See Commercial Capital Corp. v. SEC*, 360 F.2d 856, 858 (7th Cir. 1966). In the past, all open investigations have been considered as falling within the APA's good-cause exception based on the potential for deponents to share their testimony with third parties. The Commission and its Office of General Counsel have also been mindful of the Federal Election Campaign Act's requirement that ongoing investigations be kept confidential.[1]

Other federal agencies that conduct nonpublic investigations have adopted policies that interpret the APA's good-cause exception more narrowly. For example, in 1964 the Federal Communications Commission adopted a policy whereby: "In any matter pending before the Commission, any person submitting data or evidence, whether acting under compulsion or voluntarily, shall have the right to retain a copy thereof, or to procure a copy * * * of any transcript made of his testimony, upon payment of the charges therefor to the person furnishing the same, which person may be designated by the Commission. The Commission itself shall not be responsible for furnishing the copies." 47 CFR 1.10. In 1972, the Securities and Exchange Commission adopted its current rule on this subject, which is similar to the FCC's. *See* 17 CFR 203.6. Likewise, the practice of the Commodity Futures Trading Commission is governed by 17 CFR 11.7(b), which states: "A person compelled to submit data or evidence in the course of an investigatory proceeding shall be entitled to retain or, upon payment of appropriate fees * * * procure a copy or transcript thereof, except that the witness may for good cause be limited to inspection of the official transcript of his testimony."

After carefully reviewing the comments submitted to it on this matter and considering the experience of other federal agencies regarding deposition transcripts in nonpublic investigations, the Commission hereby announces that, from the date of publication of this notice, it will permit deponents in enforcement matters to obtain, upon request to the Office of General Counsel, a copy of the transcript of their own deposition. The Commission has determined that it can maintain the integrity of its investigations even if current practice is altered, so long as access to transcripts may still be denied upon determination that good cause exists for doing so, and so long as third-party witnesses (or deponents who are also respondents in matters with multiple respondents) are granted access to their transcripts subject to the confidentiality requirements of the Act.

Accordingly, in all matters open and pending before the Commission on or after the date of publication of this notice, a deponent may, in writing, request a copy of his or her own deposition transcript. The request may be made at any time after the deposition concludes. The Office of General Counsel will review the request and, absent good cause to the contrary, it will notify the deponent and the court reporter in writing that the deponent may obtain a copy of the transcript, at his or her own cost, from the court reporter. If the Associate General Counsel or her deputy determined that there was reason to invoke the good-cause exception, this Office would notify the deponent and the Commission. This change would not in any way affect 11 CFR 111.12(c).

Dated: August 18, 2003.

Michael E. Toner,

Commissioner, Federal Election Commission.

[FR Doc. 03-21543 Filed 8-21-03; 8:45 am]

BILLING CODE 6715-01-P

[1] Under 2 U.S.C. 437g(a)(12): "Any notification or investigation made under this section shall not be made public by the Commission or by any person without the written consent of the person receiving such notification or the person with respect to whom such investigation is made. Any member or employee of the Commission, or any other person, who violates the provisions * * * shall be fined not more than $2,000. Any such member, employee, or other person who knowingly and willfully violates the provisions * * * shall be fined not more than $5,000."

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000-CE-17-AD; Amendment 39-13279; AD 2003-17-05]

RIN 2120-AA64

Airworthiness Directives; Short Brothers and Harland Ltd. Models SC-7 Series 2 and SC-7 Series 3 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Short Brothers and Harland Ltd. (Shorts) Models SC-7 Series 2 and SC-7 Series 3 airplanes. This AD establishes a technical service life for these airplanes and allows you to incorporate modifications, inspections, and replacements of certain life limited items to extend the life limits of these airplanes. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for

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2003-11

issued by the Small Business Administration at 13 CFR part 121.

Backfit Analysis

The NRC has determined that the backfit rule (10 CFR 50.109 or 10 CFR 72.62) does not apply to this direct final rule because this amendment does not involve any provisions that would impose backfits as defined. Therefore, a backfit analysis is not required.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED WASTE GREATER THAN CLASS C WASTE

■ 1. The authority citation for part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

■ 2. In § 72.214, Certificate of Compliance 1004 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1004.

Initial Certificate Effective Date: January 23, 1995.

Amendment Number 1 Effective Date: April 27, 2000.

Amendment Number 2 Effective Date: September 5, 2000.

Amendment Number 3 Effective Date: September 12, 2001.

Amendment Number 4 Effective Date: February 12, 2002.

Amendment Number 5 Effective Date: [Reserved].

Amendment Number 6 Effective Date: December 22, 2003.

Amendment Number 7 Effective Date: March 2, 2004.

SAR Submitted by: Transnuclear, Inc.

SAR Title: Final Safety Analysis Report for the Standardized NUHOMS® Horizontal Modular Storage System for Irradiated Nuclear Fuel.

Docket Number: 72–1004.

Certificate Expiration Date: January 23, 2015.

Model Number: Standardized NUHOMS®–24P, NUHOMS® –52B, NUHOMS®–61BT, NUHOMS®–32PT, and NUHOMS® –24PHB.

* * * * *

Dated at Rockville, Maryland, this 19th day of November, 2003.

For the Nuclear Regulatory Commission.

William F. Kane,

Acting Executive Director for Operations.

[FR Doc. 03–31207 Filed 12–17–03; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL ELECTION COMMISSION

11 CFR Parts 4 and 111

[Notice 2003–25]

Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files

AGENCY: Federal Election Commission.

ACTION: Statement of policy.

SUMMARY: The Commission is adopting an interim policy with respect to placing closed files on the public record in enforcement, administrative fines, and alternative dispute resolution cases. The categories of records that will be included in the public record are described below. This is an interim policy only; the Commission will conduct a rulemaking in this respect, with full opportunity for public comment, in 2004.

EFFECTIVE DATE: January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Vincent J. Convery, Jr., Assistant General Counsel, 999 E Street, NW., Washington, DC 20463, 202–694–1650 or 1–800–424–9530.

SUPPLEMENTARY INFORMATION: The "confidentiality provision" of the Federal Election Campaign Act, 2 U.S.C. 431 *et seq.*, (FECA), provides that: "Any notification or investigation under [Section 437g] shall not be made public by the Commission * * * without the written consent of the person receiving such notification or the person with respect to whom such investigation is made." 2 U.S.C. 437g(a)(12)(A). For approximately the first twenty-five years of its existence, the Commission viewed the confidentiality requirement as ending with the termination of a case. The Commission placed on its public record the documents that had been considered by the Commissioners in their determination of a case, minus those materials exempt from disclosure under the FECA or under the Freedom of Information Act, 5 U.S.C. 552, (FOIA). *See* 11 CFR 5.4(a)(4). In *AFL-CIO* v. *FEC*, 177 F.Supp.2d 48 (D.D.C. 2001), the district court disagreed with the Commission's interpretation of the confidentiality provision and found that the protection of section 437g(a)(12)(A) does not lapse at the time the Commission terminates an investigation. 177 F.Supp.2d at 56.

Following that district court decision, the Commission placed on the public record only those documents that reflected the agency's "final determination" with respect to enforcement matters. Such disclosure is required under section 437g(a)(4)(B)(ii) of the FECA and section (a)(2)(A) of the FOIA. In all cases, the final determination is evidenced by a certification of Commission vote. The Commission also continued to disclose documents that explained the basis for the final determination. Depending upon the nature of the case, those documents consisted of General Counsel's Reports (frequently in redacted form); Probable Cause to Believe Briefs; conciliation agreements;

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Statements of Reasons issued by one or more of the Commissioners; or, a combination of the foregoing. The district court indicated that the Commission was free to release these categories of documents. *See* 177 F.Supp.2d at 54 n.11. In administrative fines cases, the Commission began placing on the public record only the Final Determination Recommendation and certification of vote on final determination. In alternative dispute resolution cases, the public record consisted of the certification of vote and the negotiated agreement.

Although it affirmed the judgment of the district court in *AFL-CIO*, the Court of Appeals for the District of Columbia Circuit differed with the lower court's restrictive interpretation of the confidentiality provision of 2 U.S.C. 437g(a)(12)(A). The Court of Appeals stated that: "the Commission may well be correct that * * * Congress merely intended to prevent disclosure of the fact that an investigation is pending," and that: "deterring future violations and promoting Commission accountability may well justify releasing more information than the minimum disclosures required by section 437g(a)." *See AFL-CIO* v. *FEC*, 333 F.3d 168 (D.C. Cir. 2003) at 174, 179. However, the Court of Appeals warned that, in releasing enforcement information to the public, the Commission must "attempt to avoid unnecessarily infringing on First Amendment interests where it regularly subpoenas materials of a 'delicate nature * * * represent[ing] the very heart of the organism which the first amendment was intended to nurture and protect.'" *Id.* at 179. (Citation omitted). The decision suggested that, with respect to materials of this nature, a "balancing" of competing interests is required—on one hand, consideration of the Commission's interest in promoting its own accountability and in deterring future violations and, on the other, consideration of the respondent's interest in the privacy of association and belief guaranteed by the First Amendment. Noting that the Commission had failed to tailor its disclosure policy to avoid unnecessarily burdening the First Amendment rights of the political organizations it investigates, *id.* at 178, the Court found the agency's disclosure regulation at 11 CFR 5.4(a)(4) to be impermissible. *Id.* at 179.

The Commission is issuing this interim policy statement to identify several categories of documents integral to its decisionmaking process that will be disclosed upon termination of an enforcement matter. The categories of documents that the Commission intends to disclose either do not implicate the Court's concerns, *e.g.*, categories 8, 9 and 10, or, because they play a critical role in the resolution of a matter, the balance tilts decidedly in favor of public disclosure, even if the documents reveal some confidential information.

With respect to enforcement matters, the Commission will place the following categories of documents on the public record:

1. Complaint or internal agency referral;
2. Response to complaint;
3. General Counsel's Reports that recommend dismissal, reason to believe, no reason to believe, no action at this time, probable cause to believe, no probable cause to believe, no further action, or acceptance of a conciliation agreement;
4. Notification of reason to believe findings (including Factual and Legal Analysis);
5. Respondent's response to reason to believe findings;
6. Briefs (General Counsel's Brief and Respondent's Brief);
7. Statements of Reasons;
8. Conciliation Agreements;
9. Evidence of payment of civil penalty or of disgorgement; and
10. Certifications of Commission votes.

In addition, the Commission will make certain other documents available which will assist the public in understanding the record without intruding upon the associational interests of the respondents. These are:

1. Designations of counsel;
2. Requests for extensions of time;
3. Responses to requests for extensions of time; and
4. Closeout letters.

The Commission is placing the foregoing categories of documents on the public record in all matters it closes on or after January 1, 2004.

The Commission is not placing on the public record certain other materials from its investigative files, such as subpoenaed records, deposition transcripts, and other records produced in discovery, even if those evidentiary documents are referenced in, or attached to, documents specifically subject to release under this interim practice. Release of these underlying evidentiary documents may require a closer balancing of the competing interests cited by the D.C. Circuit. Accordingly, the Commission will consider the appropriateness of disclosing these materials only after a full rulemaking with the opportunity for public comment. However, if a document or record is referenced in, or attached to, a document specifically subject to release under this interim practice, that document or record will be disclosed if it is, or was, otherwise publicly available.

The Commission will place documents on the public record in all cases that are closed, regardless of the outcome. By doing so, the Commission complies with the requirements of 2 U.S.C. 437g(a)(4)(B)(ii) and 5 U.S.C. 552(a)(2)(A). Conciliation Agreements are placed on the public record pursuant to 2 U.S.C. 437g(a)(4)(B)(ii).

The Commission will place these documents on the public record as soon as practicable, and will endeavor to do so within thirty days of the date on which notifications are sent to complainant and respondent. *See* 11 CFR 111.20(a). In the event a Statement of Reasons is required, but has not been issued before the date proposed for the release the remainder of the documents in a matter, those documents will be placed on the public record and the Statement of Reasons will be added to the file when issued.

With respect to administrative fines cases, the Commission will place the entire administrative file on the public record, which includes the following:

1. Reason to Believe recommendation;
2. Respondent's response;
3. Reviewing Officer's memoranda to the Commission;
4. Final Determination recommendation;
5. Certifications of Commission votes;
6. Statements of Reasons;
7. Evidence of payment of fine; and
8. Referral to Department of the Treasury.

With respect to alternative dispute resolution (ADR) cases, the Commission will place the following categories of documents on the public record:

1. Complaint or internal agency referral;
2. Response to complaint;
3. ADR Office's case analysis report to the Commission;
4. Notification to respondent that case has been assigned to ADR;
5. Letter or Commitment Form from respondent participating in the ADR program;
6. ADR Office recommendation as to settlement;
7. Certifications of Commission votes;
8. Negotiated settlement agreement; and
9. Evidence of compliance with terms of settlement.

When disclosing documents in administrative fines and alternative dispute resolution cases, the Commission will release publicly available records that are referenced in,

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or attached to, documents specifically subject to release under this interim practice.

With this interim policy, the Commission intends to provide guidance to outside counsel, the news media, and others seeking to understand the Commission's disposition of enforcement, administrative fines, and alternative dispute resolution cases and, thus, to enhance their ability to assess particular matters in light of past decisions. In all matters, the Commission will continue to redact information that is exempt from disclosure under the FECA and the FOIA.

As discussed above, the Commission hereby is announcing an interim policy. A rulemaking, with full opportunity for public comment, will be initiated in 2004.

Dated: December 12, 2003.

Ellen L. Weintraub,

Chair, Federal Election Commission.

[FR Doc. 03-31241 Filed 12-17-03; 8:45 am]

BILLING CODE 6715-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001-NM-266-AD; Amendment 39-13388; AD 2003-25-05]

RIN 2120-AA64

Airworthiness Directives; Bombardier Model DHC-8-102, -103, -106, -201, -202, -301, -311, and -315 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Bombardier DHC-8-102, -103, -106, -201, -202, -301, -311, and -315 airplanes, that currently requires inspections to detect breakage in the struts of the rear mount strut assemblies on the left and right engine nacelles, and replacement of any broken struts. The existing AD also requires eventual replacement of all currently installed struts with new and/or reworked struts, as terminating action for the inspections. The amendment requires new repetitive inspections of the strut assemblies for cracking of struts replaced per the existing AD, and replacement of any cracked strut with a new, machined strut. The amendment also changes the applicability of the existing AD by adding certain airplanes and removing certain other airplanes, and includes an optional terminating action for the repetitive inspections. The actions specified by this AD are intended to prevent failure of the engine rear mount struts, which could result in reduced structural integrity of the nacelle and engine support structure. This action is intended to address the identified unsafe conditions.

DATES: Effective January 22, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 22, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jon Hjelm, Aerospace Engineer, Airframe Branch, ANE-171, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256-7523; fax (516) 568-2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 94-04-09, amendment 39-8829 (59 FR 8393, February 22, 1994), which is applicable to certain Bombardier Model DHC-8-100 and DHC-8-300 airplanes, was published in the **Federal Register** on October 9, 2003 (68 FR 58283). The action proposed to require new repetitive inspections of the strut assemblies for cracking of struts replaced per the existing AD, and replacement of any cracked strut with a new, machined strut. The action also proposed to change the applicability of the existing AD by adding certain airplanes and removing certain other airplanes, and proposed to include an optional terminating action for the repetitive inspections.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 192 airplanes of U.S. registry that will be affected by this AD.

The actions that are currently required by AD 94-04-09 take approximately 16 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Required parts are provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the currently required actions is estimated to be $1,040 per airplane.

The new detailed inspection that is required in this AD action takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the required inspection on U.S. operators is estimated to be $12,480, or $65 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

The optional terminating action, if done, will take approximately 16 work hours per strut to accomplish, at an average labor rate of $65 per work hour. Required parts will cost aproxiamately $800 per strut. Based on these figures, the cost impact of the optional terminating action is estimated to be $1,840 per strut, per airplane.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under

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ENFORCEMENT PROCEDURE 2003-10
(retyped)

EMAIL

TO: Enforcement Staff
PFESP Staff

FROM: Larry Calvert

DATE: November 21, 2003

SUBJECT: Press Release Policy

Yesterday, the Commission approved, by tally vote, a new policy regarding press releases in closed enforcement matters. The policy includes two major changes in the Press Office's current practice. One of these changes involves certain obligations on the part of OGC, and therefore of you.

The change that does not involve additional obligation on our part is nevertheless important. Henceforth, releases at the closing of all matters will include a brief, one- or two-sentence or so prose summary of what the matter is about. This will modify the current press release practice, which involves the release of simply a list of the MUR number, the names of the respondents, the disposition of each respondent and very truncated (i.e., a phrase, rather than a sentence) descriptions of the violations or allegations regarding each respondent.

The change that will impact us most directly is the approval of longer releases as a matter of course in MURs that meet certain criteria. The longer releases will contain several paragraphs, prepared by the Press Office with input from Enforcement, describing the facts and legal findings and actions taken by the Commission. These releases will now be prepared in all cases in which: 1) the total civil penalties agreed to in the case amount to more than $150,000* [formerly $50,000]; or 2) the case is one in which the Commission has applied or interpreted a statutory or regulatory provision for the first time, or is taking its first action based on any change in the law due to a court decision.

In addition, cases that fail to meet these criteria but that involve undeveloped and/or important legal principles or represent new trends in political activity that are likely to be of public interest or require additional attention may be brought to the Commission with a recommendation to prepare a more detailed release.

*Note: * Amount changed to $150,000 by Enf Procedure 2009-10*

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If you are about to close a case that meets one of the two criteria for a detailed release, you will need to do several things; you will need to begin doing them well before the case actually closes; and you will need to ensure that a number of people, including (but not necessarily limited to) your team leader, Rhonda and/or myself, and Vinnie Convery, are in the loop about them. And because the news does not wait, time will be of the essence in all of these instances.

First, significantly in advance of the actual closure of the case, you will need to prepare a "bullet point" summary of the case and the findings for the Press Office. We've done this on an ad hoc basis in the past, and your team leaders can provide guidance as to format. The "bullet points" should be routed to your team leader, and thence to Rhonda or myself, for approval.

Second, based on the bullet points, Press will prepare a draft press release and send it to us for comment. When you receive the draft you should review for suggested changes IMMEDIATELY and discuss with Rhonda or myself as soon as your and your team leader's review is complete.

Third, the file [update/delete "should be coded'] and then transmitted to Vinnie Convery for processing by his shop ASAP upon closing of the case. You should make sure Vinnie is aware that the matter is a "press release" case that should be handled as a priority, and that you need to know as soon as the file is ready so that the sending of closeout letters can be coordinated with the transmittal of the file from Vinnie's team to Public Records.

Fourth, as you could perhaps glean from the last sentence, the preparation of the closeout letters in these matters is of the highest priority. While this is a good practice in all cases, in "press release" cases it is particularly important that you start to prepare the closeout letters as soon as you circulate to the Commission the report that recommends closing the file. After the case is closed, and as soon as you are informed that the file is ready to go to Public Records, you should transmit the closeout letters (having gotten the appropriate signoffs, of course). The most significant respondents in the matter (or their counsel, as appropriate) should receive closeout letters by fax, if possible.

Fifth, once the closeouts are sent, inform the Press Office. They will then post the final press release to the web site and transmit it to news organizations.

The new policies are intended to make our descriptions of the actions the Commission takes in your cases more complete and understandable to the press, and therefore the public. A side benefit, we hope, will be some measure of increased recognition for the hard and important work you do in our most significant cases. But making all of this work will require a fair amount of choreography, and it will be up to you to see that the dance steps are in place.

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If you have any questions, please let Rhonda, me or your team leader know. Thanks.

******11/21/03 FOLLOWUP:**
One other item I forgot to mention: The thresholds, and particularly the dollar threshold for when we will do a longer press release and when not, should be kept confidential. We don't want to encourage people to peg their conciliation offers based on the press release thresholds.

***EMAIL FROM LAWRENCE NORTON to FEC STAFF 11/21/03:**
Inadvertently, the November 18 memorandum to the Commission from the Office of General Counsel and the Press Office entitled "News Releases Regarding Closed Enforcement Cases" was not circulated on a "sensitive" basis. Please keep the information in the memorandum as confidential as you would any sensitive information about internal Commission thresholds, and if you have a copy of the document please file it and dispose of it as you would any sensitive document. Thank you.

***EMAIL From Lawrence Calvert To Enforcement Staff on12/19/03**
I wanted to pass on a couple of slight changes or additions to my November 21 EMs on the new press release policy. (Everyone who was in Enforcement or PFESP on that date should have received these EMs; everyone in Enforcement should also have received hard copies from Maura as Enforcement Procedures.

1. My November 21 EM directed that any proposed *changes* to a draft press release sent up by the Press Office should be reviewed by Rhonda or myself. There's a slight modification to this one. ALL draft press releases, whether you believe there should be any changes or not, should be reviwed by either Rhonda or myself.

2. Also, this slight amplfication: Please be particularly vigilant about pointing out to either Rhonda or me any statements of fact in your bullet points or in Press's draft release that are not drawn directly from statements in conciliation agreements. Normally, the facts we send to Press in "bullet" form should be drawn from CAs; if it's absolutely necessary in a particular instance to include a fact not drawn from the CAs, we need to identify the place in the record where the fact can be found (GC's report, etc.). This is particularly important now that the Commission has approved the interim policy on public disclosure, resulting in our putting more than just the dispositive documents in the matter on the public record.

Thanks.

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ENFORCEMENT PROCEDURE 2003-9

October 27, 2003

MEMORANDUM

TO: The Commission

FROM: Lawrence H. Norton
General Counsel

Rhonda J. Vosdingh
Associate General Counsel

SUBJECT: Extended Discovery Authority and Status of Enforcement

During the Executive Session on October 15, 2003, the Commission considered a document submitted by this Office entitled "Status of Enforcement." In section three of the document we requested that the Commission "grant OGC greater latitude to conduct investigations." The document stated that under this proposal, "General Counsel's Reports would detail the scope and types of discovery to be undertaken, including the names of any persons known at the time whose testimony we intend to take and those persons to whom we intend to serve interrogatories and document requests – without attaching the specific discovery-related documents to be reviewed and approved by the Commission." Rather than approve specific discovery documents, the Commission would authorize the use of compulsory process in a particular Matter Under Review. OGC's proposal also contemplated that the Commission would be notified before discovery was sent to individual Members of Congress or other prominent persons. The document specifically proposed that OGC "no longer be required to notify the Commission every time we want to issue interrogatories, and then provide the Commission with a copy of those interrogatories. Nor would OGC have to notify the Commission of every subsequent deposition."

During the Executive Session there appeared to be a consensus to allow OGC to proceed with this new approach. The memorandum is intended to memorialize this Office's understanding that we may now proceed with formal discovery as outlined in the "Status of Enforcement" document considered at the October 15, 2003, Executive Session. Based on the discussion at that Executive Session, before any compulsory process is issued it will be subject to the review and approval of the General Counsel, Deputy General Counsel, or Associate General Counsel for Enforcement.

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ENFORCEMENT PROCEDURE 2003-8

MEMORANDUM

To: The Commission

James A. Pehrkon
Staff Director

From: Lawrence H. Norton
General Counsel

Gregory R. Baker
Acting Associate General Counsel

Mark A. Goodin
Attorney

Subject: Adverse Inference Based on Failure to Maintain Records Required to be Kept by Regulation

I. Introduction

The Commission recently has addressed certain matters involving the possible application of an adverse inference in the context of a committee's failure to maintain records. We have drafted this memorandum to respond to the issue of whether, and to what extent, the Commission may draw an adverse inference from a committee's violation of the record retention requirements of the Federal Election Campaign Act of 1971, as amended (the "Act"), and the Commission's regulations.

In summary, authority exists for the Commission to draw such an adverse inference. The adverse inference rule provides a tool for courts and agencies to infer that when a party fails to produce relevant evidence within his or her control, then the evidence is unfavorable to that party. This broad principle applies in a variety of evidentiary contexts, including the failure of a party to produce records that it was required to maintain pursuant to a record retention regulation.

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II. Analysis

A. The Adverse Inference Rule

The adverse inference rule provides that "when a party has relevant evidence within his control which he fails to produce, that failure gives rise to an inference that the evidence is unfavorable to him." *International Union (UAW) v. NLRB*, 459 F.2d 1329, 1336 (D.C. Cir. 1972); *see also, Arvin-Edison Water Storage Dist. v. Hodel*, 610 F. Supp. 1206, 1218 n.41 (D.D.C. 1985). The theory underlying this rule is that, all things being equal, "a party will of his own volition introduce the strongest evidence available to prove his case." *International Union (UAW)*, 459 F.2d at 1338. Conversely, if the party fails to introduce such evidence, then the trier of fact may infer that the evidence was withheld because it contravened the position of the party suppressing it. *Id.*

This broad principle of adverse inference applies to a variety of evidentiary circumstances. For example, when a party unreasonably resists a subpoena for relevant testimony or documents, the trier of fact can infer that the refusal to comply with the subpoena indicates that the evidence or testimony would be adverse to the party's position. *See International Union (UAW)*, 459 F.2d at 1338-39. "Indeed, in some circumstances defiance of a subpoena may justify striking a defense ... or completely barring introduction of evidence on the point in question." *Id.* at 1338. In *International Union (UAW)*, the District of Columbia Circuit also held that there was no need for the administrative agency to seek enforcement of the subpoena in court before drawing an adverse inference from the resisting party's failure to comply with it. 459 F.2d at 1338-39 ("adverse inference rule plays a vital role in protecting the integrity of the administrative process in cases where a subpoena is ignored").

Furthermore, the adverse inference rule may be applied in cases where a party fails to offer testimony of its own, or of others under its control, where such testimony would be expected to benefit that party. *See, e.g.*, *Warshawsky & Co. v. NLRB*, 182 F.3d 948, 955 (D.C. Cir. 1999) (union's failure to produce evidence of its members' conversations supported adverse inference against union); *District 65, Distributive Workers of Am. v. NLRB*, 593 F.2d 1155, 1163-64 & n.21 (D.C. Cir. 1978) (administrative law judge properly inferred that testimony of company's missing witnesses would have been unfavorable to the company); *cf. Bufco Corp. v. NLRB*, 147 F.3d 964, 971 (D.C. Cir. 1998) (adverse inference *not* drawn because certain employees who might have testified were not "peculiarly within the power of one of the parties to produce"). Even the Fifth Amendment does not preclude a court in a civil action from drawing an adverse inference against a party who refuses to testify in response to probative evidence offered against him. *Baxter v. Palmigiano*, 425 U.S. 308, 318 (1976); *see also, SEC v. International Loan Network, Inc.*, 770 F. Supp. 678, 695-96 (D.D.C. 1991), *aff'd*, 968 F.2d 1304 (D.C. Cir. 1992) (court may draw adverse inference from party's refusal to testify based on Fifth Amendment); *Pagel, Inc. v. SEC*, 803 F.2d 942, 946-47 (8th Cir. 1986) (agency did not err in taking into account adverse inference based

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on broker-dealer's invocation of Fifth Amendment privilege against self-incrimination); *Cerrone v. Shalala*, 3 F. Supp. 2d 1174, 1175 n.3, 1180 (D. Colo. 1998) (agency's finding, based in part on adverse inference drawn against disability benefit recipient who invoked Fifth Amendment, was supported by substantial evidence).

Additionally, the adverse inference rule may be applied in cases where a party fails to preserve evidence under its control. Such circumstances may arise where litigation is pending or foreseeable. *See Johnson v. Washington Metro. Area Transit Auth.*, 764 F. Supp. 1568, 1579-80 (D.D.C. 1991), *order amended by* 773 F. Supp. 459 (D.D.C. 1991), *opinion amended by* 790 F. Supp. 1174 (D.D.C. 1991) (court exercised discretion in refusing to draw adverse inference where audio tapes destroyed before it was clear that suit would be filed and where evidence could be obtained through other sources); *Testa v. Wal-Mart Stores, Inc.*, 144 F.3d 173, 177 (1st Cir. 1998) (permissive adverse inference may be drawn where party in control of documents knew of legal claim and knew of document's relevance to claim). Moreover, and as discussed more fully below, an adverse inference may be drawn where a party fails to preserve documents in violation of a record retention requirement. *See, e.g., Webb v. District of Columbia*, 146 F.3d 964, 969-70, 972-74 (D.C. Cir. 1998), *remanded to* 189 F.R.D. 180 (D.D.C. 1999) (reinstating default judgment); *Byrnie v. Town of Cromwell*, 243 F.3d 93, 107 (2d Cir. 2001).

B. Courts and Agencies May Draw an Adverse Inference Based on the Violation of a Record Retention Regulation

As noted above, the broad principle of adverse inference may apply to the particular instance of a party's violation of record retention regulations. *Webb*, 146 F.3d at 969-70, 972-74. In order to draw an adverse inference, the violated regulation must have created a legal obligation for a party to retain particular records. In *Webb*, the district court determined that the employer "knowingly violated" 29 C.F.R. § 1602.31, a regulation mandating that government entities "maintain all personnel files for two years from the making of the record or the date of the action involved...." 146 F.3d at 969-70. Although the district court concluded that default was the only appropriate sanction against the employer for its failure to preserve records in compliance with this regulation, the appellate court remanded the case for consideration of lesser sanctions, such as the drawing of adverse inferences. *Id.* at 972-74. *See also Reddy v. CFTC*, 191 F.3d 109, 121-22 (2d Cir. 1999) (failure of certain commodities traders to comply with the CFTC's reporting requirements "supported an inference [by the administrative law judge] that had the records been kept, they would have been unfavorable to [the traders'] defense").

Some record retention regulations contain exceptions on their face, and thus cannot support an adverse inference. *See, e.g., Latimore v. Citibank Fed. Sav. Bank*, 151 F.3d 712, 716 (7th Cir. 1998) (bank did *not* violate record retention regulation where another portion of that regulation provided that inadvertent failure to comply with it did not constitute a violation). In addition, the Second Circuit has interpreted this "legal

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obligation" factor to create a duty to retain records only where the party seeking the inference is a member of the "general class" of persons that the regulatory agency sought to protect in promulgating the rule. *Byrnie*, 243 F.3d at 109. For example, a securities record retention regulation would not "create a duty to preserve covered records" for use in an employment discrimination suit. *Id.* at 109. In contrast, EEOC record regulations would provide such a legal obligation. *Id.*

Courts differ on whether a showing of conscious disregard of the record retention requirement or bad faith is necessary to draw an adverse inference. In the District of Columbia Circuit, a party must "consciously disregard[] its obligation" to preserve evidence before a court will sanction such misconduct. *Webb*, 146 F.3d 969 (citing *Shepherd v. American Broad. Cos.*, 62 F.3d 1469, 1481 (D.C. Cir. 1995)) (employer "knowingly violated" 29 C.F.R. § 1602.31). The Second Circuit has held that "intentional destruction of documents" suffices. *Byrnie*, 243 F.3d at 109; *see also Zimmerman v. Associates First Capital Corp.*, 251 F.3d 376, 383-84 (2d Cir. 2001) ("intentional destruction satisfies the *mens rea* requirement").

Other courts require that in order to draw an adverse inference, the party controlling the evidence must act in bad faith. In *Park v. City of Chicago*, 297 F.3d 606, 615 (7th Cir. 2002), the Seventh Circuit held that, in the absence of bad faith, a violation of an EEOC record retention regulation would not "warrant an inference that the document[s], if produced, would have contained information adverse to the employer's case." "'[B]ad faith' means destruction for the purpose of hiding adverse information," and it is a question of fact for which "the trier of fact is entitled to draw any reasonable inference." *Mathis v. John Morden Buick, Inc.*, 136 F.3d 1153, 1155 (7th Cir. 1998) (addressing federal employment record retention regulation). *See also Beniushus v. Apfel*, No. 98-C-0395, 2001 WL 303548, at *6, 8 (N.D. Ill. Mar. 27, 2001) (no adverse inference drawn in light of insufficient evidence to support bad faith violation of federal employment record retention regulation); *Smith v. Borg-Warner*, No. IP-98-1609-C-TG, 2000 WL 1006619, at * 7-9 (S.D. Ind. July 19, 2000) (bad faith violation of federal employment record retention regulation supported adverse inference jury instruction).

Certain circuits appear to permit the drawing of an adverse inference simply by establishing that a party violated a record retention regulation, without reference to the party's state of mind. *See, e.g., Favors v. Fisher*, 13 F.3d 1235, 1239 (8th Cir. 1994) ("because [the employer] violated [29 C.F.R.] § 1602.14 by destroying the tests and records," the disappointed job applicant "was entitled to the benefit of a presumption that the destroyed documents would have bolstered" her employment discrimination case); *Hicks v. Gates Rubber Co.*, 833 F.2d 1406, 1419 (10th Cir. 1987) ("because [the employer] violated [29 C.F.R.] § 1602.14 by destroying the personnel records," the employment discrimination plaintiff was "entitled to the benefit of a presumption that the destroyed documents would have bolstered her case"). Although these courts do not require a showing concerning the state of mind of the party controlling the documents,

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they still permit the inference to be rebutted by evidence presented to the factfinder. *See, e.g., Favors*, 13 F.3d at 1239; *Hicks*, 833 F.2d at 1419.

Once a party demonstrates his entitlement to an adverse inference, the extent of such an inference must be determined. Here, too, courts are solicitous toward the prejudiced party. In *Webb*, the D.C. Circuit suggested that the employer's violation of record retention regulations could support expansive adverse inferences, including inferences that the personnel files could have contained "only favorable letters," or that documents in the files would have reflected the employer's "retaliatory" or "discriminatory" intent. 146 F.3d at 973-74 & n.20. The Second Circuit has held that the party invoking the adverse inference "may rely on circumstantial evidence to suggest the contents of destroyed evidence." *Byrnie*, 243 F.3d at 110 (rejecting employer's contention that adverse inference must be "limited to giving the greatest weight possible to other existing evidence favorable to the plaintiff"). It is then a matter for the factfinder to determine, "based on the strength of the evidence presented, whether the documents likely had such content." *Id.*

An adverse inference can also be rebutted. While noting in *Webb* that "an adverse inference presumption should not test the limits of reason," the court found that the plaintiff would be entitled to make an argument that was "conceivable, although unlikely"; however, the defendant-employer "would be entitled to attempt to rebut it." 146 F.3d at 974 & n.20. *See also Hicks*, 833 F.2d at 1419 (employee alleging sexual harassment entitled to presumption that records destroyed in violation of regulation "would have bolstered her case," but employer can offer rebuttal evidence, which should be weighed by factfinder on remand); *Favors*, 13 F.3d at 1239 (district court's finding that employer rebutted inference that evidence destroyed in violation of regulation would have bolstered employee's case was not clearly erroneous).

C. <u>The Commission's Reliance on the Adverse Inference Rule</u>

When faced with a person's failure to produce records that were required to be maintained pursuant to record retention regulations, the Commission – as the prejudiced party – should consider drawing an adverse inference. *See Webb*, 146 F.3d at 969-70, 972-74; *Byrnie*, 243 F.3d at 107-10. For example, the Commission could draw an adverse inference in an audit or enforcement matter with respect to the allocation of expenses by a party committee between federal and non-federal accounts. *See* 11 C.F.R. § 106.7 (2002) (regulations promulgated under the Bipartisan Campaign Reform Act of 2002); 11 C.F.R. § 106.5 (2002) (former regulations, expired Dec. 31, 2002). If a state party committee wishes to take advantage of favorable allocation methods for expenditures in connection with certain activity described in Section 106.7, then it must maintain records in accordance with 11 C.F.R. § 106.7(d). If the party committee does not comply with the recordkeeping regulation, then the Commission might infer that the missing records would have been unfavorable to the party committee.

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Moreover, the violation of a record retention regulation could support a broad range of "conceivable" adverse inferences. *See Webb*, 146 F.3d at 973-74 & n.20. In the preceding example, if the state party did not retain the records required by the regulation, it would be appropriate to draw an adverse inference that the expenditure at issue involved federal activity. On the other hand, absent further evidence, a political committee's failure to retain records under Section 106.7 for allocation purposes would be unlikely to support an inference that the committee received contributions from prohibited sources.

Ultimately, some evidence (such as the knowledge or intent of the respondent) may be relevant to the Commission (or a reviewing court) in the drawing of an adverse inference. For instance, auditors may be able to explore the explanation as to why records that are required to be retained under the regulations do not exist. In some cases, this Office may need to initiate discovery on that point. Because recollections about the disposition of records are likely to fade with time, it may be appropriate in some cases to expedite a referral from the Audit Division to this Office.

Finally, while the Commission is well within its prerogative to draw an adverse inference in both non-adjudicative proceedings (*e.g.*, audit, enforcement) and adjudicative determinations (*e.g.*, administrative fines, repayment determinations arising from public financing of Presidential elections), there may be different implications in the judicial review of those determinations. The Commission's decisions in non-adjudicative matters are subject to *de novo* review, and a court may or may not draw the same inference as the Commission. Indeed, a court could accept evidence from a respondent that the respondent claimed an inability to produce during an audit or enforcement matter. For purposes of enforcement litigation, the Commission will be in the strongest position when it can demonstrate that it sought the relevant documents from all other possible sources before relying on an adverse inference, or that the adverse inference is buttressed by other evidence against the respondent. On the other hand, in an appeal of an adjudicative determination, the reviewing court will only analyze whether the agency abused its discretion in reaching that inference. *See* Administrative Procedure Act, 5 U.S.C. § 706(2).

cc: Robert J. Costa
Joseph F. Stoltz
Rhonda J. Vosdingh
Lawrence L. Calvert, Jr.
Richard B. Bader
Rosemary C. Smith

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ENFORCEMENT PROCEDURE 2003-7

TO: The Commission

FROM: Lawrence H. Norton
General Counsel

Rhonda J. Vosdingh
Associate General Counsel

Mark Shonkwiler
Assistant General Counsel

SUBJECT: Confidentiality Advisement in Enforcement Matters

The Federal Election Campaign Act of 1971, as amended, mandates confidentiality of Commission enforcement matters. Specifically, 2 U.S.C. § 437g(a)(12) states:

> Any notification or investigation made under this section shall not be made public by the Commission or by any person without the written consent of the person receiving such notification or the person with respect to whom such investigation is made.

The Commission's regulations at 11 C.F.R. § 111.21(a) provide that:

> no complaint filed with the Commission, nor any notification sent by the Commission, nor any investigation conducted by the Commission, nor any findings made by the Commission shall be made public by the Commission or by any person or entity without the written consent of the respondent with respect to whom the complaint was filed, the notification sent, the investigation conducted, or the finding made.

See also Advisory Opinions 1995-1 and 1994-32 (holding that complainant's public statements about complaint and respondent's public statements about response to complaint did not violate 2 U.S.C. 437g(a)(12) or 11 C.F.R. § 111.21(a)).

This Office advises respondents and witnesses of the confidentiality provision in both oral and written communications. Over the last several years there have been several occasions in which counsel for respondents have suggested that witnesses have been confused about this advisement. In at least one instance, it was reported that some witnesses who were advised of their obligation not to discuss an investigation subsequently refused to discuss the underlying facts or transactions with respondent's

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counsel. At that time, this Office advised counsel that the confidentiality advisement placed no such restriction on any witness. Nonetheless, there was a reference to this perceived problem in comments presented in connection with the June 11, 2003 Commission Hearing on Enforcement Procedures.

In order to clarify the obligations imposed by 437g(a)(12), this Office is proposing to standardize the confidentiality advisement given by attorneys and investigators to the following explanatory language:

> There is a federal statute, 2 U.S.C. 437g(a)(12), requiring all persons to keep confidential investigations conducted by the Federal Election Commission, except with the written consent of the person who is the subject of the investigation. This means that unless you have such written consent, you should not publicly disclose the existence of an ongoing FEC investigation or the fact that the FEC has contacted you in connection with this matter. This restriction, however, does not prevent you from discussing the underlying facts and circumstances of the matter with any person, including the subject of the investigation or their counsel.

This clarification does not change the obligations imposed by 2 U.S.C. § 437g(a)(12). The revision to the advisement is intended solely to clarify the scope of the confidentiality provision.

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ENFORCEMENT PROCEDURE 2003-6

To: Enforcement Staff; PFESP Staff

FROM; Lawrence Calvert

DATE: October 6, 2003

SUBJECT: Depo Transcript Availability: Boilerplate

Pease make sure you use the following boilerplate language in the introduction to all depositions in enforcement matters:

"At any time after the conclusion of today's deposition, you may request that you be allowed to obtain a copy of the transcript. If you wish to make such a request, you must do so in writing, and you must send it to the Office of General Counsel. The Office will take your request under advisement. Unless there is good cause to do otherwise, we will notify you and the court reporter in writing that you may make your own arrangements with the court reporter to obtain a transcript, at your own expense. No transcript will be available until you receive this notification. If the Office determines that there is good cause to deny your request, it will inform you in writing."

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ENFORCEMENT PROCEDURE 2003-5

TO: Enforcement Associate GC Office Staff; Enforcement Docket Staff; Enforcement Staff; PFESP

FROM: Rhonda Vosdingh

DATE; August 14, 2003

SUBJECT: Deposition Transcript Policy

This morning the Commission approved our proposed deposition transcript policy which, essentially, will allow a deponent to obtain a copy of his or her own transcript unless there is good cause not to provide it. For details I urge you to read the full Statement of Policy and cover memo considered by the Commission (copies to be distributed soon).

If after reading the memo and full policy statement you have any questions, please see your team leader, or, as always, you are welcome to ask me or Larry Calvert.

Many thanks to Larry and Tracy Robinson (one of our summer interns) for their excellent work on this project!!

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ENFORCEMENT PROCEDURE 2003-2
(Docs Open #5712)

To: Enforcement Staff, Public Financing Ethics and Special Projects Staff

From: Maura Callaway

Date: January 23, 2003

Subject : Conciliation Agreements involving Pre-BCRA activity

If you are drafting a Conciliation Agreement involving pre-BCRA activity, you should consider including the following language (in a footnote) where applicable. This language comes from a Conciliation Agreement that Mike Scurry drafted in MUR 5138 involving violations of 2 USC 441a(a)(3), 441a(a)(1)(A), 441a(f), and 434(b). The footnote appeared at the end of the first sentence in Paragraph IV. ("The pertinent facts in this matter are as follows: (footnote)":

"All of the facts recounted in this agreement occurred prior to the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (2002). Accordingly, unless specifically noted to the contrary, all citations to the Federal Election Campaign Act of 1971, as amended (the "Act"), herein are to the Act as it read prior to the effective date of BCRA and all citations to the Commission's regulations herein are to the 2002 edition of Title 11, Code of Federal Regulations, which was published prior to the Commission's promulgation of any regulations under BCRA. All statements of the law in this agreement that are written in the present tense shall be construed to be in either the present or the past tense, as necessary, depending on whether the statement would be modified by the impact of BCRA or the regulations thereunder."

If you have any questions, please consult with your team leader.

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ENFORCEMENT PROCEDURE 2003-1
(Docs Open # 5715)

TO ENFORCEMENT STAFF
PFESP STAFF

FROM: Rhonda Vosdingh

DATE: January 16, 2003

SUBJECT: Statute of Limitations

Upon being assigned a case, please remember to verify the statute of limitations date noted by CED. This should be done routinely. As you learn more facts during an investigation, you should assess whether those facts change the statute of limitations. If you have any questions, please let me know. Thanks.

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2002

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Date Due	Date Filed	Total Receipts	Total Disbursements
1/1/2001	1/1/2001	$0.00	$0.00
Monthly or Quarterly File? (M or Q)			
Late in calendar year in which a regularly scheduled election is held and covers period of activity during election year? (Y or N)			
Quarterly report late for quarter immediately prior to a primary or general election? (Y or N)			
Monthly report late for month immediately prior to a general election? (Y or N)			
12 Day Pre-Primary or Pre-General Report? (Y or N)			

Receipts	Disbursements	Date Due	Date Filed
$0.00	$0.00	1-Jan-01	1-Jan-01

1. Base:

2. Report disclosing combined receipts and disbursements of more than $10,000 filed between 31 and 60 days late:
For every additional thirty days late:

3. Report disclosing combined receipts and disbursements of more than $10,000 filed late in a calendar year during which a regularly scheduled election is held and which covers a period of activity during the election year:

4. 12 Day Pre General Report:

4. Quarterly Report immediately prior to a primary or general election:
4. Monthly report immediately prior to a general election:

5. Report filed late disclosing receipts or disbursements between $10,000 and $20,000:

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For every additional $10,000 in receipts or disbursements:

SUBTOTAL:

Recidivist factor:

0 concilation agreement(s) signed since January 1, 1996 pertaining to the late filing or non-filing of reports:

SUBTOTAL:

CIVIL PENALY:

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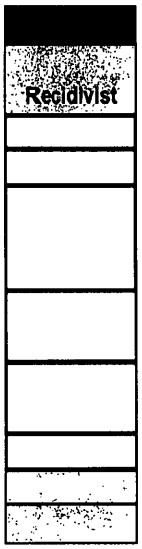

Days Late

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$250.00

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$250.00

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made available through the Internet by the Office of the Federal Register and USDA. A 60-day comment period ending October 22, 2001, was provided to allow interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because: (1) Handlers are already shipping hazelnuts from the 2001–2002 crop; (2) the Board would like to begin receiving this report as soon as possible to have better information on the total supply of hazelnuts within Oregon and Washington; (3) handlers are aware of this rule which was recommended at a public meeting; and (4) a 60-day comment period was provided in the proposed rule; no comments were received.

List of Subjects in 7 CFR Part 982

Filberts, Hazelnuts, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 982 is amended as follows:

PART 982—HAZELNUTS GROWN IN OREGON AND WASHINGTON

1. The authority citation for 7 CFR part 982 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 982.467 is added to read as follows:

§ 982.467 Report of receipts and dispositions of hazelnuts grown outside the United States.

Each handler who receives hazelnuts grown outside the United States shall report to the Board monthly on *F/H Form 1f* the receipt and disposition of such hazelnuts. All reports submitted shall include transactions through the end of each month, or other reporting periods established by the Board, and are due in the Board office on the tenth day following the end of the reporting period. The report shall include the quantity of such hazelnuts received, the country of origin for such hazelnuts, inspection certificate number, whether such hazelnuts are inshell or kernels, the disposition outlet, and shipment date of such hazelnuts. With each report, the handler shall submit copies of the applicable inspection certificates.

Dated: January 31, 2002.

A. J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–2848 Filed 2–5–02; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL ELECTION COMMISSION

11 CFR Part 106

[Notice 2002–1]

Interpretation of Allocation of Candidate Travel Expenses

AGENCY: Federal Election Commission.

ACTION: Interpretation.

SUMMARY: This notice expresses the view of the Commission that the travel allocation and reporting requirements of 11 CFR 106.3(b) are not applicable to the extent that a candidate pays for certain travel expenses using funds authorized and appropriated by the Federal Government.

DATES: February 6, 2002.

FOR FURTHER INFORMATION CONTACT: Tina H. VanBrakle, Director, Congressional Affairs 999 E Street, NW., Washington, DC 20463, (202) 694–1006 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: Contributions and expenditures made for the purpose of influencing Federal elections are subject to various prohibitions and limitations under the Federal Election Campaign Act, 2 U.S.C. 431 *et seq.*, as amended ["FECA" or "the Act"]. These prohibitions and limitations apply to a contribution or expenditure by a "person," as defined by 2 U.S.C. 431(11) and 11 CFR 100.10.[1] The statutory definition of the term "person" expressly excludes the Federal Government and any authority thereof.[2]

Commission regulations at 11 CFR 106.3 require candidates for Federal office, other than Presidential and Vice-Presidential candidates who receive federal funds pursuant to 11 CFR part 9005 or 9036, to report expenditures for campaign-related travel. Specifically, section 106.3(b) states that "(1) Travel expenses paid for by a candidate from personal funds, or from a source other than a political committee, shall constitute reportable expenditures if the travel is campaign-related. (2) Where a candidate's trip involves both campaign-related and non-campaign-related stops, the expenditures allocable for campaign purposes are reportable and are calculated on the actual cost-per-mile of the means of transportation actually used, starting at the point of origin of the trip, via every campaign -related stop and ending at the point of origin. (3) Where a candidate conducts any campaign-related activity in a stop, the stop is a campaign-related stop and travel expenditures made are reportable. Campaign-related activity shall not include any incidental contacts."

Questions have arisen as to whether the allocation and reporting requirements in 11 CFR 106.3(b) are applicable to travel expenses paid for with funds authorized and appropriated by the Federal Government. Thus, the Commission is announcing its interpretation of the scope of 11 CFR 106.3(b) in that circumstance.

Because 2 U.S.C. 431(11) specifically excludes the Federal Government from its definition of a "person," the Commission acknowledges that a candidate's travel expenses that are paid for using funds authorized and appropriated by the Federal Government are not paid for by a "person" for the purposes of the Act. Therefore, the Commission believes that the allocation and reporting requirements of 11 CFR 106.3(b) are not applicable to the extent that a candidate pays for travel expenses using funds authorized and appropriated by the Federal Government. The Commission notes that this interpretation of 11 CFR 106.3(b) is in harmony with 11 CFR 106.3(d), which states that a candidate need not report "travel between Washington, DC and the state or district in which he or she is a candidate * * * unless the costs are paid by a candidate's authorized committee(s), or by any other political committee(s)."

Please note that this announcement represents the Commission's interpretation of an existing regulation and is not intended to create or remove any rights or duties, nor is it intended to affect any other aspect of 11 CFR 106.3, the Act, or the Commission's

[1] The terms "contribution" and "expenditure" are likewise defined at 2 U.S.C. 431(8)(A) and 11 CFR 100.7, and 2 U.S.C. 431(9)(A) and 11 CFR 100.8, respectively.

[2] 2 U.S.C. 431(11) provides: "The term 'person' includes an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons, but such term does not include the Federal Government or any authority of the Federal Government."

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regulations. Furthermore, this interpretation does not apply to presidential or vice presidential campaigns that are covered by the Presidential Election Campaign Fund Act, 26 U.S.C. 9001 *et seq.* (general elections) or the Presidential Primary Matching Payment Account Act, 26 U.S.C. 9031 *et seq.*[3] Finally, the Commission notes that the use of Federal funds is governed by general appropriations law and is subject to Congressional oversight.[4]

Dated: February 1, 2002.

David M. Mason,

Chairman, Federal Election Commission.

[FR Doc. 02–2858 Filed 2–5–02; 8:45 am]

BILLING CODE 6715–01–P

[3] The Commission's regulations governing travel by presidential and vice presidential candidates who receive federal funds are found at 11 CFR 9034.7 and 9004.7, respectively. These regulations differ from 11 CFR 106.3 in several ways. See, for example, 11 CFR 9004.7(b)(5) and 11 CFR 9034.7(b)(5), which address reimbursement requirements for use of a government airplane to travel to or from a campaign-related stop.

[4] Both the Senate and the House of Representatives have provided specific guidance to their members regarding mixed-purpose travel. *See* page 118 of the *Senate Ethics Manual* (September 2000) and page 95 of the *Rules of the House of Representatives on Gifts and Travel* (April 2000).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 16 and 900

[Docket No. 99N–4578]

RIN 0910–AB98

State Certification of Mammography Facilities

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations governing mammography. The amendments implement the "States as Certifiers" (SAC) provisions of the Mammography Quality Standards Act of 1992 (MQSA). These amendments permit FDA to authorize individual States to certify mammography facilities, conduct facility inspections, enforce the MQSA quality standards, and administer other related functions. The amendments establish the standards to be met by States receiving this authority. They also establish procedures for application, approval, evaluation, and withdrawal of approval of States as certification agencies. FDA retains oversight responsibility for the activities of the States to which this authority is given. Mammography facilities certified by those States must continue to meet the quality standards established by FDA for mammography facilities nationwide.

DATES: This rule is effective May 7, 2002. Submit written comments on the information collection requirements by March 8, 2002.

ADDRESSES: Submit written comments on the information collection requirements to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy A. Taylor, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Kaye F. Chesemore, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–594–3332, FAX 301–594–3306.

SUPPLEMENTARY INFORMATION:

I. Background

MQSA (Public Law 102–539) was enacted on October 27, 1992. The purpose of the legislation was to establish minimum national quality standards for mammography. To provide mammography services legally after October 1, 1994, MQSA requires all mammography facilities, except facilities of the Department of Veterans Affairs, to be accredited by an approved accreditation body and certified by the Secretary of Health and Human Services (the Secretary). The authority to approve accreditation bodies and to certify facilities was delegated by the Secretary to FDA. MQSA replaced a patchwork of Federal, State, and private standards with uniform minimum Federal standards designed to ensure that all women nationwide receive adequate quality mammography services. On October 9, 1998, the Mammography Quality Standards Reauthorization Act (MQSRA) (Public Law 105–248) was enacted to extend MQSA through fiscal year (FY) 2002.

A. Provisions of MQSA

In order to receive and maintain FDA certification, facilities must meet key requirements of MQSA, which include:

1. Compliance with quality standards for personnel, equipment, quality assurance programs, and reporting and recordkeeping procedures.

2. Accreditation by private, nonprofit organizations or State agencies that have been approved by FDA as meeting MQSA standards for accreditation bodies and that continue to pass annual FDA performance evaluations of their activities. As part of the accreditation process, the accreditation body must evaluate actual clinical mammograms from each unit in the facility for quality. The accreditation body determines whether or not the facility quality standards have been met.

3. Demonstration of continued compliance with the facility quality standards through annual inspections performed by FDA-certified Federal or State inspectors.

B. Accomplishments to Date

Interim facility quality standards were published in the **Federal Register** of December 21, 1993 (58 FR 67558), and used as the basis for the initial certification of mammography facilities under MQSA beginning October 1, 1994. By that date, mammography facilities had to have a FDA certificate in order to continue to lawfully provide mammography services. In the **Federal Register** of October 28, 1997 (62 FR 55852), more comprehensive facility quality standards and accreditation body requirements were published and became effective on April 28, 1999. FDA has approved five accreditation bodies: American College of Radiology (ACR) and the States of Arkansas, California, Iowa, and Texas. The number of certified mammography facilities varies with time but typically is about 10,000. FDA has trained and certified Federal and State inspectors to conduct MQSA inspections, and the sixth year of inspections is underway.

C. Standards for Certification Agencies

State agencies have played a very important role in the development and implementation of the MQSA program. As already noted, four of the five accreditation bodies are States, thus providing an alternative to the ACR for accreditation of facilities within those four States. Most of the FDA-certified inspectors are State personnel who, under contract with FDA, have conducted the great majority of MQSA inspections. FDA currently has contracts for the performance of inspections with 47 States, the District of Columbia, Puerto Rico, and New York City. Mammography facilities in States without inspection contracts and all Federal facilities are generally inspected by FDA.

MQSA also provides for an even more significant State role in the MQSA program. Section 354(q) of the Public Health Service Act (the PHS Act) (42 U.S.C. 263b(q)) permits FDA to authorize qualified States to: (1) Issue, renew, suspend, and revoke certificates;

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Enforcement Procedure 2002-6

Email From: Rhonda Vosdingh

To: Enforcement Associate GC Office Staff, Central Enforcement Docket Staff, Enforcement Team 1, Enforcement Team 2, Enforcement Team 3,

Subject: Civil penalty calculation for "paper excessives"

At last Tuesday's Executive Session, the Commission considered two PFESP matters involving excessive contributions: (1) [redacted] and (2) [redacted] Both matters were somewhat related in that they both addressed the impact of the reattribution and redesignation regulations on excessive contribution findings. [redacted] The Commission [redacted] directed OGC to use the following calculations for "paper excessive" cases. [redacted] If there were no refunds made during the audit, the Commission directed OGC to seek a 25% civil penalty for the non-curable amounts (amounts that would be in violation even under the new regulation) if we engage in pre-pctb conciliation, with a full refund of the non-curable amounts. The Commission also directed OGC to apply a 15% civil penalty toward the curable amounts (the amount of the violation that could arguably go away under the new regulations). [redacted] Significantly, the Commission directed OGC to seek a civil penalty equal to 50% of the excessive contributions after a finding of pctb, which should create an incentive for respondents to settle during pre-pctb conciliation. For those of you with "paper excessives" cases, these are the guidelines we should use going forward.

The Commission's consideration of the [redacted] was based on the discussion of [redacted] and the Commission simply directed the auditors to retool the report to conform to its instructions in [redacted]

If you have any questions, please let me know. Thanks.

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

Enforcement Procedure 2002-5

Email From: Rhonda Vosdingh

To: Enforcement Associate GC Office Staff, Central Enforcement Docket Staff, Enforcement Team 1, Enforcement Team 2, Enforcement Team 3, Enforcement Team 4

cc:

Subject: Complaint summaries

As your team leaders may have told you, we are starting a project to help all of OGC to be better informed of complaints that are coming in the door. Although copies of complaints are routinely distributed, I know that it is difficult for everyone to find the time to read every single one that is filed. A pilot project has been initiated in which attorneys will summarize complaints that are filed and distribute the summaries to the entire OGC legal staff.

Responsibility for the summaries will be rotated among Enforcement attorneys on a weekly basis. Thus, each week, Retha Dixon will provide to the assigned staff attorney copies of all complaints that are filed, and the attorney will prepare a brief summary of the complaints by the following Monday. (**Clarification: Responsibility for writing the summary is determined **by the date that the complaint circulates**, not the date that the complaint was filed.**) These summaries should also highlight important legal and policy issues raised in the complaints. These weekly summaries needn't be long -- a short paragraph will ordinarily do the trick -- and need not be reviewed by your team leader before you distribute them. You should save the electronic version of the summaries at Ntsrv1/OGC-Enfo/Complaint Summaries and distribute them by e-mail directly to the entire OGC legal staff. In order to find the summaries once written and filed in OGC/Enf/Case Summaries, please save each summary under its own case number. Time spent on this project should be recorded under the case number, assuming a half-hour or more was spent on the summary. If you spend less than a half-hour, record the time under 0042-CED.

Attached are the first 2 sets of summaries, which, in addition to informing you of the complaints filed during these weeks, will serve as examples of what the summaries should look like. (Thank you, **Marianne Abely**, for preparing the first set and **Tom Andersen** and **Anne Marie Terzaken** for preparing the next sets!) (The only change that should be made in future summaries is that there should be a separate document for each matter, rather than saving them all together.) A schedule for the summaries will be distributed shortly. If you are not in the office when it's your turn to prepare the summaries, please make arrangements with one of your colleagues to trade places. Please inform Retha, myself, and the appropriate team leaders if you trade places.

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

This project is an effort to enhance communication within Enforcement and OGC as a whole, and I hope it will help everyone keep abreast of what's going on in Enforcement, as it happens. Please let me know if you have any questions. Thank you very much for your help on this matter!

8/25/03 Email From Rhonda Vosdingh:
Thanks, everyone, for your continued review of the complaints that come in each week. I find them tremendously helpful in keeping up w/our caseload, and I am sure others do, as well. As they are for the benefit of everyone in OGC, Jim has asked that they be addressed to "OGC staff," rather than to him and Larry. A small change, I know, but one that will help us all remember that the summaries can and do benefit everyone.

11/26/03 Email From Rhonda Vosdingh
Just wanted to remind you that when you prepare the complaint summaries, you should flag any "hot button" or sensitive issues, whether substantive or procedural. Among the kinds of issues you've been identifying, please note when the complaint has been simultaneously submitted to DOJ or any other agency. If you have any questions, please let Larry Calvert, your team leader, or myself know. Thank you.

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Enforcement Procedure 2002-4
(Docs Open #7824)

September 6, 2002

Email From: Rhonda Vosdingh

To: Jonathan Bernstein/FEC/US@FEC, Susan Lebeaux/FEC/US@FEC, Cynthia Tompkins/FEC/US@FEC, Mark Shonkwiler/FEC/US@FEC, Jeff Jordan/FEC/US@FEC
cc: Cynthia Myers/FEC/US@FEC, Maura Callaway/FEC/US@FEC

Subject: Reminder: objection memos

Please ask your team members to contact the Commissioners' offices of Commissioners who did not vote on a circulated report, as well as those Commissioners who objected, and include any questions, concerns, etc. of the non-voting Commissioners in the objection memo. Thanks.

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Enforcement Procedure 2002-3

June 10, 2002

Email From: Rhonda Vosdingh

To: Enforcement Staff
cc: Gregory Baker/FEC/US@FEC

Subject: Motions for reconsideration

The Commission recently approved, on a 24-hour no objection basis, a letter to be sent to a respondent who had filed a motion for reconsideration notifying the respondent that there is no procedure for such a motion under the Commission's regulations. If you get such a motion in any of your cases (or other extra-procedural motions), please discuss with your team leader the option of handling it this way. For your reference, I'll have copies of our memo to the Commission circulated to staff. *See* MURs 4568, et al (Triad).

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

Enforcement Procedure 2002-2

June 3, 2002

Email from: Rhonda Vosdingh

o: Enforcement Staff
cc:

Subject: amendments to GCRs

Please let me know before the Executive Session if you plan to make any amendments to OGC's recommendations at the table (including, e.g., amendments to name a new treasurer, correct a citation, etc.). Sometimes such amendments may have broader implications or raise other issues beyond the specific matter that will need to be addressed at the same time. Thanks.

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Enforcement Procedure 2002-1

May 29, 2002

Email From: Rhonda Vosdingh

To: Enforcement Staff
cc: Gregory Baker/FEC/US@FEC

Subject: Respondent names in recommendations

Please specifically list the names of respondents in all recommendations in your GC's Reports (rather than, for example, making recommendations as to "all respondents"). The specific names are necessary for CMS purposes and for purposes of entering certs into the databases, otherwise there could be confusion later. Thank you.

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2001

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Enforcement Procedure 2001-5
(Docs Open #7749)

June 27, 2001

To: General Counsel Staff
cc: Mary Dove, James Pehrkon, Commissioners, Commissioner EAs

From: Lois Lerner

Subject: Numbered Paper

To assist the Commission during its discussions of circulated documents, as of July 9, 2001, this office will prepare all new documents for Commission consideration on numbered paper. The computer has a numbering function, so there is no need to use special paper. Noriega will be circulating instructions to activate the numbering function on your computers. If you have any questions or concerns, please let him know. Thank you.

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ENFORCEMENT PROCEDURE 2001-4

Email From: Rhonda Vosdingh

To: Enforcement Staff
cc:

Subject:
Naming corporate officers as respondents

[Deleted re: civil penalty]

Also, the Commission briefly discussed naming officer(s) of corporations as respondents, as well as the corporation, in cases where corporations have violated the Act when the officer(s) were initially involved in the violation. This is just to remind you to keep in mind as you process your cases whether individuals should be named as respondents when a corporation is alleged to have violated the FECA.

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Lois Lerner
08/09/2001 10:36 AM

To: General Counsel Staff
cc:

Subject: Deposition Transcripts

I was asked whether once a case is closed we should send respondents copies of their own deposition transcripts if they request them. If counsel requests deposition transcripts during the briefing stage, we send them to the court reporter(and instruct the reporter that it now OK to release the transcript) because the reporter makes a living by selling the transcripts and we shouldn't interfere with that. Although we put these on the public record when the case is over, I believe we should follow the same procedure as we do for the briefing stage. That is, counsel can either go the the reporter and purchase a copy or wait for it to be on the public record and make a copy--but we should not send a copy. It may seem a distinction without a difference, but it isn't our livelihood that's involved.

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Enforcement Procedure 2001-2

May 14, 2001

MEMORANDUM

TO: Enforcement Staff
PFESP Staff

FROM: Maura Callaway
Special Assistant

SUBJECT: Close-out Reports and Notification to Respondents of Case Disposition

This is to remind staff that if you send the complainant a copy of a General Counsel's Report explaining the basis for the Commission's disposition of a matter, you should also send a copy of the same report to the respondent(s). It is important that the respondents receive the same information as the complainant.

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

FEDERAL ELECTION COMMISSION
Washington, DC 20463

Enforcement Procedure 2001-1

MEMORANDUM

TO: Enforcement Staff
PFESP Staff

FROM: Maura Callaway
Special Assistant

SUBJECT: Calculating Civil Penalties In Late and Nonfilers after the advent of the Administrative Fines Program

As most of you already know, on November 14, 2000, the Commission discussed the relationship between the penalties in the Administrative Fines program and the penalties (using the OGC civil penalty calculator) in the remaining RAD Referrals that preceded the Administrative Fines program. The Commission instructed this Office to go out the door with the OGC late/non-filer penalty and negotiate down to the Administrative Fines penalty. The Commission further directed that if the OGC penalty computes to less than the Administrative Fines penalty, or is significantly more than 25% above the Administrative Fines penalty, the Commission would go out-the-door with an amount 25% above the Administrative Fines penalty so that OGC could negotiate down to the figure representing the Administrative Fines penalty.

Enforcement Form #71 (First GC in late/non-filing matters) has been revised to incorporate the new policy. In addition, the Commission's website contains a good explanation of the Administrative Fines program ("How the Administrative Fines Program Works"). An automatic Administrative Fines calculator is available on the website for your use in determining the amount of the Administrative Fines penalty.

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2000

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Enforcement Procedure 2000-4

June 19, 2000

FROM: Lois Lerner

To: Enforcement Staff

Subject: Sunshine forms on authorization to file suit

Please keep this in mind when forwarding suit authorizations.
---------- Forwarded by Lois Lerner/FEC/US on 06/19/2000 01:36 PM ----------
---

RICHARD
BADER
06/15/2000 12:16 PM

To: Lois Lerner/FEC/US@FEC
cc:

Subject: Sunshine forms on authorization to file suit

I have just reviewed the memo seeking contingent authorization to seek judicial enforcement of the Riley deposition subpoena in MUR 4568. I have no problem with the recommendation, but on the Sunshine form, the last item ("specifically concerns the Commission's participation in a civil action") is not checked. Would you remind your staff that this box should be checked on the Sunshine form for all memo's that recommend litigation of any sort? Thanks. (If its OK with you, I will go ahead and put an X in that space on this sunshine form for you, & send it on to Larry).

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

Enforcement Procedure 2000-2

2/10/00

From Lois Lerner

To: Enforcement Staff
cc: Lawrence Noble/FEC/US@FEC, Kim Leslie Bright/FEC/US@FEC

Subject: Investigator ROIs

It has come to my attention that we have not been including copies of investigator ROIs in the permanent file. Because they are part of our investigative record in a case, there should be a copy in the permanent file. From now on, the investigators should forward a copy to docket for inclusion in the permanent file at the same time they forward the ROI to staff. Docket should then include a paper copy in the permanent file. If a Commissioner's Office requests a copy of an ROI, the request should be handled as any other request for part of the file. If you are unsure how to respond to such a request, please talk to your team leader or me. For open cases where we have not included ROIs in the file prior to now, such ROIs will need to be compiled and added as collection at the end of the file before the case file is closed out. Thank you.

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Enforcement Procedure 2000-1

January 24, 2000

From: Lois Lerner

To: Enforcement Staff, Lawrence Noble/FEC/US@FEC, Vincent Convery/FEC/US@FEC

Subject: Restricted Submissions

An issue has come up regarding Respondent submissions that come to us with a restrictive use notice. For example, in one matter we received a sua sponte submission from a respondent who was also submitting the information to DOJ. The cover letter indicated that it was being submitted pursuant to the Fed. Rules of Criminal Procedure--i.e., that it could be used for settlement purposes only, and could not be made public. In another matter, respondent's counsel submitted a proffer for the purposes of convincing the Commission to take no further action against his client. The cover letter also put restrictions on the use of the proffer--i.e., that it could not be made public. Because we have a responsibility to make our file public at the end of a matter, such restrictions are not appropriate. If you receive such a submission, speak to your team leader or me right away about how to handle the submission. It may be that you should not even read the contents of the submission because having read the information may be considered an acceptance of the restrictive terms, and create problems if we later wish to pursue the respondent. Thank you.

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1999

This document does not bind the Commission,
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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

Enforcement Procedure 1999-3

August 18, 1999

From: Lois Lerner

To: Enforcement Staff
cc: Lawrence Noble/FEC/US@FEC

Subject: Revised Recirculated Reports

The Commission has requested that when we withdraw a report, the cover memo on the recirculated version should specify exactly what changes have been made--even if they are non-substantive. I don't think you need to include the exact language, just a page reference and a statement of what was changed. Examples--1.) On page three, we have included a discussion of respondent's latest filed report. 2.) On page 4, second paragraph, we have made some non-substantive language changes.
These comments will help the Commissioners keep track of which version of the report they should refer to. Thank you.

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1998

This document does not bind the Commission,
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Enforcement Procedure 1998-5
(Docs Open # 9499)

FEDERAL ELECTION COMMISSION

Washington, D.C.

December 11, 1998

MEMORANDUM

TO: The Commission

FROM: Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

SUBJECT: Contingent Suit Authorization

During Executive Session on December 9, 1998, the Commission indicated that it no longer wishes to routinely authorize the filing of civil suit on a contingent basis when subpoenas/orders are approved for issuance. Therefore, absent objection, this Office will no longer automatically include such recommendations in reports and memorandum recommending the approval of subpoenas /orders.

**See certification dated December 15, 1998, stating there were no objections.

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

Enforcement Procedure 1998-4

MEMORANDUM

TO: Enforcement Staff
PFESP Staff

FROM: Maura Callaway
Special Assistant

SUBJECT: Signatures on Conciliation Agreements

On November 6, 1998, the Commission revised the Commission's policy concerning signatures on conciliation agreements. This policy is effective immediately with respect to all agreements not yet approved by the Commission. A copy of this Office's memorandum to the Commission is attached for your information. The Commission approved a policy:

> ... requiring that respondents personally sign conciliation agreements involving knowing and willful violations, except in the most extreme circumstances. With respect to respondents who are individuals, the personal signature of the respondent will be required. With respect to respondents that are organizations and corporations, the signature of the Chief Executive Officer, President, or other officer or organizational representative, will be required.
>
> Continue the present policy of allowing counsel or designated representatives to sign conciliation agreements involving other than knowing and willful violations, but at the Commission's discretion, the respondent's signature may be required.

Attachments
Memo to Commission
Index for Procedure Memoranda (page 1 only)
Subject Index to Procedures Memoranda (8 pages)

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Enforcement Procedure 1998-4
(background Memo)

MEMORANDUM

TO: The Commission

FROM: Lawrence M. Noble
General Counsel

Lois G. Lerner
Associate General Counsel

SUBJECT: Signatures on Conciliation Agreements

I. BACKGROUND

During Executive Session on October 20, 1998, the Commission directed this Office to prepare a memorandum summarizing the current policy regarding signatures on conciliation agreements and containing recommendations for changes in that policy. The instant memorandum has been prepared as a result of that discussion and direction.

It has been the long-time policy of the Commission to permit a respondent's counsel, who has been designated in writing by the respondent, to sign the conciliation agreement negotiated between the Commission and the respondent, regardless of whether the violations at issue were knowing and willful. It appears that in only two instances, MUR 4538 (Lawrence J. Smith) and MUR 4617 (Mike Espy), did the Commission require a respondent to personally sign a conciliation agreement. Both of these matters involved the personal use of campaign funds. In MUR 4538 the respondent admitted to a knowingly and willful violation of 2 U.S.C. § 439a. The Commission's probable cause to believe finding in MUR 4617 did not contain a knowing and willful component. The Commission's policy arose in part from the fact that it is easier and more expeditious to have counsel sign the agreements since a significant number of counsel reside in the immediate vicinity. In addition, particularly when multiple respondents are involved in the same conciliation agreement, it is easier to obtain the signature of the common attorney. Such has also been true when corporations or other organizations are respondents. In those instances, counsel has often signed the agreements on behalf of the organizations and/or its representatives.

As indicated during Executive Session on October 20, this Office has no objection to revising the current policy to require the signature of respondents on all

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conciliation agreements involving knowing and willful violations.[1] It is this Office's view that by requiring respondents to personally sign the agreements involving knowing and willful violations, which typically involve very serious and substantial violations, the respondents will be made to feel more personally accountable for their actions, and will not be able to insulate themselves from their wrongdoing by having counsel sign on their behalf. Obtaining the signatures of respondents who are individuals should be relatively straight-forward. As to those respondents that are organizations and corporations, the signature of the Chief Executive Officer, President, or other officer, should be required.

With respect to this change in policy regarding knowing and willful violations, and most particularly with respect to individual respondents, this Office recommends that the Commission create an extremely limited exception allowing for signature by counsel or a designated representative in extreme circumstances, such as respondent's health. This exemption could be invoked at the Commission's direction.

With respect to those conciliation agreements that do not involve knowing and willful violations, this Office recommends that the current policy be continued with the caveat that there may be certain situations where the Commission, at its discretion, may require the respondent, personally, to sign the conciliation agreement. By requiring the respondents signature at the Commission's discretion, the Commission will be able to maintain flexibility concerning this policy. There is a strong argument to maintain flexibility in light of the very diverse population of respondents, including the aged, the physically or mentally infirm, and the imprisoned. In addition, in appropriate circumstances the prospect of the respondent being required to personally sign a conciliation agreement can be used as a negotiating instrument during conciliation negotiations.

II. RECOMMENDATIONS

1. Approve a policy requiring respondents, personally, to sign conciliation agreements involving knowing and willful violations, except in the most extreme circumstances. With respect respondents who are individuals, the personal

[1] This Office has determined that the regulations promulgated by the Securities and Exchange Commission specifically require an offer of settlement to be signed by the party involved, and not by counsel. 17 C.F.R.§ 201.240(b).

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II. **RECOMMENDATIONS (continued)**

signature of the respondent will be required. With respect to respondents that are organizations and corporations, the signature of the Chief Executive Officer, President, or other officer or organizational representative, will be required.

2. Continue the present policy of allowing counsel or designated representatives to sign conciliation agreements involving other than knowing and willful violations, but at the Commission's discretion, the respondent's signature may be required.

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Enforcement Procedure 1998-1
(Docs Open # 9447)

January 20, 1998

Recently we had a situation where the Commission approved a conciliation agreement and closed a case. Before the letters went out to respondents notifying them of the Commission's actions, the Press Office received a request from a reporter for the agreement. Press contacted the staff person handling the case, and was given a signed copy of the agreement, which it passed on to the reporter. All of this occurred BEFORE the respondents had received notice that the Commission had approved the agreement.

This put the respondents in a less than comfortable position when the reporter called them for comment. As you know once a case is closed, the confidentiality provisions no longer apply and we cannot use them as a reason to keep things from t he press. Ordinarily, this does not create a problem because no one is aware that the Commission is considering action regarding a respondent, so no one inquires about that action until it appears on the public records or the parties themselves talk about it. In some cases, however, the press is very interested in a matter and makes regulars inquires regarding the matter or may hear about the matter from some other source.

In order to avoid having conciliation agreements made available to the press prior to the respondents receiving them, please direct all requests for such documents to Vinnie [Admin. Law] or if he is not available, to me [Associate General Counsel for Enforcement]. We will make sure the respondents are notified prior to the press receiving the agreement or other documents. Thank you.

Page 2 of Enforcement Procedure 1998-1

February 5, 1998
Memorandum to: Larry Noble, General Counsel
From: John Surina, Staff Director
Subject: Release of Conciliation Agreements

Ron Harris, Patricia Young and I sat down and discussed the circumstances under which both the Press Office and the Public Records Office should be provided a copy of an executed conciliation agreement and the manner in which that document should find its way to both offices. As we discussed, the release of a conciliation agreement cannot occur until the close-out letter has been sent to the respondent(s). At that point, however, there occasionally arise rare situations under which it is appropriate to release a particular agreement prior to the entire expurgated file in that MUR being placed on the public record. In those circumstances, we would like Vinnie Convery [Admin. Law] to make two copies of the pertinent conciliation – one each for Press and Public Records.

The foregoing is not intended to supersede our standing arrangement in which you and your staff coordinate with [Press] and his staff on the status and substance of major cases prior to those matters becoming public. That coordination, including the sharing of

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documents on a confidential basis, is in everybody's best interest as it prepares the Press Office to be clear and responsible to reporters' inquiries.

cc: Ron Harris, Patricia Yyoung, Vinnie Convery, Lois Lerner

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1997

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Enforcement Procedure 1997-5
(Docs Open # 9458)

September 22, 1997

EMAIL To: Enforcement Staff
FROM: Lois Lerner
SUBJECT: Copies of Deposition Transcripts must be purchased from the Court Reporter (formerly titled "Provision of Transcripts at the Briefing Stage)

*Note: This section has been replaced by Enforcement procedure 2003-5
[Deleted section : As you are aware, we do not permit respondents to have copies of their deposition transcripts prior to the time the briefs have gone out in a matter.]

If respondents do request their transcripts [deleted "once the briefs have gone out"] we usually tell the court reporter that he/she can now sell respondents a copy of the transcript. Recently, we got a request from a respondent's counsel who asked that we provide him with a copy of the transcript or allow him to come into our offices to review our copy and take notes. This is to clarify that we do not provide respondents with copies-- if they want one, they must purchase it from the court reporter who is in business to sell them. However, if they wish to come in and read it here, they may do so, subject to a room being available. This is similar to the procedure we use then a witness wants to review and sign his/her transcript in DC rather than some other place where the reporter resides. If you have any questions, please see your team leader or me. Thanks.

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Enforcement Procedure 1997-4
(Docs Open # 9451)

Memorandum

To: Staff

From: Lois G. Lerner
Associate General Counsel

Re: New Procedures

Date: September 23, 1997

On September 9, 1997, the Commission considered the General Counsel's Report on caseload considerations. That report recommended an approach to the overwhelming caseload engendered by the 1996 election cycle. In general, the approach recommended that the Commission not activate any additional matters from election cycles prior to the 96' cycle and that we work towards closing up previous election cycle cases that are already active.

In addition, the report recommended some procedural changes to help expedite progress on the cases we do activate. We are very pleased that the Commission has approved these changes and I wanted to let you know about them as soon as possible. To begin with, the Commission has expanded OGC's authority to grant post RTB extension of time requests. Now, we can grant extension of up to 60 days without having to get Commission approval. In addition, for requests for extensions of more than 60 days and for requests that we would recommend the Commission deny, we have developed a "fill in the blank" report form (The form report will be added to the forms library shortly.) This form provides the Commissioners with the information they need to reach a decision, while minimizing the resources needed to produce it. The Commission also has approved a new circulation policy for approval of these reports. The reports will circulate on a non-objection basis and, absent two objections, the recommendations will be approved without being placed on the next Executive Session agenda. If two or more objections are received, the report would go on to the next scheduled agenda.

NOTE: This section has been replaced by Enforcement Procedure 1998-5

The Commission has approved a policy whereby contingent suit authority is approved for all subpoenas at the time the subpoenas are approved. This will save an enormous amount of time because it will persuade some recalcitrant respondents to comply rather than face swift subpoena enforcement, and will avoid the need to draft a report recommending subpoena enforcement. Instead, where suit is necessary, this office will circulate a short informational notice indicating the matter is being transferred to Litigation. (The form will be added to the forms library shortly.) The following is an example of how the recommendations should read in cases where we are seeking subpoenas:

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1. Approve the attached Subpoenas to Produce Documents and Orders to Provide Written Answers.
2. Grant the Office of the General Counsel contingent authority to file suit to enforce the attached proposed Subpoenas to Produce Documents and Orders to Answer Written Questions against any witness who fails to comply with them.

end of section

Finally, the Commission approved a policy whereby status reports in the Major '96 cases will be oral. In the past, the Commission has received most of its status information in ongoing cases through substantive reports containing recommendations for approval. We anticipate, however, that many of the larger investigations will have extended discovery periods, during which there will be few substantive recommendations to present to the Commission. Rather than expend the time and effort to prepare status reports during these periods, this office will place certain MUR(s) on the agenda for discussion purposes. At the Commission meeting, the Assistant General Counsel whose team is handling the cases will give an oral report and be available to answer questions.

We believe these innovations will help us do a better and faster job with our caseload. If you wish to have more details on the Commission's decisions in this area, please feel free to review the Caseload Considerations Report in Docket, or stop by my office and ask Cindy to share my copy.

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Enforcement Procedure 1997-2
(Docs Open #9449)

April 1, 1997
Email to: Enforcement Staff
From: Lois Lerner
Subject: Disgorgement vs. Civil Penalty

Please remember when using disgorgement in a conciliation agreement, the provision should read ...Respondents will disgorge "to the United States Treasury..." and in civil penalty situations it reads Respondents shall pay "to the Federal Election Commission..." This makes it easier to distinguish between the two actions. Thank you.

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

Enforcement Procedure 1997-1

January 21, 1997

MEMORANDUM

TO: Enforcement Staff
PFESP Staff

FROM: Maura Callaway

SUBJECT: Revised Procedures for Statements of Reason involving Deadlocked Votes

Last week the Commission approved a change in procedure for handling Statements of Reason in deadlocked vote situations. The attached memo explains the change. Form 102 has been revised accordingly. If you have any questions, please consult with your team leader.

Attachment
Memo to the Commission

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

MEMORANDUM

TO: The Commission

FROM: Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

SUBJECT: Revised Procedure for Statements of Reason in Deadlocked Vote Situations

In externally generated matters where this Office recommends that the Commission proceed against a respondent(s) but the Commission votes against doing so or is deadlocked, a Statement of Reasons is required to be sent to the complainant when the matter is concluded. The current procedure for issuing these Statements is bifurcated. In majority vote situations, this Office forwards a memo explaining the necessity for the Statement and attaches a draft Statement that the Commissioners revise and finalize. In deadlocked vote situations, however, the Statement of Reasons is prepared directly by the Commissioners without this Office providing a draft. It has been this Office's practice in such circumstances to have the staff member assigned to the case contact one or all of the Executive Assistants of the Commissioners who voted against going forward to confirm that a Statement of Reasons is in fact required and, subsequently, to remind the Commissioners' offices if a Statement is not forthcoming within 30 days.

In order to make the procedures used in both situations more consistent and efficient, this Office is adjusting the present process. We will continue to forward draft Statements in majority vote situations. In addition, we will be forwarding a brief memo explaining the necessity for a Statement in all situations -- including deadlocked votes. The memo will note that a Statement is due by a date certain -- 30 days after the Commission's vote which necessitated the Statement. This will provide a consistent vehicle to explain the requirement in all applicable situations.

We have discussed this revised procedure with the Commission Secretary and she has raised no objections to the change. We hope that the implementation of this revised procedure will assist both the Commission and this Office in tracking these Statements and ensuring that they are issued timely.

Attachment
Revised Form 102

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

FORM 102 (revised January 1997)

MEMORANDUM

TO: The Commission

FROM: Lawrence M. Noble] use this signature block for
General Counsel] option 1 below

BY: >] use this signature block for
Assistant General Counsel] option 2 below

SUBJECT: >[Draft] Statement of Reasons -- MUR >

*****OPTION 1***
Use when there is a majority vote not to go forward and attach a Draft Statement:
> [explanation of why a Statement of Reasons is necessary and the background and issues in the case]

A draft Statement of Reasons reflecting the basis for the Commission's action is attached.

Attachment
Draft Statement of Reasons

Staff Assigned: >

*****OPTION 2***
Use for deadlocked votes:
On >, 199>, the Commission dismissed the allegations against > in MUR > due to a lack of four affirmative votes to proceed against the respondent(s). Commissioner > made the motion not to adopt the General Counsel's recommendations. As a result of this dismissal, a Statement of Reasons is required. The Statement of Reasons should be ready for issuance by >, 199>, which is 30 days after the Commission's vote necessitating the Statement.

Staff Assigned: >

FORM 102 (revised January 1997) (use numbered paper)

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***do not use this page for deadlocked votes**

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR >
(Respondents' Names)	)	

STATEMENT OF REASONS

>{text}

Date	>Chairman
Date	>Vice-Chairman
Date	>Commissioner
Date	>Commissioner
Date	>Commissioner
Date	>Commissioner

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1996

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Callaway

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of Language in Conciliation Agreements	))))	Agenda Document #X95-98

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on December 14, 1995, do hereby certify that the Commission decided by a vote of 4-0 to take the following actions with respect to the above-captioned matter:

1. Approve the recommendation in the General Counsel's November 27, 1995 memorandum to negotiate conciliation agreements providing for the inclusion of an explanation of the civil penalty and mitigating factors where such an explanation appears justified.

2. Approve language in such agreements that will include the phrase, "The Commission has determined that a civil penalty of $X ordinarily would be appropriate in this matter."

Commissioners Aikens, Elliott, McGarry, and Thomas voted affirmatively for the decision; Commissioner McDonald was not present.

Attest:

12-15-95
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

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FEDERAL ELECTION COMMISSION
Washington, DC 20463

Enforcement Procedure 1996-5

MEMORANDUM

To: Enforcement Staff
PFESP Staff

FROM: Lois G. Lerner
Associate General Counsel

SUBJECT: Civil Penalty Language in Conciliation Agreements

In a few conciliation agreements approved by the Commission, certain language was included in the civil penalty paragraph that sets forth the amount of the "appropriate" civil penalty as well as the amount of the civil penalty that the Commission was willing to accept to settle the matter. (See MURs 3538, 2602, 4141, 3585.) In response to concerns raised by the Commission, this Office subsequently prepared a memorandum that recommended that OGC continue to negotiate conciliation agreements that include an explanation of the civil penalty and the mitigating factors in the case if such an explanation appears justified. The General Counsel's memorandum emphasized that this Office would include this type of language in only the most rare and exceptional cases. In approving the General Counsel's recommendation, the Commission noted that this type of language should be reserved for only the most unusual circumstances. The Commission also indicated that the inability to pay should be taken into consideration in only the most extreme circumstances, and should not be routinely included as justification for a reduced penalty.

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The Commission also approved the inclusion of the following phrase (in bold type) in the paragraph of the conciliation agreement pertaining to the civil penalty:

The Commission has determined that a civil penalty of $X ordinarily would be appropriate in this matter, pursuant to 2 U.S.C. § 437g(a)(5)(A). However, [list mitigating factors.] Accordingly, the Respondent will pay a civil penalty to the Federal Election Commission in the amount of ... OR In light of this situation, the Commission will accept a civil penalty of ... OR Therefore, the Commission agrees to accept a civil penalty of ... .

A copy of the General Counsel's memorandum and the corresponding certification is attached.

Attachments

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1995

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Enforcement Procedure 1995-8
(Docs Open #9496)

EMAIL TO: Enforcement Staff

FROM: Lois Lerner
Associate General Counsel

SUBJECT: Termination when committee has not made refunds

DATE: November 9, 1995

There has been some confusion about whether a committee can terminate if it has not refunded outstanding excessives and/or prohibiteds. If, in the MUR context, the Commission has entered into a conciliation agreement with the committee and that agreement had dropped the refund requirement, then RAD will permit the committee to terminate as long as it files a termination repot and doesn't have other unresolved issues.

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Enforcement Procedure 1995-7
(DOCs Open # 9485)

EMAIL TO: Enforcement Staff

FROM: Lois Lerner
Associate General Counsel

SUBJECT: Copying Audio and Video Tapes

DATE: October 23, 1995

Recently, OGC received numerous tapes as evidence in a matter. During an attempt to copy the tapes, several of them were inadvertently erased. Whenever you receive audio or video tapes as evidence in a matter, please remember to remove the **copyguard tab** before copying or playing the tape. Once the copyguard has been removed it is impossible to inadvertently copy over or erase the tape.

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ENFORCEMENT PROCEDURE 1995-6

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Statements of Reasons in Enforcement)
Matters Involving Partial Dismissals.)

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on September 11, 1995, the Commission decided by a vote of 5-0 to continue preparing statements of reasons in all externally generated enforcement cases where the Commission without written explanation does not pursue a complaint-generated respondent or a particular allegation in the complaint, as recommended in the General Counsel's Memorandum dated September 5, 1995.

Commissioners Aikens, McDonald, McGarry, Potter, and Thomas voted affirmatively for the decision; Commissioner Elliott did not cast a vote.

Attest:

9-12-95
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

Received in the Secretariat: Tues., Sept. 05, 1995 3:42 p.m.
Circulated to the Commission: Wed., Sept. 06, 1995 11:00 a.m.
Deadline for vote: Mon., Sept. 11, 1995 4:00 p.m.

bjr

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FEDERAL ELECTION
COMMISSION
SECRETARIAT

SEP 5 3 42 PM '95

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 5, 1995

MEMORANDUM

TO: The Commission

FROM: Lawrence M. Noble
General Counsel

SUBJECT: Statements of Reasons in Enforcement Matters Involving Partial Dismissals

I. BACKGROUND

For nearly ten years, the Commission's practice has been to issue a statement of reasons in enforcement matters whenever in a complaint generated matter the Commission rejects the General Counsel's recommendation to go forward, resulting in dismissal of an administrative complaint. Reviewing courts under section 437g(a)(8) will look to the General Counsel's Report for the legal basis for dismissals of complaints, FEC v. Democratic Senatorial Campaign Committee, 454 U.S. 27, 39 n.19 (1981), but where the Commission declines this Office's recommendation to go forward, resulting in dismissal of a complaint, reasons for such dismissal cannot be found in the General Counsel's Report. Therefore, a separate statement of reasons is required. Common Cause v. FEC, 676 F. Supp. 286 (D.D.C. 1986). Later court decisions established that this principle applied also to dismissals based on Commission deadlock (i.e. a lack of four votes to go forward), in addition to majority decisions to dismiss. Democratic Congressional Campaign Committee v. FEC, 831 F.2d 1131 (D.C. Cir. 1987); Common Cause v. FEC, 842 F.2d 436 (D.C. Cir. 1988).1/

The case which in part triggered this policy, Common Cause v. FEC, 676 F. Supp. 286 (D.D.C. 1986), involved a situation where the entire complaint was dismissed against the

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1/ By contrast, statements of reasons are not required in internally generated matters or on issues affecting only internally generated respondents or allegations. Compare 2 U.S.C. § 437g(a)(8)(A) with 2 U.S.C. § 437g(a)(2) and 11 C.F.R. § 111.8 (internally generated matters).

Celebrating the Commission's 20th Anniversary

YESTERDAY, TODAY AND TOMORROW
DEDICATED TO KEEPING THE PUBLIC INFORMED

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General Counsel's recommendation and the court concluded it could not sustain the Commission's dismissal based on the reasoning in the General Counsel's Report. See Memo to the Commission from Charles N. Steele dated September 15, 1986 (Attachment 1). A later memorandum to the Commission without discussion extended this procedure also to partial dismissals, i.e., circumstances where the Commission dismissed only some of the respondents or allegations without written explanation.2/ Since that time, the Commission's practice has been applied to such cases.3/ Furthermore, one of the cases which dictated that the Commission also issue such statements in instances of lack of four votes, Common Cause v. FEC, 842 F.2d at 438, 449, itself involved a partial dismissal of respondents without written explanation.4/ Nonetheless, it appears the Commission has not expressly voted to bring such situations within its 1986 policy decision and this Office recommends the Commission do so.

Therefore, this Office recommends that the Commission decide to continue preparing statements of reasons in all externally generated cases where the Commission without written explanation does not pursue a complaint-generated respondent or a particular allegation in the complaint.

2/ See Memo to the Commission from Charles N. Steele, "Recently Closed Enforcement Cases," dated January 15, 1987 (statements of reasons required where "the Commission ... dismissed all or part of the complaint," and referring to MUR 2110 involving "No further action with respect to some respondents"); "Minutes of an Open Meeting Of the Federal Election Commission Thursday, February 5, 1987" at page 8. See also Memo to OGC Staff from Charles N. Steele, "External Enforcement Actions Requiring Statements of Reasons," dated February 6, 1987 (staff memo immediately following the Commission discussion). These documents are appended to this report as Attachment 2.

3/ See, e.g., MUR 3678 (Clyde Evans) (partial dismissal of allegations); MUR 2677 (Rosemary Pooler) (same); MUR 2370 (West Virginia Republican State Executive Committee) (same); MUR 3048 (Rucker for Congress) (partial dismissal of respondents).

4/ There, the court articulated three reasons behind the requirement that the Commission issue statements of reasons. A statement of reasons is "necessary to allow meaningful judicial review of the Commission's decision not to proceed"; such a statement "contributes to reasoned decisionmaking by the agency...[,] ensur[ing] reflection and creat[ing] an opportunity for self-correction"; and "some explanation of the views of the decliners will enhance the predictability of Commission decisions for future litigants." Id. at 449.

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II. RECOMMENDATION

Continue preparing statements of reasons in all externally generated enforcement cases where the Commission without written explanation does not pursue a complaint-generated respondent or a particular allegation in the complaint.

Attachments

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

Enforcement Procedure 1995-5
(Docs Open #7719)

MEMORANDUM

TO: Enforcement Staff

FROM: Abigail Shaine

DATE: August 3, 1995

SUBJECT: Non-Filer Conciliation Agreements

When preparing a conciliation agreement in a RAD referal invovling a non-filer, please remember to include a requirement that the reports be filed.

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

Enforcement Procedure 1995-4
(Docs Open # 9476)

EMAIL TO: Enforcement Staff

FROM: Abigail Shaine

SUBJECT: Subchapter S Corporation

In Lois' absence I have been asked to let staff know of the Commission's request that in all matters in which a corporation is a respondent, we should advise the Commission at the earliest opportunity if we become aware that the corporation is a subchapter S corporation. Thus, upon becoming aware that a corporate respondent is a subchapter S corporation, please include that fact in the next report to the Commission. This is true regardless of the nature of the violation in question with that respondent.

In addition, to assist the Commissioners in obtaining that information, anytime discovery is being directed to a corporate respondent, please inquire whether the corporation is a subchapter S corporation.

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

Enforcement Procedure 1995-2
(Docs Open # 9472)

MEMORANDUM TO: Enforcement Staff

FROM: Maura Callaway

SUBJECT: Language in Late Filer Conciliation Agreements

When drafting conciliation agreements in late filer cases, please remember to include a statement concerning the financial activity of the committee. (Enforcement procedure 1989-6 states that the committee's financial activity is to be included in late filer conciliation agreements.) The committee's financial activity should be included in the paragraph which discusses the due date of the report(s) in question. For example, it could be incorporated as follows: "Pursuant to 2 U.S.C § 434(a)>, the > Report was due on >, 199>. The Respondents filed the > Report on >, 199>, > days late, disclosing receipts totaling $>, and disbursements totaling $>."

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Enforcement Procedure 1995-1
(DOCs Open # 9471)

EMAIL TO: Enforcement Staff

FROM: Lois Lerner
Associate General Counsel

SUBJECT: Contributions on Joint accounts

For you information, today, in the context of a $25,000 violation discussion, the Commission determined that:

1) where there is a joint account;
2) the check is imprinted with both account holders' names; and
3) the check is signed by a third party (ex. Bookkeeper or accountant)

the Commission will split the checks 50/50 between the joint account holders UNLESS there is a statement to the contrary from the contributor.

UPDATE TO Enforcement Procedure 1995-1, dated March 25, 1995
From Lois Lerner to Enforcement Staff

During today's discussion of PM 291/MUR 3867 (Hillman), the Commission decided that: where a contribution is made on a joint account check (where both account holders' names are printed on the check) and the check is signed by a third party agent (such as an accountant or bookkeeper), there is a presumption that the contribution should be split equally between the joint account holders—absent evidence showing it should be attributed otherwise.

In the past, the Commission has considered the manner in which the recipient committee reported the contribution as evidence of how the contribution should be attributed. Pursuant to today's discussion, however, the recipient would overcome the presumption that the contribution should be divided equally between the joint account holders. I also note that even though the recipient committees in this MUR did not report the contribution at issue as being split between the joint account holders, the Commission is not perusing those committees for reporting errors.

This is quite a departure from how we have treated these contributions in the past, so if you have this situation I urge you to talk to Maria Fernandez your team leader or me about how to proceed.

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1994

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ENFORCEMENT PROCEDURE 1994-21

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	Enforcement Policy
Letters to Respondents	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on September 27, 1994, do hereby certify that the Commission decided by a vote of 6-0 that effective immediately it shall be the policy of the Office of General Counsel in those unusual circumstances where the Office of General Counsel determines that there is a higher or lower civil penalty that needs explanation, that they insert the following language in the letter to the respondent: "Please be advised that the civil penalty in this agreement reflects unusual factors brought forth during the investigation."

Commissioners Aikens, Elliott, McDonald, McGarry, Potter, and Thomas voted affirmatively for the decision.

Attest:

9-29-94
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

ENFORCEMENT PROCEDURE 1994-20

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 15, 1994

MEMO TO: Enforcement Staff

FROM: Maura Callaway
Special Assistant to the
Associate General Counsel

SUBJECT: Refund Requirement in Excessive Contribution Cases

During Executive Session on November 29, 1994, the Commission reaffirmed the Commission's policy in excessive contribution cases of requiring conciliation agreements to include a provision that the respondent will refund all remaining excessive contributions, and a provision for the payment of a civil penalty. (Staff was initially notified of this requirement in the attached EM from Lois to staff on February 4, 1994.)

Attachment

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nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	Agenda Document
Refund Policy	)	#X94-104

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on November 29, 1994, do hereby certify that the Commission decided by a vote of 6-0 to reaffirm the Commission's policy in excessive contribution cases of requiring conciliation agreements to include a provision that the respondent will refund all remaining excessive contributions, and a provision for the payment of a civil penalty.

Commissioners Aikens, Elliott, McDonald, McGarry, Potter, and Thomas voted affirmatively for the decision.

Attest:

11-30-94
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

AGENDA DOCUMENT NO. X94-104

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

November 3, 1994

SENSITIVE
NOV 0 8 1994
EXECUTIVE SESSION
SUBMITTED LATE

MEMORANDUM

TO: The Commission

FROM: Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

SUBJECT: Suspension of the Rules

This Office requests that the Commission suspend the rules so it may consider the attached late submitted memorandum entitled, "Refund Policy" at the Executive Session Meeting of November 8, 1994. The subject matter relates to another matter on that agenda.

Attachment

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nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

FEDERAL ELECTION COMMISSION
WASHINGTON DC 20463

November 3, 1994

MEMORANDUM

TO: The Commission

FROM: Lawrence M. Noble
General Counsel

Lois G. Lerner
Associate General Counsel

SUBJECT: Refund Policy

In cases involving a political committee's receipt of excessive contributions, it has been a long standing policy of this Office to recommend a conciliation agreement providing for payment of a civil penalty reflecting 25% of refunded contributions and 50% of unrefunded contributions, as well as a requirement that the respondent political committee refund all remaining outstanding excessive contributions. Although, over time, there may have been a few matters circulated to the Commission that inadvertently left out the refund requirement, we believe we have attempted to consistently follow that policy.

As a result of recent Commission discussions concerning the refund requirement, however, we looked at several of the more recent and well known matters involving excessive contributions to determine if this Office had, in fact, sought to include a refund requirement in the initial conciliation proposal. Our research has shown that in all of the instances reviewed, this Office's initial conciliation proposal did include a refund requirement. [redacted]

Our research also included review of the final conciliation agreements accepted by the Commission. In both MURs 3309 (Dole) and 3360 (Kemp) each final agreement accepted by the Commission contained a requirement that the respondent refund the remaining excessive contributions. [redacted] was an unusual case involving a primary, general, and special election. The initial proposed agreement mailed to the committee contained a refund requirement. Thereafter, the Commission lowered the amount to

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be refunded because of what the Commission perceived as the unique nature of the situation. The final conciliation agreement did, however, require the committee to refund a small portion of the original refund amount recommended by this Office.

A final agreement has not yet been reached in some of the above cited matters. As a result of negotiations in [redacted], the refund requirement has been eliminated because of the committee's financial situation, and the case is still in conciliation. In [redacted], no refund requirement is contained in the proposed final agreement (now on circulation with a recommendation to accept) because by the time this agreement was proposed, the committee had already refunded or obtained redesignations/reattributions for the excessive contributions. In [redacted] the Commission dropped the refund requirement at the PCTB stage but raised the civil penalty from the last offer made at PPC. In [redacted] before the Commission at last week's Executive Session, this Office's initial proposal contained a refund requirement as well as the traditional 50% civil penalty for unrefunded excessives. The Commission approved an agreement containing a refund requirement but, given what the Commission perceived as the unique circumstances of the case, the Commission determined to lower the civil penalty to about 25% of the amount in violation. Following unsuccessful negotiations and the receipt of additional information, the Commission decided to eliminate the refund requirement and raise the civil penalty to approximately 33% of the amount in violation.

In sum, absent the belief in the existence of unusual circumstances, the Commission has approved a refund requirement in cases involving receipt of excessive contributions. We believe this policy, coupled with a substantial civil penalty provides an important deterrent effect. If committees are not required to refund the excessive amounts, the civil penalty becomes merely a tax on the committee's receipt and use of illegal contributions. Therefore, this Office believes that the Commission should reaffirm the refund requirement in addition to a civil penalty requirement.

RECOMMENDATION

Reaffirm the Commission's policy in excessive contribution cases of requiring conciliation agreements to include a provision that the respondent will refund all remaining excessive contributions, and a provision for the payment of a civil penalty.

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This is the background to Enforcement Procedure 1994-20.
MEMORANDUM

TO: The Commission

FROM: Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

SUBJECT: Refund Policy

It has been the long-standing policy of this Office to require, as a condition of conciliation, respondent political committees to refund all remaining outstanding excessive contributions. We have looked at several of the more recent and well known matters involving excessive contributions to determine if this Office has in fact sought to include a refund requirement in the initial conciliation proposal. Our research has shown that in all of the instances reviewed, this Office's initial conciliation proposal did include a refund requirement. [redacted]

Our research also included review of the final conciliation agreements accepted by the Commission. In both [redacted] and [redacted] each final agreement accepted by the Commission contained a requirement that the respondent refund the remaining excessive contributions. In [redacted] no refund requirement was contained in the final agreement because by the time the final agreement was reached, the committee had already refunded or obtained redesignations/reattributions for the excessive contributions. [redacted] is a unusual case involving a primary, general, and special election. [redacted] The final conciliation agreement required the committee to refund a small portion of the original refund amount.

A final agreement has not yet been reached in some of the above cited matters. [redacted]

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[redacted]

Although the above research shows that there have been inconsistencies in the refund requirements that have been contained in some final conciliation agreements, this Office believes that the Commission should reaffirm the refund requirement in addition to a civil penalty requirement.

RECOMMENDATION

Reaffirm the Commission's policy in excessive contribution cases of requiring conciliation agreements to include a provision that the respondent will refund all remaining excessive contributions, and a provision for the payment of a civil penalty.

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INTEROFFICE MEMORANDUM

Date: 19-Oct-1994 01:32pm GMT
From: Lois G. Lerner
LLERNER
Dept: OGC
Tel No: 376-5690

TO: See Below

Subject: Statements of Reason

There appears to be some confusion as to whether a Statement of Reasons is due where this Office recommends RTB or probable cause and the Commission finds RTB or probable cause, but takes no further action. Statements of Reason are due in any complaint generated situation where we recommend going forward on a MUR or with a respondent and the Commission instead, dismisses the MUR or respondent. For this purpose, no further action is a dismissal even though the Commission has taken some action. If you have any questions in this area, please refer to the Enforcement manual (we are in the process of revising the Statement of Reasons section to clarify this point) or discuss with your team leader. Thanks

Distribution:

TO:	MAURA WHITE CALLAWAY	(MCALLAWAY)
TO:	Anne Weissenborn	(AWEISSENBORN)
TO:	Phil Wise	(PWISE)
TO:	Mary Taksar	(MTAKSAR)
TO:	Jeff Long	(JLONG)
TO:	JONATHAN BERNSTEIN	(JBERNSTEIN)
TO:	Mark Allen	(MALLEN)
TO:	Tony Buckley	(TBUCKLEY)
TO:	Jose Rodriguez	(JRODRIGUEZ)
TO:	Joan McEnery	(JMCENERY)
TO:	Mary Bumgarner	(MBUMGARNER)
TO:	Richard Denholm	(RDENHOLM)
TO:	Tamara Kapper	(TKAPPER)
TO:	Sylvia Parker	(SPARKER)
TO:	LISA KLEIN	(LKLEIN)
TO:	Craig Reffner	(CREFFNER)
TO:	Xavier McDonnell	(XMCDONNELL)
TO:	Dawn Odrowski	(DODROWSKI)
TO:	Frances B. Hagan	(FHAGAN)
TO:	LIEN GREEN	(LGREEN)
TO:	Kamala Milstead	(KMILSTEAD)
TO:	Holly Baker	(HBAKER)
	Abigail Shaine	(ASHAINE)
	Lawrence Calvert	(LCALVERT)
TO:	Karen White	(KWHITE)

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INTEROFFICE MEMORANDUM

Date: 16-Aug-1994 05:11pm GMT
From: Lois G. Lerner
LLERNER
Dept: OGC
Tel No: 376-5690

TO: See Below

Subject: Civil Penalties for $25,000 violations - 441a(a)(3)

We are used to thinking of $25,000 limit cases as those where a contributor makes numerous contributions to several candidates which, in the aggregate, exceed $25,000. Keep in mind that we also have a violation of the $25,000 limit where someone makes a single contribution exceeding that amount. This often occurs in situations where an individual has made a loan to a candidate. In 94L-20, an individual made a $30,000 loan to a candidate, which the candidate gave to the committee. This resulted in violations of both 441a(a)(1)(A) and 441a(a)(3). When calculating the civil penalty, we recommended 25% of the amount up to $25,000(had been repaid) and 100% of the amount over $25,000 for both the contributor and the recipient. The Commission approved the civil penalty saying it was in line with the recently approved policy of seeking 100% in cases involving violations of the $25,000 limit.
Please keep this in mind when dealing with large contribution cases.

Distribution:

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INTEROFFICE MEMORANDUM

Date: 27-Jul-1994 02:44pm GMT
From: Lois G. Lerner
LLERNER
Dept: OGC
Tel No: 376-5690

TO: See Below

Subject: $25,000 limit cases

Recently, counsel in one of the $25,000 limit cases asked why the civil penalty proposal was so much higher for his client than it had been for a previous client with a similar violation. If this occurs, you can acknowledge that, since the time the previous case closed, the Commission has decided that these cases warrant higher civil penalties and, generally, the Commission will be seeking 100% of the amount in violation.

Distribution:

TO:	MAURA WHITE CALLAWAY	(MCALLAWAY)
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TO:	Jeff Long	(JLONG)
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TO:	Abigail Shaine	(ASHAINE)
TO:	Lawrence Calvert	(LCALVERT)
TO:	Karen White	(KWHITE)
TO:	Eric Brown	(EBROWN)
TO:	Andrea Low	(ALOW)
	Erik Morrison	(EMORRISON)
	Elizabeth Strange	(ESTRANGE)
TO:	Cindy Myers	(CMYERS)

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INTEROFFICE MEMORANDUM

Date: 19-Jul-1994 01:39pm GMT
From: Lois G. Lerner
LLERNER
Dept: OGC
Tel No: 376-5690

TO: See Below

Subject: Conciliation Agreements

When entering into conciliation agreements with respondents, please use the respondent's full name in the agreement. Lately, we've had several agreements go through with "Mrs. John Smith", rather than "Mary Smith." The problem is that there may be more than one Mrs. John Smith, past or present, and it makes it impossible to track who the true respondent was for purposes such as recidivism. Thank you.

Distribution:

TO:	MAURA WHITE CALLAWAY	(MCALLAWAY)
TO:	Anne Weissenborn	(AWEISSENBORN)
TO:	Phil Wise	(PWISE)
TO:	Mary Taksar	(MTAKSAR)
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INTEROFFICE MEMORANDUM

Date: 28-Jun-1994 04:02pm GMT
From: Lois G. Lerner
LLERNER
Dept: OGC
Tel No: 376-5690

TO: See Below

Subject: E-Mail to respond to RAD

Starting July 5, 1994 when RAD sends you a memo indicating that they plan to send a letter to a respondent in an ongoing MUR, you should now send your response via E-Mail. Please note that all responses must be sent to Lorrussia Martin. Do not send responses to the RAD Analyst who is handling the committee. Also, please cc: your supervisors. Thanks

Distribution:

TO:	MAURA WHITE CALLAWAY	(MCALLAWAY)
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	Phil Wise	(PWISE)
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	Cindy Myers	(CMYERS)
	Deborah Rice	(DRICE)
	Colleen Sealander	(CSEALANDER)

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INTEROFFICE MEMORANDUM

Date: 21-Mar-1994 03:02pm GMT
From: Lois G. Lerner
LLERNER
Dept: OGC
Tel No: 376-5690

TO: See Below

Subject: $25,000 MURs

Holly Quate was checking for refunds in her MUR relating to contributions in excess of the $25,000 limit in 1992. When she ran an index for 1993 to check for refunds, she found that the contributor also had exceeded his $25,000 limit in 1993. I have instructed her to include these excessives in her report. If you are in a similar situation, please be sure to add the 1993 excessives to your report.

Distribution:

TO:	MAURA WHITE CALLAWAY	(MCALLAWAY)
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	Phil Wise	(PWISE)
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TO:	Tonda Phalen	(TPHALEN)
TO:	Jeff Long	(JLONG)
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Procedure 1994-12

INTEROFFICE MEMORANDUM

Date: 21-Jun-1994 08:25pm GMT
From: Lois G. Lerner
LLERNER
Dept: OGC
Tel No: 376-5690

TO: See Below

Subject: Probable Cause Briefs

Recently I have noticed an increase in the number of Probable Cause (PC) briefs that discuss Pre-Probable Cause (PPC) conciliation negotiations at length. The purpose of the PC brief is to present OGC's analysis of the facts of the case in relation to the applicable law. Because PPC conciliation is not a prerequisite to PC, neither the fact that PPC negotiations occurred nor the specifics of those negotiations are relevant to the issue of probable cause. In fact, it could be argued that it would be prejudicial for the Commission to consider failed PPC negotiations in determining whether there is probable cause to believe a violation has occurred. Additionally, by discussing the negotiations in the brief, you open yourselves up to respondents who want to re-argue PPC conciliation in their response briefs. Finally, because references to conciliation negotiations fall within the confidentiality provisions, adding them to the brief creates extra, unnecessary work for the FOIA team when it comes time to close the case. Consequently, from now on please refrain from discussing PPC negotiations in your PC briefs. You may, of course, include PPC negotiation information in the PC report to the Commission when providing the background of the case or discussing proposals for PC conciliation.

Distribution:

TO:	MAURA WHITE CALLAWAY	(MCALLAWAY)
TO:	Anne Weissenborn	(AWEISSENBORN)
TO:	Phil Wise	(PWISE)
TO:	Mary Taksar	(MTAKSAR)
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	Tamara Kapper	(TKAPPER)
	Sylvia Parker	(SPARKER)
	LISA KLEIN	(LKLEIN)

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Enforcement Procedure 1994-11

MEMORANDUM

TO: Enforcement Staff
Docket Staff

FROM: Lois G. Lerner
Associate General Counsel

SUBJECT: Notification to Candidates

A question arose recently from a Commissioner about the address OGC uses to send notification to candidates who are incumbents. In order that all notifications are handled consistently, please take note of OGC's new policy:

If the candidate is a U.S. Senator or Congressman, send the original notification to the candidate's home address listed on his/her Statement of Candidacy (FEC Form 2). If Congress is in session, send a copy, marked "confidential," to the candidate's congressional office in D.C.

If the candidate is a Cabinet officer, send the original notification to the candidate's home address listed on his/her Statement of Candidacy, and send a copy, marked "confidential," to his/her office address.

Attached for your convenience is an excerpt from the Webster's Secretarial Handbook (Second Edition) which lists common titles and their corresponding forms of address.

cc: Susan Donaldson

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PROCEDURE 1994-10

I N T E R O F F I C E M E M O R A N D U M

Date: 07-Jun-1994 07:35pm GMT
From: Lois G. Lerner
LLERNER
Dept: OGC
Tel No: 376-5690

TO: See Below

Subject: Civil Penalties in $25,000 limit MURs 441a(a)(3)

Today the Commission approved a civil penalty policy for $25,000 limit MURs. For MURs involving 2 USC § 441(a)(3) violations relating to 1992 and beyond, the base going out the door civil penalty should be 100% of the amount in excess of the annual limit. Mitigating factors such as untimely redesignations, reattributions or refunds will not be reflected in the out the door figure. Instead they may be taken into account during negotiations. Those of you who have been waiting for the Commission's decision on this matter can now forward your reports. I'm sure questions will arise in individual cases as we go along. Please bring them to my attention so we can provide guidance to everyone.

ribution:

TO:	MAURA WHITE CALLAWAY	(MCALLAWAY)
TO:	Anne Weissenborn	(AWEISSENBORN)
TO:	Phil Wise	(PWISE)
TO:	Mary Taksar	(MTAKSAR)
TO:	Jeff Long	(JLONG)
TO:	JONATHAN BERNSTEIN	(JBERNSTEIN)
TO:	Mark Allen	(MALLEN)
TO:	Tony Buckley	(TBUCKLEY)
TO:	Jose Rodriguez	(JRODRIGUEZ)
TO:	Joan McEnery	(JMCENERY)
TO:	Mary Bumgarner	(MBUMGARNER)
TO:	Richard Denholm	(RDENHOLM)
TO:	Tamara Kapper	(TAMARAK)
TO:	Sylvia Parker	(SPARKER)
TO:	LISA KLEIN	(LKLEIN)
TO:	Craig Reffner	(CREFFNER)
TO:	Xavier McDonnell	(XMCDONNELL)
TO:	Dawn Odrowski	(DODROWSKI)
TO:	Frances B. Hagan	(FHAGAN)
TO:	LIEN GREEN	(LGREEN)
TO:	Kamala Milstead	(KMILSTEAD)
TO:	Holly Baker	(HBAKER)
TO:	Abigail Shaine	(ASHAINE)
	Lawrence Calvert	(LCALVERT)
	Karen White	(KWHITE)
	Eric Brown	(EBROWN)

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

94-10

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	Agenda Document
Civil Penalties in Section	)	# X94-56
441a(a)(3) Matters	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on June 7, 1994, do hereby certify that the Commission decided by a vote of 4-2 to base initial civil penalties in matters involving 2 U.S.C. § 441a(a)(3) violations, relating to 1992 and beyond, on 100% of the amount in excess of the annual limit.

Commissioners McDonald, McGarry, Potter, and Thomas voted affirmatively for the decision; Commissioners Aikens and Elliott dissented.

Attest:

6-9-94
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

PROCEDURE 1994-9

INTEROFFICE MEMORANDUM

Date: 23-May-1994 04:08pm GMT
From: Lois G. Lerner
LLERNER
Dept: OGC
Tel No: 376-5690

TO: See Below

Subject: Extension Requests

Lately we've had more and more requests for extensions of time to respond to discovery. We are learning the hard way that some respondents ask for and are granted an extension without intending to comply fully or without intending to comply by the date of the extension. When deciding whether to grant such an extension, you might consider asking for their representation that they intend to comply. This should be a case by case decision in conjunction with your team leader.

Distribution:

TO:	MAURA WHITE CALLAWAY	(MCALLAWAY)
	Anne Weissenborn	(AWEISSENBORN)
	Phil Wise	(PWISE)
TO:	Mary Taksar	(MTAKSAR)
TO:	Jeff Long	(JLONG)
TO:	JONATHAN BERNSTEIN	(JBERNSTEIN)
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TO:	Jose Rodriguez	(JRODRIGUEZ)
TO:	Joan McEnery	(JMCENERY)
TO:	Mary Bumgarner	(MBUMGARNER)
TO:	Richard Denholm	(RDENHOLM)
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TO:	Kamala Milstead	(KMILSTEAD)
TO:	Holly Baker	(HBAKER)
TO:	Abigail Shaine	(ASHAINE)
TO:	Lawrence Calvert	(LCALVERT)
TO:	Karen White	(KWHITE)
TO:	Eric Brown	(EBROWN)
	Andrea Low	(ALOW)
	Erik Morrison	(EMORRISON)
	Elizabeth Strange	(ESTRANGE)

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PROCEDURE 1994-8

INTEROFFICE MEMORANDUM

Date: 12-May-1994 03:41pm GMT
From: Lois G. Lerner
LLERNER
Dept: OGC
Tel No: 376-5690

TO: See Below

Subject: Compelling Exception Cases

Under the Priority System there is a provision that allows us to assign a case that rates as a tier 3 where there is a compelling reason to pursue the case despite the low rating. We do not anticipate this will occur very often, but when it does it is imperative that the First General Counsel's Report in the matter note in the first paragraph what the case rating was, that it was assigned pursuant to the compelling reason exception and set forth the basis of applying the exception. You will know if your case falls within this by the rating. If it is below 30 and is not a tier 4, then it is an exception. Thus far, only one matter, MUR 3826, has been assigned pursuant to this exception.

ribution:

TO:	MAURA WHITE CALLAWAY	(MCALLAWAY)
TO:	Anne Weissenborn	(AWEISSENBORN)
TO:	Phil Wise	(PWISE)
TO:	Mary Taksar	(MTAKSAR)
TO:	Jeff Long	(JLONG)
TO:	JONATHAN BERNSTEIN	(JBERNSTEIN)
TO:	Mark Allen	(MALLEN)
TO:	Tony Buckley	(TBUCKLEY)
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TO:	Abigail Shaine	(ASHAINE)
	Lawrence Calvert	(LCALVERT)
	Karen White	(KWHITE)
	Eric Brown	(EBROWN)

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PROCEDURE 1994-7

INTEROFFICE MEMORANDUM

Date: 05-Apr-1994 03:44pm GMT
From: Lois G. Lerner
LLERNER
Dept: OGC
Tel No: 376-5690

TO: See Below

Subject: 48 hr. violations

At today's meeting the issue came up about the consistency of conciliation agreements with 48hr. report violations. Some staff are including a listing of the specific contributions that were not reported on the 48 hr. reports while others are just listing the number of missing contributions. The Commission has asked that we not include a listing of contributors in the conciliation agreements. If you have any agreements outstanding or in the works that do include such a listing, please send respondents a revised agreement without the names of contributors. If you have received a signed agreement that includes this information, call respondents and ask their permission to revise the non-signed page since the new policy is not to include these names. There are many examples of agreements that were drafted without the names. See team leaders for such. Thanks

Distribution:

TO:	MAURA WHITE CALLAWAY	(MCALLAWAY)
TO:	Anne Weissenborn	(AWEISSENBORN)
TO:	Phil Wise	(PWISE)
TO:	Mary Taksar	(MTAKSAR)
TO:	Tonda Phalen	(TPHALEN)
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TO:	Craig Reffner	(CREFFNER)
TO:	Xavier McDonnell	(XMCDONNELL)
TO:	Dawn Odrowski	(DODROWSKI)
TO:	Frances B. Hagan	(FHAGAN)
	LIEN GREEN	(LGREEN)
TO:	Kamala Milstead	(KMILSTEAD)
TO:	Joi Roberson	(JROBERSON)

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Civil Penalties.)
)

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on May 20, 1994, the Commission decided by a vote of 4-0 to approve the following policy concerning the computation of civil penalties:

1. Penalties below $5,000: round to the nearest $100 increment.

2. Penalties between $5,000 and $9,999: round to the nearest $500 increment.

3. Penalties of $10,000 and above: round to the nearest $1,000 increment.

Commissioners Aikens, Elliott, McGarry, and Potter voted affirmatively for the decision; Commissioners McDonald and Thomas did not cast votes.

Attest:

5-20-94
Date

Delores Hardy
for Marjorie W. Emmons
Secretary of the Commission

Received in the Secretariat: Tues., May 17, 1994 9:15 a.m.
Circulated to the Commission: Tues., May 17, 1994 11:00 a.m.
Deadline for vote: Fri., May 20, 1994 4:00 p.m.

bjr

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

Enforcement Procedure 1994-6

May 24, 1994

MEMORANDUM

TO: Enforcement Staff
Public Financing, Ethics and Special Projects

FROM: Maura Callaway

SUBJECT: Rounding off Civil Penalties

On May 20, 1994, the Commission approved the following policy for rounding off civil penalties in all enforcement cases, regardless of the issue(s) involved.

Penalties below $5,000: round to the nearest $100 increment

Penalties between $5,000 and $9,999: round to the nearest $500 increment

Penalties of $10,000 and above: round to the nearest $1,000 increment

In the event a penalty computes to be exactly half of the applicable increment, the penalty should be rounded up, rather than down. For example, if the penalty computes to $2,150, it should be rounded up to $2,200. If the penalty computes to $15,500, it should be rounded up to $16,000.

**Note: This procedure supersedes section III of Enforcement Procedure 1991-5 concerning "exact dollar amounts" of civil penalties.

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

Enforcement Procedure 1994-5

MEMORANDUM

TO: The Commission

FROM: Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

SUBJECT: Recommendations in MURs involving § 441a(a)(3)

I. BACKGROUND

At the present time several MURs involving violations of the $25,000 annual contribution limitation (2 U.S.C. § 441a(a)(3)) have been activated under the Enforcement Priority System. Based upon a cursory review of the contributions involved in these MURs, the issue has arisen of how to handle the political committees which received excessive contributions from the individuals who are the primary respondent in the MURs.

II. DISCUSSION

When a complaint is filed alleging a violation of the $25,000 limit, it is this Office's practice to notify as respondents all political committees mentioned in the complaint if there is information in the complaint indicating that the individual's contributions to the committee exceeded the
§ 441a(a)(1) limits. Thereafter, in the course of the MUR, this Office must put forth a recommendation as to each of the recipient committees named as respondents. In addition, instances have arisen where the complaint did not include information indicating that certain of the individual's contributions were excessive under the § 441a(a)(1) limits, but the individual's response to the complaint and/or this Office's investigation, indicates otherwise. In these situations, this

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Office must also put forth a recommendation as to each of the committees that accepted excessive contributions.1

A review of the activated cases indicates that several individual respondents have made contributions to political committees in excess of their § 441a(a)(1) limits. The excessive amounts range from between $200 and $12,500. 2 Of the excessive contributions that we have been able to identify in a preliminary examination, it appears that in only one-third 3of the cases did the excessive contributions exceed the applicable contribution limitation by more than 50 percent.

III. PROPOSAL

The Commission has expressed a strong interest in resolving these matters as expeditiously as possible, and in having the excessive portions of the contributions at issue returned to the individual contributors. This Office notes, however, that if the Commission pursues each of the recipient political committees for receipt of all the excessive contributions discovered in the course of the MUR, regardless of amount, the duration of the MUR is very likely to increase. On the other hand, this Office recognizes that pursing a committee and including a refund requirement in a conciliation agreement is the only way to ensure that a refund is in fact made. In order to accomplish these competing objectives, and to insure consistent treatment among the respondent committees involved in these matters, this Office puts forth the following proposal:

In all matters involving the annual contribution limitation (2 U.S.C. § 441a(a)(3)), this Office will recommend that the Commission make a finding of reason to believe against the recipient political committee for the receipt of each

1 In some of these cases the Commission has already found reason to believe against the contributor, but not against the political committee.
2 Unlike complaint generated matters, in internally generated matters, no notification is made by this Office to any of the recipient political committees even if the amount the committee received from the individual appears excessive on the face of the referral or sua-sponte submission.
3 This Office intends to pursue the individual contributors for all contributions made in excess of the §§ 441a(a)(1) limits and 441a(a)(3) limits.

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excessive contribution(s). [redacted], the Office of the General Counsel will also recommend that the Commission take no further action against the committee. 4 Subsequent to the Commission's finding, the committee will be sent a letter notifying it of the Commission's finding. The letter also will contain admonishment language, and if a refund has not yet occurred, will request that the committee refund, within 30 days of receipt of the letter, the amount received in excess of the limitations from the individual contributor.

This Office believes that this proposal will result in the most efficient handling of these cases, yet ensure that the most egregious contributions are pursued. This Office also believes that the placement of a letter on the public record requesting that a refund be made to the individual contributor, along with the request that this Office be notified of the refund, will serve as a strong inducement to the committee to make the requested refund(s).

IV. RECOMMENDATION

1. Authorize the Office of the General Counsel to adopt the following practice:

> In all matters involving the annual contribution limitation (2 U.S.C. § 441a(a)(3)), the Office of the General Counsel will recommend that the Commission find reason to believe against a recipient political committee for the receipt of each excessive contribution(s). If, however, the amount of the excessive contribution(s) [redacted] the Office of the General Counsel will recommend that the Commission take no further action against the committee. Subsequent to the Commission's finding, the committee will be sent a letter notifying it of the Commission's finding. The letter will contain admonishment language, and if appropriate, will also request that the committee refund the amount it received in excess of the limitations from the individual contributor.

2. Approve the attached form letter.

Attachment
Form letter

---

4 In two of these MURs, the Commission has found reason to believe against the individual contributors only.

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>

RE: MUR >
>

Dear >:

[On >, 199>, the Federal Election Commission found reason to believe that >("Committee") and you, as treasurer,] >[your clients, >,] violated 2 U.S.C. § 441a(f), a provision(s) of the Federal Election Campaign Act of 1971, as amended ("the Act"). However, after considering the circumstances of this matter, the Commission also determined to take no further action and closed its file as it pertains to >[the Committee and you, as treasurer] [your clients]. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

The Commission reminds you that it is a violation of 2 U.S.C. § 441a(f) for a political committee to accept contributions in excess of the limitations. >[Insofar as >[your clients] [the Committee] accepted an excessive contribution from >[name of individual contributor] totaling >, and has not yet refunded the excessive amount to the contributor, the Commission requests that >[your clients] [the Committee] refund the excessive amount within 30 days of receipt of this letter. The Commission also requests that you notify the >[staff member] [attorney] named below when the refund has occurred.] >[You] [Your client(s)] should take steps to ensure that this activity does not occur in the future.

The file will be made public within 30 days after this matter has been closed with respect to all other respondents involved. You are advised that the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) still apply with respect to all respondents still involved in this matter.

If you have any questions, please contact >, the >[attorney] >[staff member] assigned to this matter, at (202) 219->.

For the Commission,

>
Chairman

Enclosure
Factual and Legal Analysis

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Enforcement Procedure 1994-4
(Docs Open # 9503)

Procedure for Erratum and Re-circulation of Reports

In order to expedite the process when recirculations of portions of reports are required, we have developed the following procedures:

1. ALL REPORTS—If the revision you are circulating does not affect the recommendations or any item that needs to be voted on, you may simply recirculate the appropriate page with a cover memo that explains what report it relates to and the reason for the recirculation. If, however, the recirculation affects the recommendations or any document, such as a conciliation agreement, that is being recommended for approval, you must follow one of the below listed procedures.

2. SHORT REPORTS—This category refers to reports that do not exceed 10 pages in length, including attachments.

   Withdraw the report and recirculate an entire new copy along with a cover memo explaining your reasons for withdrawal and detailing the changes made.

3. SHORT REPORTS WITH LENGTHY ATTACHMENTS—This category refers to report packages where the OGC generated materials—i.e. report and attachments, do not exceed 10 pages, but also contain additional non-OGC generated attachments.

   Recirculate the OGC generated materials with a cover memo detailing the changes in the recirculation and explaining that the additional attachments can be found attached to the original report circulated in the matter.

4. LONG REPORTS—This category refers to report packages where OGC generated materials exceed 10 pages, regardless whether there are additional non-OGC generated materials.

   Circulate appropriate replacement pages as well as a new recommendation page. Explain in your cover memo what report these new pages belong to and detail your reasons for the recirculation.

Under any of these scenarios, you may want to include a request for a shorter than 72 hour circulation time, if appropriate. Speak to your team leader about this issue.

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Enforcement Procedure 1994-2
(Docs Open #9502)

EMAIL

TO: Enforcement Staff

FROM: Lois Lerner
Associate General Counsel for Enforcement

SUBJECT: Withdrawals and Hold-overs

DATE: March 3, 1994

When you are informed by a Commissioner's office that he/she will be withdrawing an objection or asking for a matter to be held over, or when we decide we will be withdrawing a report at the table, please send me an Email explaining such to your leader, me, [the General Counsel], and [CELA]. Although some of us may have the information, it is important that we all obtain it as soon as possible. Thanks.

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

Enforcement Procedure 1994-1
(Docs Open #9500)

EMAIL

TO: Enforcement Staff

FROM: Lois Lerner
Associate General Counsel

SUBJECT: Counsels' names and Respondents' party

Unless absolutely necessary to your discussion, please remember not to refer to respondents' counsel by name or to refer to respondents' political affiliation. This can create an appearance of bias that does not exist and that we should not cultivate. Thank you.

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1993

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Enforcement Procedure 1993-22
(DOCS OPEN # 7708)

MEMORANDUM

TO: Enforcement Staff

FROM: Lois G. Lerner
Associate General Counsel

SUBJECT: Supplying Commission Documents to a Grand Jury

In the event we receive a subpoena from a Grand Jury for Commission documents, Commission approval must be obtained prior to providing the documents. A memorandum should be prepared with the appropriate recommendation. See attached.

When forwarding the documents to the Grand Jury, every page of each document provided should be stamped "CONFIDENTIAL."

If you have any questions about this procedure, please consult with your team leader.

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

Procedure 1993-21

INTEROFFICE MEMORANDUM

Date: 17-Nov-1993 02:24pm GMT
From: Lois G. Lerner
LLERNER
Dept: OGC
Tel No: 376-5690

TO: See Below

Subject: Conciliation where Treasurer argues inability to pay

At today's meeting the Commission discussed the issue of how to proceed where a treasurer, who was not the treasurer at the time the violations occurred, seeks a lower civil penalty based on inability to pay. In the past, we have told such respondents that we would need financial information from them to document the claim. The instructions we received today are:

> When dealing with treasurers, who were not the treasurers at the time the violations occurred, do not ask questions regarding their inability to pay. If they put forth a lower civil penalty based on inability to pay, recommend rejecting the offer. If you can't reach an agreement, move on to the next stage.

The Commission did not seem to have the same concerns if the respondent treasurer was treasurer at the time of the violation--so you may deal with the ability to pay issue during conciliation with these respondents.

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Enforcement Procedure 1993-19

October 4, 1993

MEMO TO: Enforcement Staff

FROM: Maura Callaway

SUBJECT: IRS FORM

Attached is IRS Form 8821 (Tax Information Authorization). This form is to be filled out by a respondent when the FEC wants to get documents in the possession of the IRS. This issue apparently arose in MUR 3485. If you have any questions about this issue/form, please see Holly Baker.

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

Procedure 1993-15

I N T E R O F F I C E M E M O R A N D U M

Date: 12-Aug-1993 04:23pm GMT
From: MAURA WHITE CALLAWAY
MCALLAWAY
Dept: OGC
Tel No:

:O: See Below

ubject: LRF Assignments

If you haven't already, at some point you may receive an LRF assignment (from Brad) involving an article for the FEC RECORD about one of your recently closed MURs. If you receive one of these, it is your responsibility to review the draft article for accuracy and clarity, and to submit comments to Brad prior to the due date. Typically, the due date is just a few days away so the turn-around time is quite short. If you think any part of the draft article is inaccurate or unclear, you should note this to Brad. Usually the easiest way is to write your comments on the draft article itself. If the article is OK as written, you still need to let Brad know by writing on the cover sheet that it is OK. The entire LRF folder, with your comments, should be returned to Brad.

Quite often, after OGC's comments are received in Information, a second draft will be sent to OGC for comment. You will receive the second draft in the same fashion as the first -- in a manila folder with the original LRF number. It is your responsibility to review and comment on the second draft in the same manner as the first. It is particularly important that you comment on the second draft timely because the deadline for publication is quite tight.

If you have any questions about this procedure, please let me know. Thanks.

istribution:

O: Phil Wise (PWISE)
O: Anne Weissenborn (AWEISSENBORN)
O: Lawrence Parrish (LPARRISH)
O: Tonda Mott (TMOTT)
O: Mary Taksar (MTAKSAR)
O: Jeff Long (JLONG)
O: JONATHAN BERNSTEIN (JBERNSTEIN)
C Mark Allen (MALLEN)
L. Tony Buckley (TBUCKLEY)
O: Jose Rodriguez (JRODRIGUEZ)
C Helen Kim (HKIM)
O: Richard Denholm (RDENHOLM)
O: Tamara Kapper (TAMARAK)

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Procedure 1993-13

INTEROFFICE MEMORANDUM

Date: 29-Jul-1993 03:32pm GMT
From: Lois G. Lerner
LLERNER
Dept: OGC
Tel No: 376-5690

:O: See Below

ubject: Contingent Suit Authorization Procedure

We have a lot of cases where, at the post probable cause stage, the Commission authorizes suit contingent on the respondents failure to sign the proposed conciliation agreement within a specified time frame--usually 10 days. Many of these cases are settled within that time frame, but a significant number are not and must go to Litigation where a new staff person has to become familiar with the case.

In order to most efficiently handle these matters, we are formally implementing a procedure that some of you already may be using. When a contingent suit authorization letter goes out to respondents, the Enforcement attorney assigned to the matter has the responsibility to contact the respondent one more time to clarify what the letter means and see if an agreement can be reached so that the case does not have to go to Litigation. This does not mean you have to call several times or that extended negotiations should ensue. What this does mean is that you need to talk to respondents or leave a message letting them know that the matter will go to Litigation after the time specified in the letter and asking if they want to discuss conciliation before the time has expired. You should also draft a memo of the conversation or message for the file.

If, as a result of your call to respondent, conciliation results, please remember to notify Steve Hershkowitz so that Litigation will know the case has settled.

This document does not bind the Commission,
nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

Procedure 1993-12

INTEROFFICE MEMORANDUM

Date: 20-Jul-1993 02:08pm GMT
From: Lois G. Lerner
LLERNER
Dept: OGC
Tel No: 376-5690

TO: See Below

Subject: The Final Final Word on "Knowingly"

As you know, there has been some confusion over the issue whether we should include the phrase "knowingly violated" in the admissions clause where the section of the Act that was violated icludes the word "knowingly."(Ex. 441(a)(f)--no candidate or committee shall knowingly accept....) At today's meeting, the Commission decided that we no longer should include knowingly in admission clauses in these instances. Instead, continue to include "knowingly" in the description of the statutory cite in the law section of the agreement, but leave it out of the admission's clause. This is prospective so you don't have to do anything with regard to outstanding offers that include knowingly in both places. Obviously, if a respondent requests that we delete knowingly from the admission's clause of an outstanding agreement, you should agree to do so. If you have any questions, please discuss with your team leader. Thanks

Distribution:

TO:	MAURA WHITE CALLAWAY	(MCALLAWAY)
TO:	Anne Weissenborn	(AWEISSENBORN)
TO:	Phil Wise	(PWISE)
TO:	Lawrence Parrish	(LPARRISH)
TO:	Mary Taksar	(MTAKSAR)
TO:	Tonda Mott	(TMOTT)
TO:	Jeff Long	(JLONG)
TO:	JONATHAN BERNSTEIN	(JBERNSTEIN)
TO:	Mark Allen	(MALLEN)
TO:	Tony Buckley	(TBUCKLEY)
TO:	Jose Rodriguez	(JRODRIGUEZ)
TO:	Helen Kim	(HKIM)
TO:	Zina Hoes	(ZHOES)
TO:	Mary Bumgarner	(MBUMGARNER)
TO:	Richard Denholm	(RDENHOLM)
TO:	Tamara Kapper	(TAMARAK)
	Sylvia Parker	(SPARKER)
	LISA KLEIN	(LKLEIN)
TO:	Craig Reffner	(CREFFNER)
TO:	Xavier McDonnell	(XMCDONNELL)
	Dawn Odrowski	(DODROWSKI)
	Frances B. Hagan	(FHAGAN)

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Procedure 1993-10

I N T E R O F F I C E M E M O R A N D U M

Date: 23-Jul-1993 11:50am GMT
From: Lois G. Lerner
LLERNER
Dept: OGC
Tel No: 376-5690

TO: See Below

Subject: Notice to Respondents --Take No Action

Apparently there is some confusion about whether it is necessary to notify respondents when the Commission votes to "take no action" or "take no further action" against a respondent. Here are some guidelines. If we have sent out a brief recommending probable cause(PC) or no probable cause on a violation and the Commission votes to take no action or take no further action on our recommendation, you **must** notify the respondent of that determination just as you would a PC or noPC determination.

If you are at RTB and we make recommendations and the Commission affirmatively votes to take no action(in contrast to not voting on the recommendation)you must notify the respondent. If, however, they "take no action **at this time**", we generally do not notify the respondents because there will likely be a further vote on this in the future. Sometimes, when there are several respondents represented by the same counsel and the Commission goes RTB on some and take no action at this time on others, we will tell counsel about the no action at this time to avoid confusion on where his various clients stand. If you have this circumstance, talk to your team leader about how to handle it.

I hope this clears up the confusion. If in doubt--talk to your team leader. Thanks

Distribution:

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TO:	Anne Weissenborn	(AWEISSENBORN)
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C	Jose Rodriguez	(JRODRIGUEZ)
O:	Helen Kim	(HKIM)
O:	Zina Hoes	(ZHOES)
O:	Mary Bumgarner	(MBUMGARNER)

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Procedure 1993-9

I N T E R O F F I C E M E M O R A N D U M

Date: 22-Jul-1993 05:55pm GMT
From: Lois G. Lerner
LLERNER
Dept: OGC
Tel No: 376-5690

TO: See Below

Subject: Statements of Reason

Please be advised that, starting immediately, when a Statement of Reasons is issued in a MUR, that statement **MUST** be sent to the respondents it applies to as well as the complainants. In the past, the practice has not been uniform and not all respondents have received copies of statements applying to them. The section in the procedures manual relating to Statements of Reason will be revised to clarify that copies of such statements shall be sent to appropriate respondents in addition to sending them to the complainants.

Thank you.

Distribution:

	MAURA WHITE CALLAWAY	(MCALLAWAY)
TO:	Anne Weissenborn	(AWEISSENBORN)
TO:	Phil Wise	(PWISE)
TO:	Lawrence Parrish	(LPARRISH)
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TO:	Xavier McDonnell	(XMCDONNELL)
TO:	Dawn Odrowski	(DODROWSKI)
TO:	Frances B. Hagan	(FHAGAN)
TO:	Noriega James	(NJAMES)
	LIEN GREEN	(LGREEN)
TO:	Kamala Milstead	(KMILSTEAD)

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

Procedure 1993-8

I N T E R O F F I C E M E M O R A N D U M

Date: 08-Jul-1993 02:05pm GMT
From: MAURA WHITE CALLAWAY
MCALLAWAY
Dept: OGC
Tel No:

TO: See Below

Subject: Admonishment letters

The Chairman has notified Lois of some problems with admonishment language contained in notification letters forwarded to his office for signature. The major problem noted by the Chairman involves the standard admonishment sentence: "The Commission reminds you that >[describe violation] appears to be a violation of >."

Apparently, letters have been going upstairs for signature that contain incorrect statements. For example, one said that the "acceptance of excessive contributions appears to be a violation of 2 U.S.C. § 441a(f)." As the Chairman correctly points out, the acceptance of excessive contributions is a violation of 2 U.S.C. § 441a(f). Thus, the letter should have said: "The Commission reminds you that the acceptance of excessive contributions is a violation of 2 U.S.C.§ 441a(f)."

The "appears to be" language was placed in the form letters with the intention that the facts of the case would be inserted, such as, "The Commission reminds you that the acceptance of $3,500 from John Smith appears to be a violation of 2 U.S.C. § 441a(f)." Since the letters only were for cases at the RTB stage it was appropriate to say that the activity "appeared to be" a violation, rather than was a violation. If you prefer to insert a statement of the law (such as the one noted by the Chairman) it is o.k., but please remember to say that such activity is a violation, not appears to be one. When sending out admonishment letters after a PCTB finding, you can insert the facts and still use the "is a violation" language because PCTB is a higher standard. I will add admonishment language as an option to form 50A (PCTB and NFA) and change the form letters in the library account so that two language options (appears to be/is) appear.

Also, for your information, the Chairman also asked that we delete the word "immediate" from the phrase "should take immediate steps to insure that this activity does not occur in the future." (Prior to sending this message I deleted the word from the forms in the library account.)

tribution:

TO: Phil Wise (PWISE)

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

Procedure 1993-5

March 23, 1993

Inclusion of "Knowingly" in admission clauses

This is a reminder that all standard going out the door conciliation offers involving a violation where the statutory cite includes the term knowingly (ex. 441a(f) "knowingly accepted"), should include the "knowingly" in the admissions clause. Where appropriate, we may negotiate to exclude the term from the admission clause, but all going out the door offers should include it.

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

Enforcement Procedure 1993-2

January 1993

MEMORANDUM

TO: Enforcement Staff

FROM: Lois G. Lerner
Associate General Counsel

SUBJECT: Injunctive Relief

Based upon the recommendation of this Office, on January 12, 1993, the Commission decided to no longer require this Office to prepare memoranda regarding each request for injunctive relief contained in a complaint under Title 2. This Office's recommendation is contained in the attached memorandum entitled "Injunctive Relief: Analysis of the Commission's Power to Seek Preliminary Injunctions in Enforcement Matters."

The Commission also voted to add certain language to the form letters (8 and 9) sent to complainants and respondents upon the receipt of a complaint. The new language, to be used in those situations where injunctive relief is requested, states that the Commission will not grant the request for injunctive relief at this time.

As a result of the Commission's action, Enforcement forms 13 (letter), 14 (letter), and 101 (memorandum) have been deleted from the formbook.

Attachments
Memorandum -- December 11, 1992
Forms 8 and 9

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nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

<<FORM8>>

>
>

RE: MUR >

Dear >:

This letter acknowledges receipt on >, 19>, of your complaint alleging possible violations of the Federal Election Campaign Act of 1971, as amended ("the Act"),* by >. The respondents will be notified of this complaint within five days.

[Your letter seeks injunctive relief to prevent > from continuing to engage in the allegedly improper activity. 2 U.S.C. § 437g(a)(6) provides that the Commission may seek such relief at the end of the administrative enforcement process. Accordingly, the Commission will not grant your request for injunctive relief at this time.]

You will be notified as soon as the Federal Election Commission takes final action on your complaint. Should you receive any additional information in this matter, please forward it to the Office of the General Counsel. Such information must be sworn to in the same manner as the original complaint. We have numbered this matter MUR >. Please refer to this number in all future correspondence. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

Sincerely,

>
Assistant General Counsel

Enclosure
Procedures

* Change to Chapters 95 and 96 of Title 26, U.S. Code, where appropriate.

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nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

<<FORM9>>

>
>
>

RE: MUR >
>

Dear >:

The Federal Election Commission received a complaint which indicates that >[you] >[("Committee") and you, as treasurer,] >[] may have violated the Federal Election Campaign Act of 1971, as amended ("the Act").* A copy of the complaint is enclosed. We have numbered this matter MUR >. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against you in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

[The complainant seeks injunctive relief to prevent > from continuing to engage in the allegedly improper activity. 2 U.S.C. § 437g(a)(6) provides that the Commission may seek such relief at the end of the administrative enforcement process. Accordingly, the Commission will not grant the complainant's request for injunctive relief at this time. The Commission will proceed with the processing of the remainder of the complaint pursuant to 2 U.S.C. § 437g(a).]

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

If you have any questions, please contact >, the >[attorney] >[staff member] assigned to this matter, at (202) 219->. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

>
Assistant General Counsel

Enclosures
1. Complaint
2. Procedures
3. Designation of Counsel Statement

*Change to Chapters 95 and 96 of Title 26, U.S. Code, where appropriate.

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

Procedure 1993-1

January 1993

MEMO TO: Enforcement Staff

FROM: Lois G. Lerner
Associate General Counsel

SUBJECT: Notifying Candidates in Internally Generated Matters

Recently, there have been several instances in internally generated matters where candidates have asserted, at the probable cause stage, that they were not previously aware there was a matter pending against their committee. The Commission has expressed concern that the candidates in internally generated matters are being treated differently than those in complaint generated matters, where the candidate is sent a courtesy copy of the complaint. In order to eliminate this discrepancy and to encourage more expeditious resolution in internally generated matters, we are instituting a new procedure whereby candidates will now receive courtesy copies of the notification letter and accompanying Factual and Legal Analysis in all internally generated matters where we open a MUR and find RTB. The new procedure goes into effect immediately as to all future internally generated MUR openings.

Don't
think we
are doing
this

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1992

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PROCEDURE 1992-17

I N T E R O F F I C E M E M O R A N D U M

DATE: NOVEMBER 30, 1992
(To team leaders 9/16/92)
FROM: LOIS G. LERNER

TO: Enforcement Staff
Title 26 Staff

SUBJECT: Time Payment Schedules

When you receive a request that a conciliation agreement contain a provision for time payments to pay the civil penalty, there must be a justification for accepting that provision. We have required the respondent to provide financial information to justify the granting of the request. Jonathan has had the most experience with this, so you may wish to speak to him about it.

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

ENFORCEMENT POLICY 1992-16

December 15, 1992

MEMORANDUM

TO: Enforcement Staff

FROM: Lois G. Lerner
Associate General Counsel

SUBJECT: FAX Policy

During discussions with the team leaders, it came to light that several of the teams have their own informal policy about the acceptance of FAXes in MURs. With the increased use of FAX machines by respondents, the time has come for Enforcement to have one uniform policy on the acceptance of FAXed documents. After talking with the team leaders and Steve Hershkovitz, it seems that the following policy is the most workable and makes the most sense.

FAXes are acceptable for all submissions in a case, except as listed below. Follow-up by hard copy is not necessary, and should not be encouraged, unless the FAX is illegible, or the FAXed document is a signed conciliation agreement that we intend to recommend to the Commission.

Please note that if you submit a signed conciliation agreement to the Commission and recommend its approval, but have received only a FAX, the report must indicate that representation has been made that the original will be mailed. This office will only execute originals signed by the respondent.

EXCEPTIONS:

1. FAXes cannot be accepted for complaints or amendments since such documents are required to be signed and notarized.

2. FAXes cannot be accepted for notarized statements or statements under penalty of perjury.

3. FAXes cannot be accepted for documentary responses.

If you have any questions about this policy, please check with your team leader.

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 24, 1992

MEMORANDUM

TO: Enforcement Staff

FROM: Lois G. Lerner
Associate General Counsel

SUBJECT: Amendments and Supplements to Complaints

As you know, a complaint filed with the Commission must meet certain statutory requirements. A complaint must be in writing, contain the name and address of the complainant, and be signed, sworn to and notarized.[1] After a proper complaint is filed, any additional material submitted by the complainant is considered either an "amendment" or a "supplement." An amendment contains additional allegations and/or names additional respondents, whereas a supplement merely provides additional information pertaining to the allegations in the original complaint.

When an **amendment** is filed, it must meet the statutory requirements for a proper complaint discussed above. If an amendment is received lacking any of the requirements, you must send the complainant a letter notifying him/her of the defect. (Form 11A.) When the defect is cured, copies of the amendment should be sent to all respondents implicated therein. The respondents are given an additional 15 days to respond. (Form 12.) If the amendment names respondents who were not named in the original complaint, you should mail copies of both the original complaint and the amendment to the new respondents.

Unlike an amendment, when a **supplement** is filed, it need not meet the statutory requirements for a proper complaint. The respondents are sent copies but no additional response period is allowed. (Form 12.)

1. The notary must represent as part of the jurat that the swearing occurred.

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For both supplements and amendments, a letter is sent to the complainant acknowledging receipt of the additional material (Form 11).

Attachment
Form 11A (new)

cc: Lawrence M. Noble

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

<FORM11A>>

>

RE: MUR >

Dear >:

This letter acknowledges receipt on >, 199>, of the amendment to the complaint you filed on >, 199>, against >. Insofar as the amendment >[contains additional allegations] >[and] >[names additional respondents], the amendment is required to meet the statutory requirements for a proper complaint.

Under 2 U.S.C. § 437g(a)(1) and 11 C.F.R. 111.4, a complaint must be in writing, contain the name and address of the complainant, and be signed and sworn to in the presence of a notary public and notarized. The notary must represent as part of the jurat that such swearing occurred. The preferred form is "Subscribed and sworn to before me on this __ day of _____, 199_." If the defects are not cured and the allegations are not refiled, no action will be taken on the basis of this amendment.

If you have any questions concerning this matter, please contact me at (202)219->.

Sincerely,

>
>Attorney/Paralegal

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

I N T E R O F F I C E M E M O R A N D U M

Date: 29-Sep-1992 05:24pm GMT
From: Lois G. Lerner
LLERNER
Dept: OGC
Tel No: 376-5690

TO: See Below

Subject: Please keep in mind for Depos

As the attached indicates, it should be our policy that we ask for the witnesse's name, address, phone number and social security number whenever we're taking a deposition.
thanks

I N T E R O F F I C E M E M O R A N D U M

Date: 25-Sep-1992 11:38am GMT
From: MAURA WHITE CALLAWAY
MCALLAWAY
Dept: OGC
Tel No:

TO: Lois G. Lerner (LLERNER)

Subject: Litigation

Steve H. suggests that enforcement staff be told to ask at depositions for the deponenets social security number, birthdate, address, and phone number, in order to have sufficient information to locate the respondent at a later date. Apparently Alva has run into difficulty locating respondents concerning collection of civil penalties. I told him that it was pretty standard to ask for address and phone number, but that I would pass this along to you.

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– PROCEDURE 1992-10

I N T E R O F F I C E M E M O R A N D U M

Date: 08-Jul-1992 04:25pm GMT
From: Lois G. Lerner
LLERNER
Dept: OGC
Tel No: 376-5690

TO: See Below

Subject: News Articles

We're seeing more and more news articles used as bases for complaints and PreMURS, which raises the issue of how we treat the information in the articles. Please remember, news articles are not "evidence" of anything. They are the reporter's perception of what he or she heard or found and often are wrong. While we can rely on them as a basis for finding RTB so as to investigate issues the articles raise, we need to find real evidence to support any ultimate Commission action-i.e. PPC conciliation or probable cause. So, when drafting reports basing recommendations on such articles, please be careful with your phrasing--rather than saying the article provides evidence that the violation occurred, phrase it in terms of the article provides the basis for "finding RTB" that the violation occurred or something along those lines. Thanks.

Distribution:

TO:	MAURA WHITE CALLAWAY	(MCALLAWAY)
TO:	GEORGE F. RISHEL	(GRISHEL)
TO:	Anne Weissenborn	(AWEISSENBORN)
TO:	Phil Wise	(PWISE)
TO:	Lawrence Parrish	(LPARRISH)
TO:	Mary Taksar	(MTAKSAR)
TO:	Tonda Mott	(TMOTT)
TO:	Jeff Long	(JLONG)
TO:	JONATHAN BERNSTEIN	(JBERNSTEIN)
TO:	Debby Curry	(DCURRY)
TO:	Mark Allen	(MALLEN)
TO:	Tony Buckley	(TBUCKLEY)
TO:	Jose Rodriguez	(JRODRIGUEZ)
TO:	Helen Kim	(HKIM)
TO:	Richard Zanfardino	(RZANFARDINO)
TO:	Zina Hoes	(ZHOES)
TO:	Theresa Hennessy	(THENNESSY)
TO:	Mary Bumgarner	(MBUMGARNER)
TO:	Mary Mastrobattista	(MMASTROBATTISTA)
TO:	Richard Denholm	(RDENHOLM)
	Tamara Kapper	(TAMARAK)
TO:	Sylvia Parker	(SPARKER)
TO:	LISA KLEIN	(LKLEIN)

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Procedure 1992-8

I N T E R O F F I C E M E M O R A N D U M

Date: 27-Jan-1992 03:11pm GMT
From: Lois G. Lerner
LLERNER
Dept: OGC
Tel No: 376-5690

TO: See Below

Subject: Failure to Register and Report MURs

Please remember that conciliation agreements in MURs where the violation is the failure to register and report should require the respondents to register and report as well as pay a civil penalty. The registration requirement is included even if it's only a one time shot and then they terminate. Thanks

Distribution:

TO:	MAURA WHITE CALLAWAY	(MCALLAWAY)
TO:	DORA WALLS	(DWALLS)
TO:	GEORGE F. RISHEL	(GRISHEL)
TO:	Anne Weissenborn	(AWEISSENBORN)
	Phil Wise	(PWISE)
TO:	Lawrence Parrish	(LPARRISH)
TO:	Mary Taksar	(MTAKSAR)
TO:	Tonda Mott	(TMOTT)
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TO:	Jose Rodriguez	(JRODRIGUEZ)
TO:	Helen Kim	(HKIM)
TO:	Richard Zanfardino	(RZANFARDINO)
TO:	Jacqueline Crawford	(JCRAWFORD)
TO:	Theresa Hennessy	(THENNESSY)
TO:	Mary Bumgarner	(MBUMGARNER)
TO:	Mary Mastrobattista	(MMASTROBATTISTA)
TO:	Cheryl Kornegay	(CKORNEGAY)
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TO:	Dawn Odrowski	(DODROWSKI)
TO:	Veronica Gillespie	(VGILLESPIE)
	Frances B. Hagan	(FHAGAN)
	Noriega James	(NJAMES)
TO:	LIEN GREEN	(LGREEN)

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

ENFORCEMENT PROCEDURE 1992-7
(updated)

DATE: March 26, 1992

FROM: Maura Callaway, Special Assistant

SUBJECT: Reports Analysis Division and Termination Requests

[DELETED]

As part of the cooperative effort between RAD and OGC, RAD has asked that staff be reminded to provide RAD with a copy of all letters sent to committees denying termination requests because of an ongoing enforcement matter. [Deleted sentence] Apparently there have been several instances lately where RAD should have received a copy of the letter and did not.

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

Procedure 1992-5

I N T E R O F F I C E M E M O R A N D U M

Date: 26-Feb-1992 02:53pm GMT
From: Lois G. Lerner
LLERNER
Dept: OGC
Tel No: 376-5690

TO: See Below

Subject: F & L Analyses in Sua Sponte Matters

At Tuesday's meeting, the Commission discussed what information we should be including in the F & L Analysis in a sua sponte where the analysis was going to respondents other than those who had filed the sua sponte. Even though those respondents are "internally generated" for the purposes of the MUR, we need to provide them with the substance of the sua sponte letter so that they can adequately respond. So, you can begin by saying in this matter came to the Commission's attention in the course of its supervisory responsibilities, but then you need to describe the sua sponte submission. If you have any specific questions on these, please discuss with your supervisor or with me.

tribution:

TO:	MAURA WHITE CALLAWAY	(MCALLAWAY)
TO:	DORA WALLS	(DWALLS)
TO:	GEORGE F. RISHEL	(GRISHEL)
TO:	Anne Weissenborn	(AWEISSENBORN)
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	Sylvia Parker	(SPARKER)
	LISA KLEIN	(LKLEIN)
TO:	Craig Reffner	(CREFFNER)

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

92-3

INTEROFFICE MEMORANDUM

Date: 23-Jan-1992 03:24pm GMT
From: Lois G. Lerner
LLERNER
Dept: OGC
Tel No: 376-5690

TO: See Below

Subject: Requests to Audit

Just a reminder--in most cases requests for assistance from Audit should be in written form and once such a request is made, please notify Dora because she will be keeping a file of the requests. Periodically, we will send a memo to Audit asking for an update on the status of our requests, so it is very important that Dora is aware of the request so it does not fall through the cracks. Thank you.

Distribution:

TO:	MAURA WHITE CALLAWAY	(MCALLAWAY)
TO:	DORA WALLS	(DWALLS)
	GEORGE F. RISHEL	(GRISHEL)
	Anne Weissenborn	(AWEISSENBORN)
TO:	Phil Wise	(PWISE)
TO:	Lawrence Parrish	(LPARRISH)
TO:	Mary Taksar	(MTAKSAR)
TO:	Tonda Mott	(TMOTT)
TO:	Jeff Long	(JLONG)
TO:	JONATHAN BERNSTEIN	(JBERNSTEIN)
TO:	Debby Curry	(DCURRY)
TO:	Mark Allen	(MALLEN)
TO:	Tony Buckley	(TBUCKLEY)
TO:	Jose Rodriguez	(JRODRIGUEZ)
TO:	Helen Kim	(HKIM)
TO:	Richard Zanfardino	(RZANFARDINO)
TO:	Jacqueline Crawford	(JCRAWFORD)
TO:	Theresa Hennessy	(THENNESSY)
TO:	Mary Bumgarner	(MBUMGARNER)
TO:	Mary Mastrobattista	(MMASTROBATTISTA)
TO:	Cheryl Kornegay	(CKORNEGAY)
TO:	Richard Denholm	(RDENHOLM)
TO:	Tamara Kapper	(TAMARAK)
TO:	Sylvia Parker	(SPARKER)
TO:	LISA KLEIN	(LKLEIN)
TO:	Craig Reffner	(CREFFNER)
TO:	Xavier McDonnell	(XMCDONNELL)
	Dawn Odrowski	(DODROWSKI)
	Veronica Gillespie	(VGILLESPIE)
TO:	Frances B. Hagan	(FHAGAN)
TO:	Noriega James	(NJAMES)

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nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

Procedure 1992-1

INTEROFFICE MEMORANDUM

Date: 03-Jan-1992 05:35pm GMT
From: Lois G. Lerner
LLERNER
Dept: OGC
Tel No: 376-5690

TO: See Below

Subject: 103.3(b)-Reminder

Please remember if a committee repays an excessive contribution within the 60 days provided in 103.3(b), that does not automatically mean there is no violation. You must also check to see whether the committee used the funds before returning them. See 11 C.F.R. § 103.3(b)(4). If the committee did not have sufficient funds to cover its disbursements during that period, without using the excessive contribution, then 103.3(b) does not provide a way out of the violation.

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

1991

This document does not bind the Commission,
nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

91-17

I N T E R O F F I C E M E M O R A N D U M

Date: 11-Dec-1991 10:52am GMT
From: Lois G. Lerner
LLERNER
Dept: OGC
Tel No: 376-5690

TO: See Below

Subject: Enforcement Update

At the Executive Session yesterday, Commission considered a document called Enforcement Update. The document discussed this Office's efforts, beginning with the Task Force and following through to TQM, to address problems that contribute to inefficiency in our processes. In addition to pointing out changes we have made and plan to make within the Office, the report also contained four recommendations for Commission approval. A lenghty discussion ensued, including a description of TQM and what we think it can accomplish, and the Commission was very receptive to the concept. Finally, the Commission approved the following recommendations:

1. Adopt a 30 day time frame for discovery responses as established in the Federal Rules of Civil Procedure.

2. Approve the use of conciliation simultaneous with the reason to believe finding in all internally generated matters where the facts appear to be fully developed.

3. Adopt a procedure whereby Probable Cause reports are circulated for a tally vote and only placed on the agenda if there is an objection.

4. Establish a five minute recess between the completion of the non-Enforcement matters on the agenda and the beginning of Enforcement matters.(So that staff do not have to wait upstairs for long periods before they are called into the meeting)

These changes will go into effect on January 2, 1992.

All Enforcement Staff will receive copies of the memo to the Commission and I will speak to the Enforcement Team leaders further about the discussion at the table. In turn, they will meet with the individual teams to give the details. If any non-Enforcement staff would like a copy of the memo, please see Dora. Although the focus of the memo was Enforcement, I think the process is of interest to all staff since it is a preview of what the Office will be doing in the TQM process.

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nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

Procedure 1991-14

FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

September 10, 1991

MEMORANDUM

TO: Enforcement Staff

FROM: Lois G. Lerner
Associate General Counsel

SUBJECT: MURs involving 2 U.S.C. § 441a(a)(3)

At the present time we have several open MURs involving individuals who allegedly exceeded the $25,000 annual limit on contributions. If you are working on one of these matters, please apply the following thresholds to your recommendations regardless of whether the matter is internally or externally generated.

A. Reason to Believe and Pursue

Recommend a finding of reason to believe against the individual if he/she exceeded the $25,000 annual limit by more than

OR

Recommend a finding of reason to believe against the individual if he/she exceeded the $25,000 annual limit by any amount and another limitation (§ 441a(a)(1)) was also exceeded by any amount.[1]

B. Reason to Believe and Take No Further Action

Recommend a finding of reason to believe and the taking of no further action against the individual if he/she exceeded the $25,000 annual limit by or less, and there are no other excessive contributions (§ 441a(a)(1)) by the individual at issue in the MUR.

1. If you plan to recommend a finding of reason to believe against the individual for a violation of 2 U.S.C. § 441a(a)(1), please check the closed MUR index to make sure that the contributions were not involved in a closed MUR.

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

Procedure 1991-12

INTEROFFICE MEMORANDUM

Date: 08-Aug-1991 05:40pm GMT
From: Lois G. Lerner
LLERNER
Dept: OGC
Tel No: 376-5690

TO: See Below

Subject: 11 CFR 103.3(b)

When excusing an excessive or corporate contribution because it was returned within the time periods set forth in the regulation, remember the regulation contains a second requirement. The committee cannot use the funds until they have been determined to be legal. 11 CFR 103.3(b)(4). So, if the contribution is of any significant amount, please check the reports of disbursements during the period before the refund, redesigination or reattribution to make sure the committee had sufficient funds to make its disbursements without using the questionable contribution. If it did not, then it cannot use 103.3(b) as a shield from a violation.

tribution:

TO:	GEORGE F. RISHEL	(GRISHEL)
TO:	Phil Wise	(PWISE)
TO:	FRANIA MONARSKI	(FMONARSKI)
TO:	Elizabeth Campbell	(ECAMPBELL)
TO:	John Canfield	(JCANFIELD)
TO:	Lawrence Parrish	(LPARRISH)
TO:	Jeff Long	(JLONG)
TO:	Sandra Forant	(SFORANT)
TO:	JONATHAN BERNSTEIN	(JBERNSTEIN)
TO:	Patty Reilly	(PREILLY)
TO:	Debby Curry	(DCURRY)
TO:	Mary Mastrobattista	(MMASTROBATTISTA)
TO:	Todd Hageman	(THAGEMAN)
TO:	ROB BONHAM	(RBONHAM)
TO:	Anne Weissenborn	(AWEISSENBORN)
TO:	Michael G. Marinelli	(MMARINELLI)
TO:	Mary Bumgarner	(MBUMGARNER)
TO:	Tony Buckley	(TBUCKLEY)
TO:	Tamara Kapper	(TAMARAK)
TO:	LISA KLEIN	(LKLEIN)
TO:	JIM BROWN	(JBROWN)
TO:	Xavier McDonnell	(XMCDONNELL)
TO:	Cheryl Kornegay	(CKORNEGAY)
TO:	Craig Reffner	(CREFFNER)
:	Frances B. Hagan	(FHAGAN)
TO:	Noriega James	(NJAMES)
TO:	LIEN GREEN	(LGREEN)

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

ENFORCEMENT PROCEDURE 1991-9

May 13, 1991

MEMORANDUM

TO: Enforcement Staff

FROM: Lois G. Lerner
Associate General Counsel for
Enforcement

SUBJECT: Pre-PCTB Conciliation in Internally Generated Matters

On May 8, 1991, the Commission approved the practice of sending proposed conciliation agreements with reason to believe notifications in all **internally generated** matters involving straight-forward excessive and prohibited contributions. "Straight-forward" means matters where the only issue involved is the making or acceptance of an excessive or prohibited contribution, and there are no factual disputes regarding such making or receipt. This new practice is effective immediately.

Attached is revised Form 27A which is to be used in all situations (i.e., late/non-filing MURs and straight-forward § 441a & 441b MURs) involving internally generated matters where a conciliation agreement is sent out with notification of the reason to believe finding.

This document does not bind the Commission,
nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

FORM 27A
RTB to Respondent Enclosing Conciliation Agreement
(Internally Generated)

RE: MUR
[Name of Respondent]

Dear :

On , 199 , the Federal Election Commission found that there is reason to believe [you] [("Committee") and you, as treasurer,] violated 2 U.S.C. § , a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against [you] [the Committee and you, as treasurer.] You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against [you] [the Committee and you, as treasurer], the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

In order to expedite the resolution of this matter, the Commission has also decided to offer to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Enclosed is a conciliation agreement that the Commission has approved.

If you are interested in expediting the resolution of this matter by pursuing preprobable cause conciliation and if you agree with the provisions of the enclosed agreement, please sign and return the agreement, along with the civil penalty, to the Commission. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

This document does not bind the Commission,
nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact , the [staff member] [attorney] assigned to this matter, at (202) 376- .

Sincerely,

[Chairman's Name]
Chairman

Enclosures
Factual and Legal Analysis
Procedures
Designation of Counsel Form
Conciliation Agreement

This document does not bind the Commission,
nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

1991-08

MEMORANDUM

TO: Enforcement Staff

FROM: Lois G. Lerner
Associate General Counsel

SUBJECT: Closing Notice Letters to Complainant

This memorandum replaces the January 12, 1987, memorandum on this same subject.

All letters notifying complainants that the MUR file has been closed must be sent by **certified mail, return receipt requested**. Under 2 U.S.C. § 437g(a)(8), a complainant who wishes to file suit must do so within 60 days after the date of the dismissal. Although it is the Commission's position that the 60 day period begins the day after the date of the closing of the file, one court has held that the 60 day period runs from the receipt of the notice. Thus, by sending the notice certified mail, return receipt requested, we will know when it was received, should the court in a particular case say that the 60 day period runs from the receipt of the notice.

cc: Docket

This document does not bind the Commission,
nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

91-7

INTEROFFICE MEMORANDUM

FROM: LOIS G. LERNER

DATE: JANUARY 23, 1991

SUBJECT: NEW TREASURER AFTER PROBABLE CAUSE

When the Commission has found probable cause against the committee and its treasurer, but the treasurer then changes you have to notify the new treasurer. The way to do this is to send a letter to the new treasurer explaining the situation, incorporating the original brief by reference and enclosing a copy of the original brief. This way, the treasurer can get actual notice and you won't have to prepare a whole new brief.

SUBJECT: UPDATE -- New treasurers after Probable Cause

I am changing my instruction regarding notice to the new treasurer. Instead of a letter, send a "supplemental" brief indicating that the Commission found probable cause against the Committee and the old treasurer, but now the treasurer is changed so, in accord with Commission policy, we're recommending PC against the new treasurer AND incorporate by reference the original brief into the new brief and enclose a copy of the original brief.

This document does not bind the Commission,
nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

P91-7

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 30, 1991

MEMORANDUM

TO: Enforcement Staff

FROM: Lois G. Lerner
Associate General Counsel

SUBJECT: Pre-Probable Cause to Believe Conciliation in Externally Generated Matters

On April 26, 1991, the Commission approved the practice of sending proposed conciliation agreements with notification of reason to believe findings in all **externally generated** matters involving only the late filing or non-filing of reports. This new practice is effective immediately.

A new form letter (#28A) has been added to the forms Library reflecting the above change in procedure.

Attachment
Form 28A

This document does not bind the Commission,
nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

FORM 28A
RTB To Respondent in LATE FILER/NON-FILER
MURS Enclosing Conciliation Agreement
(EXTERNALLY GENERATED)

RE: MUR
[Name of Respondent]

Dear :

On , 199 , the Federal Election Commission notified [ ] [("Committee") and you, as treasurer,] [your clients(s), ,] of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to [ ] [you] [your client(s)] at that time.

Upon further review of the allegations contained in the complaint, [and information supplied by (you,) (your client(s),) (,) the Commission, on , 199 , found that there is reason to believe [you] [the Committee and you, as treasurer,] [ ] violated 2 U.S.C. § , a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against [ ] [you] [the Committee and you, as treasurer.] You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against [ ] [you] [the Committee and you, as treasurer], the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

In order to expedite the resolution of this matter, the Commission has also decided to offer to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Enclosed is a conciliation agreement that the Commission has approved.

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nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

If you are interested in expediting the resolution of this matter by pursuing preprobable cause conciliation and if you agree with the provisions of the enclosed agreement, please sign and return the agreement, along with the civil penalty, to the Commission. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact , the [staff member] [attorney] assigned to this matter, at (202) 376->.

Sincerely,

[Chairman's Name]
Chairman

Enclosures
Factual and Legal Analysis
Procedures
Designation of Counsel Form
Conciliation Agreement

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nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

ENFORCEMENT PROCEDURE 1991-3

MEMORANDUM

TO: Enforcement Staff

FROM: Lois G. Lerner
Associate General Counsel for
Enforcement

SUBJECT: Procedure for Refunding Civil Penalties

If you need to refund a civil penalty check submitted by or on behalf of a respondent, you must send a memorandum to the Administration Division setting forth the details of the matter, and include a completed Form 1047. Attached are samples of both. Forms 1047 is now located on the bookshelves near Sandy Forant's desk.

Attachments

This document does not bind the Commission,
nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

Enforcement Procedure 1991-2

February 7, 1991

MEMORANDUM

TO: Enforcement Staff

FROM: Lois G. Lerner
Associate General Counsel

SUBJECT: Thresholds in Enforcement Matters

I. NEW POLICY

On January 29, 1991, the Commission approved this Office's plan to implement a policy whereby OGC will recommend not pursing beyond a finding of reason to believe those **individuals** whose contributions are excessive in **externally generated** matters, unless the amount in excess is [redacted] individual's limit. (The appropriate recommendation with respect to individual contributors of [redacted] limit is to "find reason to believe, take no further action, and close the file.") With respect to the recipient committee, however, this Office will continue to recommend pursing the recipient committee unless extenuating circumstances exist. This policy is now in effect.

II. SUMMARY OF THRESHOLDS

The following thresholds for recommendations involving violations of 2 U.S.C. §§ 441a and 441b(a) are now in effect in OGC:

A. Dymally Rule

In RAD referrals and Title 26 Audits, OGC makes no recommendations against contributors of [redacted] contribution limits. For contributors of [redacted] limits, a finding of reason to believe should be recommended. Unless extenuating circumstances exist, the recipient committee should be pursued for the receipt of all excessives.

B. 2 U.S.C. § 441a Threshold for Individual Contributors in Externally Generated Matters

See Part I above. Approved by Commission 1/29/91.

This document does not bind the Commission,
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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

C. 2 U.S.C. § 441b(a) Threshold in Internally Generated Matters

In internally generated matters, OGC recommends that the Commission take no action against a contributor whose prohibited contribution(s) totals [redacted] or less in the matter at issue unless special circumstances exist. As to the recipient committee, OGC's recommendation will be made on a case by cases basis depending on the facts in hand. Approved by Commission 11/90.

This document does not bind the Commission,
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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

1991-01

INTEROFFICE MEMORANDUM

FROM: LOIS G. LERNER

DATE: JANUARY 23, 1991

SUBJECT: NEW TREASURER AFTER PROBABLE CAUSE

When the Commission has found probable cause against the committee and its treasurer, but the treasurer then changes you have to notify the new treasurer. The way to do this is to send a letter to the new treasurer explaining the situation, incorporating the original brief by reference and enclosing a copy of the original brief. This way, the treasurer can get actual notice and you won't have to prepare a whole new brief.

SUBJECT: UPDATE -- New treasurers after Probable Cause

I am changing my instruction regarding notice to the new treasurer. Instead of a letter, send a "supplemental" brief indicating that the Commission found probable cause against the Committee and the old treasurer, but now the treasurer is changed so, in accord with Commission policy, we're recommending PC against the new treasurer AND incorporate by reference the original brief into the new brief and enclose a copy of the original brief.

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

P90-27

I N T E R O F F I C E M E M O R A N D U M

Date: 19-Oct-1990 01:32pm GMT
From: MAURA WHITE CALLAWAY
MCALLAWAY
Dept: OGC
Tel No:

TO: See Below

Subject: 48 hour contribution notices

When you are preparing General Counsel's reports and conciliation agreements in RAD referrals involving the late filing of 48 hour contribution notices, use the following language: "ABC Committee failed to file 48 hour notices for six contributions." This way you don't definitively state in the report (except for the civil penalty calculation section) and conciliation agreement how many reports were late.

Distribution:

TO:	GEORGE F. RISHEL	(GRISHEL)
TO:	Phil Wise	(PWISE)
	FRANIA MONARSKI	(FMONARSKI)
	Elizabeth Campbell	(ECAMPBELL)
	John Canfield	(JCANFIELD)
TO:	Lawrence Parrish	(LPARRISH)
TO:	Jeff Long	(JLONG)
TO:	Sandra Forant	(SFORANT)
TO:	JONATHAN BERNSTEIN	(JBERNSTEIN)
TO:	Patty Reilly	(PREILLY)
TO:	Debby Curry	(DCURRY)
TO:	Rob Raich	(RRAICH)
TO:	Mary Mastrobattista	(MMASTROBATTISTA)
TO:	Todd Hageman	(THAGEMAN)
TO:	Michael Troy	(MTROY)
TO:	ROB BONHAM	(RBONHAM)
TO:	Anne Weissenborn	(AWEISSENBORN)
TO:	Michael G. Marinelli	(MMARINELLI)
TO:	Mary Bumgarner	(MBUMGARNER)
TO:	Tony Buckley	(TBUCKLEY)
TO:	Tamara Kapper	(TAMARAK)
TO:	Rena Cooke	(RCOOKE)
TO:	LISA KLEIN	(LKLEIN)
TO:	JIM BROWN	(JBROWN)
TO:	Xavier McDonnell	(XMCDONNELL)
TO:	Cheryl Kornegay	(CKORNEGAY)
TO:	Craig Reffner	(CREFFNER)
	Frances B. Hagan	(FHAGAN)
	Noriega James	(NJAMES)
	LIEN GREEN	(LGREEN)
TO:	Jacqueline Crawford	(JCRAWFORD)

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

P90-25

INTEROFFICE MEMORANDUM

Date: 24-Jul-1990 03:29pm GMT
From: Lois G. Lerner
LLERNER
Dept: OGC
Tel No: 376-5690

TO: See Below

Subject: Added Violations At Conciliation

If you have told a respondent who has asked for conciliation that you plan to recommend an additional RTB finding, and the respondent agrees to extend his/her conciliation request to that finding, you need to attach a Factual/Legal Analysis, as well as a proposed conciliation agreement, to your report to the Commission. Even though the respondent is aware of the new finding, he/she must receive "notice" of it in case conciliation falls through.

Distribution:

:	GEORGE F. RISHEL	(GRISHEL)
	Dan Blessington	(DBLESSINGTON)
	Phil Wise	(PWISE)
TO:	FRANIA MONARSKI	(FMONARSKI)
TO:	Jeff Long	(JLONG)
TO:	JONATHAN BERNSTEIN	(JBERNSTEIN)
TO:	Debby Curry	(DCURRY)
TO:	Patty Reilly	(PREILLY)
TO:	Rob Raich	(RRAICH)
TO:	KEN KELLNER	(KKELLNER)
TO:	Tamara Kapper	(TAMARAK)
TO:	Anne Weissenborn	(AWEISSENBORN)
TO:	Noriega James	(NJAMES)
TO:	Michael G. Marinelli	(MMARINELLI)
TO:	Mary Bumgarner	(MBUMGARNER)
TO:	Tony Buckley	(TBUCKLEY)
TO:	Rena Cooke	(RCOOKE)
TO:	LISA KLEIN	(LKLEIN)
TO:	JIM BROWN	(JBROWN)
TO:	Frances B. Hagan	(FHAGAN)
TO:	Craig Reffner	(CREFFNER)
TO:	LIEN GREEN	(LGREEN)
TO:	MAURA WHITE CALLAWAY	(MCALLAWAY)
TO:	DORA WALLS	(DWALLS)
TO:	Xavier McDonnell	(XMCDONNELL)
TO:	Elizabeth Campbell	(ECAMPBELL)
	Mark Allen	(MALLEN)
	Nichole Corn	(NCORN)
	Michael Troy	(MTROY)
TO:	Todd Hageman	(THAGEMAN)

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

ENFORCEMENT PROCEDURE 1990-20

FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 7, 1990

EMAIL
[retyped]

TO: Enforcement Staff

FROM: Lois G. Lerner
Associate General Counsel

SUBJECT: Delays in sending RTB Notifications

As the attached memo indicates, when there are delays in sending notification letters out after RTB because the Commission directs us to recirculate letters, analyses, etc. on a tally basis, the result can be a large gap between the RTB date and the notification date. If this occurs, please adjust the letter so that it explains the delay.

This document does not bind the Commission,
nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

1990-17

Agenda Document #90-39

RECEIVED
FEDERAL ELECTION COMMISSION
SECRETARIAT

90 APR 17 AM 10: 13

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 17, 1990

AGENDA ITEM
For Meeting of: April 26, 1990

MEMORANDUM

TO: The Commission

THROUGH: John C. Surina
Staff Director

FROM: Lawrence M. Noble
General Counsel

Lois G. Lerner
Associate General Counsel

SUBJECT: Revision of Commission Practice Regarding the Issuance of Questions and Document Requests in Commission Enforcement Cases

I. SUMMARY OF PROPOSAL

In order to streamline and expedite the investigative process, the Office of the General Counsel recommends that the Commission revise its current practice requiring formal approval of virtually all phases of an investigation in a Matter Under Review ("MUR"). Specifically, this Office recommends that the Commission adopt a practice providing for the Office of the General Counsel to conduct appropriate informal investigations and discovery after a finding of reason to believe.

II. BACKGROUND

During the past three years, the Office of the General Counsel has successfully undergone many important changes. Among these are: a reorganization to centralize the work into three distinct areas (Enforcement, Litigation and Policy), the computerization of OGC, and adding a fourth enforcement team. These structural changes have been accompanied by new policies aimed at increasing the efficiency and speed of the enforcement process, including sending out conciliation agreements with "Reason to Believe" notices in routine non-filer and late filer cases, the implementation of regular MUR reviews, the "batching" of RAD referrals for the initial reports, and intensive staff training in depositions and negotiations.

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As was noted in the recent MUR Review, all of these changes have had a positive effect on the production of work within OGC. Nevertheless, it is still taking too long to process, investigate and resolve enforcement cases. Frustrated and concerned, we have continued to seek out solutions and answers. One thing that is apparent is that we have excellent and dedicated staff who are working up to "full speed," often putting in many uncompensated hours.

In considering realistic solutions to the problem, certain facts must be acknowledged. First and foremost is that our workload will continue to grow. While it is true that many of the cases involve simple facts and legal issues, our procedures, some of which are mandated, require a substantial amount of processing time for even our simplest cases. Adding to the problem is the fact that in comparison to previous years, many of the matters now being handled are more complex in both the fact pattern and the legal issues involved, and include a larger number of respondents. At present, OGC's active enforcement cases involve over one thousand respondents. Several of these cases warrant two or more staff members assigned full time, yet the resources are just not there. As of April first of this year, each staff attorney on enforcement was handling, on average, more than 13 cases. Although we are now hiring staff attorneys to fill vacancies created by several recent departures, it is clear that it is not realistic to expect any major staffing increases in the near future. Rather, we will have to look for ways to speed up the process within the present staffing framework.

It is against this background that we have reviewed the situation and are proposing a change in the practice that has developed with regard to the investigation of MURs. Although it will not solve all of our problems, we believe this proposal is an important step towards eliminating some of the time consuming and inefficient practices that have developed and will will enhance the credibility and effectiveness of enforcement.

III. USE OF INFORMAL INVESTIGATIVE TOOLS

Any attempt to shorten the amount of time it takes to process a case and to use our limited resources more efficiently must deal with the manner in which we conduct our investigations after reason to believe is found. At present, the practice is to conduct virtually all of the investigation in a MUR through formal written questions, document requests and/or formal depositions which are approved by the Commission. This not only necessitates reports being drafted for all questions and requests for documents, but it also adds an often unnecessary degree of

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formality to the process. For example, in virtually all cases where a personal interview is warranted in an investigation, a subpoena is issued calling for a formal deposition before a court reporter. In many cases, however, conducting a phone interview or informal meeting where a statement is taken (and turned into an affidavit if necessary) would be more efficient and effective. Likewise, we now use written questions or document requests which are approved by the Commission when a phone call or letter from OGC may obtain the needed information in a more efficient manner.

In fact, the Commission has made it clear that, absent special circumstances, it prefers not to issue subpoenas to respondents or witnesses unless less formal discovery is first tried. This belief that many investigations do not require subpoenas is fully consistent with the concept of allowing the Office of the General Counsel to use normal investigative techniques without specific advance approval by the Commission. As noted, such a practice would include seeking information through informal interviews, interrogatories, the taking of statements and letter requests for information and documents. The need for the Commission's formal approval should be limited to those times when subpoenas for depositions or documents and orders for answers to interrogatories are needed. This need may arise where a degree of formality is initially warranted (e.g., banks) or where the respondent or witness does not comply with the informal discovery and the Commission determines that formal discovery should be used to obtain the requested information.

A policy allowing OGC to conduct informal investigations and prepare and send out informal interrogatories and requests for documents without seeking prior Commission approval will not be a novel scheme for an enforcement agency or even unique within the FEC. Rather, this approach is considered standard practice with regard to enforcement agencies and, in fact, used to be the practice within OGC.

Under this proposal, there will be no need for a report to the Commission every time it is determined that certain information is necessary to the investigation or when answers or documents already received are unresponsive or inadequate. To keep the Commission apprised of the degree of the investigation contemplated, we propose including a brief discussion setting forth the anticipated discovery plan in the Reason to Believe Report. In addition, this Office anticipates making better use of the Comprehensive Investigative Report ("CIR") to keep the Commission apprised of the developments of the investigation. As noted, all subpoenas and orders to answer questions, produce documents or appear for a deposition would continue to be submitted for Commission approval.

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Because the type of discovery contemplated would be informal and not under compulsory process, respondents and witnesses would still have the right to refuse to provide the requested information. If OGC believed that the information was sufficiently important, it would then request the Commission to issue a formal subpoena or order. After such an order issued, the respondent would still have the opportunity to move to quash the order and, if necessary, force the Commission to seek judicial enforcement.

We believe that this procedure will speed up the enforcement process by eliminating a great deal of paperwork, allowing the more efficient gathering of facts in most cases and fostering more cooperation from witnesses and respondents who may see informal contacts as less threatening. In order to give the Commission the opportunity to assess how the policy is working, the Office of General Counsel will report to the Commission on its overall effectiveness after it has been in operation for one year.

IV. RECOMMENDATION

Authorize the Office of the General Counsel to utilize informal discovery techniques including the issuance of interrogatories and requests for documents in Matters Under Review without prior authorization by the Commission.

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JUNE 1990

DISCOVERY PROCEDURES

1. A Discovery Plan is to accompany all First General Counsel's Reports in Track 2 and 3 cases. The plan should describe the information that needs to be obtained in the case, and state how you plan to obtain it. See form 107.

The General Counsel will review all Discovery Plans in Track 3 cases, and conduct regular investigative conferences every 60 days. The staff assigned to the case is responsible for scheduling the conference.

In Track 2 and 3 cases, a Comprehensive Investigative Report ("CIR") is to be completed every 90 days unless there has been a substantive report in the interim.

2. All discovery requests and cover letters in Track 2 matters will be reviewed and approved by the Associate General Counsel, who will sign the letters (except RTB notification letters). All discovery requests and cover letters in Track 3 cases will be reviewed and approved by the General Counsel, who will sign the letters (except "RTB" notification letters).

3. If counsel has been designated by a respondent or witness, all communications and correspondence must be with counsel.

4. A memorandum detailing every telephone conversation with a respondent, witness, or counsel must be kept, using form 108.

5. If a respondent or witness with whom you are talking on the telephone expresses a desire to speak with an attorney, you should immediately tell them that they have the right to be represented by counsel. You should then ask them if it would be OK if you continue the conversation.

If the respondent or witness asks you if they should retain counsel, you should tell them that you cannot advise them on that issue, and that if they choose to hire an attorney, you will communicate with the attorney subsequent to the Commission's receipt of a written designation. Again, ask them if it would be OK if you continue the conversation.

6. In order to clarify simple facts, you may telephone respondents and witnesses who have not designated counsel, and attorneys representing respondents and witnesses. A memorandum detailing the conversation must be put in the file. See form 108.

7. Telephone interviews of respondents and non-respondent witnesses may be conducted. (See attached guideline.) Interviews involving more than the clarification of simple

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facts are to be followed up with an affidavit. An interview form is to be completed for each interview. See form 109. The affidavit should be drafted and mailed within one week of the conversation. See forms 110 and 111.

8. Where extensive or detailed information needs to be obtained it is usually best to send written questions so there is no misunderstanding of what was said and there is a written record of the responses.

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FORM 107

OFFICE OF THE GENERAL COUNSEL DISCOVERY PLAN

ASSIGNMENT: _____ **TRACK:** _____

STAFF MEMBER: _____ **DATE:** _____

COMMENTS: _____

_____

_____

_____

_____

_____

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FORM 108

**OFFICE OF THE GENERAL COUNSEL MEMORANDUM
OF TELEPHONE CALL OR VISIT**

DATE _____ TIME _____

MUR _____ STAFF MEMBER _____

CHECK ONE: [ ] TELEPHONE CALL [ ] VISIT

NAME OF PERSON: _____

NUMBER CALLED: _____

CHECK ONE: [ ] RESPONDENT [ ] WITNESS [ ] OTHER

SUBSTANCE: _____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

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Form 109

OFFICE OF THE GENERAL COUNSEL TELEPHONE INTERVIEW FORM

DATE _____ TIME _____

MUR _____ STAFF MEMBER _____

TELEPHONE NUMBER CALLED _____

PERSON CALLED _____

CHECK ONE: [ ] RESPONDENT
[ ] NON-RESPONDENT WITNESS
Was an inquiry made as to whether the witness was willing to talk? Yes[ ] No [ ]

EVALUATION OF RESPONDENT OR WITNESS:

_____

_____

SUBSTANCE OF CONVERSATION: _____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

NEXT COURSE OF ACTION: _____

_____

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

Form 110

BEFORE THE FEDERAL ELECTION COMMISSION

IN THE MATTER) MUR
)
)

AFFIDAVIT

I, _____, being first duly sworn, depose and say as follows:

1. I reside at _____.

2. My principal place of business is _____, located at _____.

3.

[Insert Facts]

Further the affiant sayeth not.

_____
[Affiant's name]

Subscribed and sworn to before me, on this _____ day of _____, 19___.

_____
Notary Public

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

FORM 111

>
>
>

RE: MUR >

Dear >:

During your telephone conversation with > of my staff on >, 19>, you agreed to sign an affidavit attesting to the truth of your statements. Enclosed is the affidavit which this Office has drafted reflecting the facts as you presented them to >. Please have the affidavit notarized and return it to the Commission within ten days in the enclosed pre-addressed envelope.

For non-respondent witnesses only:

[Because this information is being sought as part of an investigation being conducted by the Commission, the confidentiality provision of 2 U.S.C. § 437g(a)(12)(A) applies. That section prohibits making public any investigation conducted by the Commission without the express written consent of the person with respect to whom the investigation is made. You are advised that no such consent has been given in this case.]

Thank you for your cooperation in this matter. If you have any questions, please contact >, the [attorney] [staff member] assigned to this matter, at (202)376->.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosures
Affidavit
Envelope

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GUIDELINE FOR TELEPHONE INTERVIEW OF NON-RESPONDENT WITNESS

Hello, my name is _____. I am calling from the Federal Election Commission in Washington, D.C. I am [an attorney] [a paralegal] in the Office of the General Counsel. For your information, it is the Commission's responsibility to enforce the Federal Election Campaign Act which deals with financing for federal election campaigns.

I am calling you because you may have some information which will assist the Commission in an investigation it is conducting.

I would like to ask you several questions concerning _____ (give a general description of the aspect of the investigation about which you need information, e.g. fundraising techniques by the Smith for Congress Committee). At this point the Commission does not consider you a respondent in this matter, but only a witness. Are you willing to discuss this with me today?

I would like to begin by asking you your full name and address. I now have some specific questions that I would like you to answer to the best of your recollection:

1.
2.
3.

Thank you for taking the time to speak with me today. I would like to draft up an affidavit reflecting the substance of our conversation and mail it to you for your signature. You will have to have the affidavit notarized by a notary public. I will provide you with a return envelope so that you will not incur any mailing costs. Are you willing to sign a statement concerning our discussion today?

If you have any questions, or if you suddenly remember something in addition to what you have already told me, or think that what you may have told me was inaccurate or incorrect, please call me on our toll-free line. The number for our toll-free line is 800-424-9530. You should expect to receive the affidavit in about ten days.

By the way, because this information is being sought as part of an investigation being conducted by the Commission, you may not discuss the substance of our conversation today with anyone except your attorney. Do you have any questions about this requirement?

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ENFORCEMENT PROCEDURE 1990-13
(DOCs OPEN # 5454)

INTEROFFICE MEMORANDUM

FROM: LOIS G. LERNER

DATE: MARCH 19, 1990

SUBJECT: ADDITIONAL INFO ON SUIT AUTHORIZATIONS

Update on Memo Concerning Post Probable Cause Negotiations Where the Commission has Authorized Suit

The attached comments from Rick Bader also apply where the Commission has authorized suit if respondents fail to sign a proposed agreement within a specified timeframe.

FROM: LOIS G. LERNER

SUBJECT: AUTHORIZE SUIT MEMO

DATE: MARCH 27, 1990

RE: MARCH 19, 1990 Memo

When you send a memo to Litigation informing them that the time has expired on respondent's "last chance" conciliation agreement so they can go ahead and file suit, please send a copy to Docket so that they can pull the file for the litigation people. Thanks.

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1990-12

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C 20463

MEMORANDUM

TO: Enforcement Staff

FROM: Lois G. Lerner
Associate General Counsel

RE: Situations Where the Commission Has Authorized Suit If Respondent Does Not Accept the Commission's Conciliation Agreement Within a Specified Time

DATE: March 19, 1990

When we have sent a letter to respondents notifying them that the Commission has authorized the General Counsel's Office to file suit in the event that they do not sign and return the proposed conciliation agreement within the specified time, it is the Enforcement staff's responsibility to monitor that time period. Once the time has expired (allowing for mailing), the staffperson should immediately notify Litigation in writing and send a copy of that notice to Maura.

Furthermore, once such a letter has gone to respondents, Enforcement staff should not continue to negotiate with respondents. Respondents should be reminded that the Commission has authorized the filing of suit unless the Commission's offer is accepted. If they wish to negotiate further, they will need to speak to Litigation staff once the time period specified in the letter has expired.

The only exception to this rule would be where, within the time specified in our letter, respondents send in a counteroffer that differs only slightly from the Commission's offer and is totally acceptable. In such cases, you should go up to the Commission with the counter and recommend accepting it and closing the file.

CAVEAT: These rules apply only where the letter sent by the Commission states that suit has been authorized if respondents fail to sign the enclosed agreement. There have

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CAVEAT: These rules apply only where the letter sent by the Commission states that suit has been authorized if respondents fail to sign the enclosed agreement. There have been rare instances where the Commission has revised our proposed letter to state that suit is authorized unless respondents respond to the Commission's offer within a specified time. Such letters obviously leave open the possibility of further negotiations and should be dealt with accordingly.

cc: Lawrence M. Noble
Richard B. Bader
Robert W. Bonham, III

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P90-11

I N T E R O F F I C E M E M O R A N D U M

Date: 13-Mar-1990 03:54pm GMT
From: Lois G. Lerner
LLERNER
Dept: OGC
Tel No: 376-5690

TO: See Below

Subject: Review of Subpoena Enforcement Papers

Litigation has asked that the Enforcement staffer handling a matter that goes to subpoena enforcement review the court papers before they are filed to make sure they are factually correct and that all pertinent information is included. Please assist them by completing your review as expediciously as possible. Thank you.

I N T E R O F F I C E M E M O R A N D U M

Date: 13-Mar-1990 04:08pm GMT
From: Lois G. Lerner
LLERNER
Dept: OGC
Tel No: 376-5690

TO: See Below

Subject: Review of Litigation Papers--Clarification

The Enforcement review of Litigation filings will extend to draft complaints in all matters arising from enforcement, not just subpoena enforcement.

Distribution:

TO:	GEORGE F. RISHEL	(GRISHEL)
TO:	Dan Blessington	(DBLESSINGTON)
	Phil Wise	(PWISE)
TO:	FRANIA MONARSKI	(FMONARSKI)
TO:	Jeff Long	(JLONG)
TO:	ROMELLE HODGE	(RHODGE)
TO:	JONATHAN BERNSTEIN	(JBERNSTEIN)
TO:	Debby Curry	(DCURRY)
TO:	Patty Reilly	(PREILLY)

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ENFORCEMENT PROCEDURE 1990-9

DATE: February 15, 1990

FROM: **Lois G. Lerner**
Associate General Counsel

SUBJECT: **Notifying Litigation Staff**

If the Commission has authorized suit in a MUR for failure to comply with a subpoena, failure to reach a conciliation agreement or failure to comply with a conciliation agreement and, subsequently you receive the missing information, agreement or payment, you need to notify Litigation immediately, in writing with a copy to Docket, that there is no need to continue the suit. If there is some question as to whether the respondent's submission obviates the need for suit, please discuss with me.

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P90-7

I N T E R O F F I C E M E M O R A N D U M

Date: 02-Feb-1990 03:17pm GMT
From: Lois G. Lerner
LLERNER
Dept: FEC
Tel No: 376-5690

TO: DORA WALLS (DWALLS)

Subject: New Procedure

Please be aware that the below discussed report should not come to me without the discussed memo--the memo can be handwritten.

I N T E R O F F I C E M E M O R A N D U M

Date: 02-Feb-1990 03:10pm GMT
From: Lois G. Lerner
LLERNER
Dept: FEC
Tel No: 376-5690

TO: See Below

Subject: Extension of 30 Day Period for PreProbable Cause Conciliation

Please do not forget to forward an informational report to the Commission if you are extending Pre-probable Cause Conciliation beyond 30 days. Please include a note to me, explaining what has gone on thus far and justifying the extension. Such extensions should not occurr unless you are close to an agreement.

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ENFORCEMENT PROCEDURE 1990-6

DATE: January 16, 1990

FROM: **Lawrence M. Noble**
General Counsel

TO: **Lois G. Lerner**
Associate General Counsel

Cc: **Richard B. Bader**
Ivan Rivera

SUBJECT: Sunshine Forms for Civil Action

Can you please notify the staff that when doing a Sunshine Form for recommending suit, they should mark the line for "Matter specifically concerns the Commission's participation in a civil action..." [deleted—as well as the "compliance" line.]. While it sounds like a relatively small matter, it is important as we may need to *defend those forms some day.*

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ENFORCEMENT PROCEDURE 1990-5

DATE: January 10, 1990

FROM: **Lois G. Lerner**
Associate General Counsel

TO: **Enforcement Staff distribution list**

SUBJECT: **Sunshine Forms on Briefs**

This is to remind you that it is NOT necessary to include a Sunshine Form with final briefs because they are not circulating for any type of Commission vote.

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ENFORCEMENT PROCEDURE 1990-4

DATE: January 10, 1990

FROM: **Lois G. Lerner**
Associate General Counsel

TO: **Enforcement Staff distribution list**

SUBJECT: **Recommendations for § 437g Audits**

When recommending a § 437g audit in the context of a MUR, please remember to put a note on the report reminding me to notify the Audit Division of the recommendation.

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

P90-3

INTEROFFICE MEMORANDUM

Date: 10-Jan-1990 05:59pm GMT
From: Lois G. Lerner
LLERNER
Dept: FEC
Tel No: 376-5690

TO: See Below

Subject: 441a(d) Violations

Do not use the words assign or assignment when discussing whether a state committee has allowed the national committee to spend against its coordinated expenditure limit pursuant to 2 USC § 441a(d) and 11 CFR § 110.7(or vis versa). The Commission has objected to that terminology. Instead, say the committeee" authorized" or "granted authority."

Distribution:

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	Dan Blessington	(DBLESSINGTON)
	Sandra H. Robinson	(SROBINSON)
TO:	Phil Wise	(PWISE)
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TO:	JONATHAN BERNSTEIN	(JBERNSTEIN)
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TO:	Patty Reilly	(PREILLY)
TO:	Rob Raich	(RRAICH)
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TO:	Tamara Kapper	(TAMARAK)
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TO:	Janice Lacy	(JLACY)
TO:	Michael G. Marinelli	(MMARINELLI)
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TO:	Tony Buckley	(TBUCKLEY)
TO:	Sandie Dunham	(SDUNHAM)
TO:	Rena Cooke	(RCOOKE)
TO:	LISA KLEIN	(LKLEIN)
TO:	COLLEEN MILLER	(CMILLER)
TO:	JIM BROWN	(JBROWN)
TO:	Frances B. Hagan	(FHAGAN)
TO:	Karen Powell	(KPOWELL)
	Craig Reffner	(CREFFNER)
	LIEN GREEN	(LGREEN)
TO:	MAURA WHITE CALLAWAY	(MCALLAWAY)
TO:	DORA WALLS	(DWALLS)
TO:	Noriega James	(NJAMES)
TO:	Xavier McDonnell	(XMCDONNELL)

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P90-1

INTEROFFICE MEMORANDUM

Date: 09-Jan-1990 05:05pm GMT
From: Lois G. Lerner
LLERNER
Dept: FEC
Tel No: 376-5690

TO: See Below

Subject: Legal/Factual Analysis in Complaint Generated Matters

There has been some confusion about Legal/Factual Analyses in complaint generated matters where the Commission finds RTB against a respondent on some violations and no RTB on other violations. In such cases, the analysis should provide the basis of the no RTB findings as well as the RTB findings. When, however, you are recommending no RTB as to all allegations regarding a particular respondent, it is not necessary to include a legal/factual analysis as the respondent will ultimately receive a copy of the General Counsel's Report containing the no RTB discussion.

Distribution:

TO:	GEORGE F. RISHEL	(GRISHEL)
TO:	Dan Blessington	(DBLESSINGTON)
TO:	Sandra H. Robinson	(SROBINSON)
TO:	Phil Wise	(PWISE)
TO:	FRANIA MONARSKI	(FMONARSKI)
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TO:	JONATHAN BERNSTEIN	(JBERNSTEIN)
TO:	Debby Curry	(DCURRY)
TO:	Patty Reilly	(PREILLY)
TO:	Rob Raich	(RRAICH)
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TO:	Tamara Kapper	(TAMARAK)
TO:	Anne Weissenborn	(AWEISSENBORN)
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TO:	Michael G. Marinelli	(MMARINELLI)
TO:	Mary Bumgarner	(MBUMGARNER)
TO:	Tony Buckley	(TBUCKLEY)
TO:	Sandie Dunham	(SDUNHAM)
TO:	Rena Cooke	(RCOOKE)
TO:	LISA KLEIN	(LKLEIN)
TO:	COLLEEN MILLER	(CMILLER)
TO:	JIM BROWN	(JBROWN)
	Frances B. Hagan	(FHAGAN)
	Karen Powell	(KPOWELL)
TO:	Craig Reffner	(CREFFNER)
TO:	LIEN GREEN	(LGREEN)
TO:	MAURA WHITE CALLAWAY	(MCALLAWAY)

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1989

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ENFORCEMENT PROCEDURE 1989-26

INTEROFFICE MEMORANDUM

DATED: 10/25/1989

From: Lois G. Lerner

Subject: Civil Penalties

Based on the discussion at this week's meeting, the following applies. When proposing an out the door civil penalty in a matter involving excessive contributions or improper transfers, stick with the guideline of 50% of the unrefunded amount and 25% of the refunded amount. Deal with the mitigating factors in the context of negotiations. If there is a matter involving very unusual circumstances where you feel the rule should not apply, please speak to me about how to proceed.

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ENFORCEMENT PROCEDURE 1989-25

FEDERAL ELECTION COMMISSION
Washington, DC 20463

October 23, 1989

EMAIL
[retyped]

TO: Enforcement Staff

FROM: Lois G. Lerner
Associate General Counsel

SUBJECT: Briefs

Before sending Briefs out, please make sure you check the Statement of Organization to see if there has been a change in the treasurer. If there has, you should name the new treasurer in the brief. Do not rely on statements made by counsel. We recently had a situation where the treasurer changed but all counsel's correspondence continued to refer to the old treasurer. No one checked the Statement of Organization before sending the brief so the brief was sent to the old treasurer even though there had been an amendment. Now, we have to send an additional brief to the new treasurer and give her an opportunity to respond before recommending probable cause.

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ENFORCEMENT PROCEDURE 1989-22

FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM
[retyped]

TO: Enforcement Staff

FROM: Lois G. Lerner
Associate General Counsel

SUBJECT: Letters on non-Termination

DATE: August 23, 1989

It has come to my attention that staff have not been sending letters to respondent committees that have filed a termination report, but are involved in an ongoing MUR. Per my February 19, 1989, memo to staff, when you receive a note from RAD asking whether they can send a termination letter to committees involved in ongoing Enforcement matters, it is your responsibility to notify RAD not to send such a letter and to send the respondent the appropriate form letter (copy attached), with a copy to RAD. If you have not done so in any ongoing matters, please take care of this right away. Otherwise, the committees end up being referred for failure to file reports which they did not think they had to file because they thought they were terminated.

Thank You.

Enclosure

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

ENFORCEMENT PROCEDURE 1989-19

FEDERAL ELECTION COMMISSION
Washington, DC 20463

July 18, 1989

MEMORANDUM
[retyped]

TO: Enforcement Staff

FROM: Lois G. Lerner
Associate General Counsel

SUBJECT: Letters to Respondents Concerning the Expiration of the 30 Day Pre-Probable Cause Period

Recently, I have seen several letters notifying respondents that the 30 day pre-probable cause conciliation period is about to end when, in fact, the period has already expired. These letters should routinely go out about 25 days into negotiations as a reminder to respondents that they must do something or we will move on. They should be used as a tool to help move your case along in a timely manner, not an after the fact notice.

Please try to get these out in a timely manner. I will not sign reminder letters that go beyond the 30 day period. If, on occasion, you miss your date by a short period, I will sign a similar type letter that has been revised to reflect that the time period has expired.

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nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

ENFORCEMENT PROCEDURE 1989-13

FEDERAL ELECTION COMMISSION
Washington, DC 20463

March 2, 1989

MEMORANDUM
[retyped]

TO: Enforcement Staff

FROM: Lois G. Lerner
Associate General Counsel

SUBJECT: Factual and Legal Analyses in Complaint Generated Matters

Since June 1, 1988, Factual and Legal Analyses have been sent on a trial basis to respondents with reason to believe notices in all complaint generated matters. On March 27, 1989, the Commission approved, on a permanent basis, the sending of Factual and Legal Analyses with reason to believe notices. Thus, it is now the Commission's policy to send Factual and Legal Analyses with all reason to believe notices regardless of whether the matter is internally generated or externally generated.

cc: Lawrence M. Noble

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nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

ENFORCEMENT PROCEDURE 1989-10

FEDERAL ELECTION COMMISSION
Washington, DC 20463

February 15, 1989

MEMORANDUM
[retyped]

TO: Enforcement Staff

FROM: Lois G. Lerner
Associate General Counsel

SUBJECT: Factual and Legal Analyses in Agency Referral Generated Matters

When you prepare a Factual and Legal Analysis in a matter originating with a referral from the Department of Justice or other federal agency, please try to avoid indicating anywhere within the analysis that the matter was referred to the Commission by that agency. The analysis should only state that in the normal course of carrying out its supervisory responsibilities the Commission ascertained that the specific activity at issue occurred. Of course, you may continue to discuss the substance of the referral in the analysis.

Notification of the Commission's reason to believe finding in matters generated by referrals from other agencies is normally made using form 27 (internally generated). This form commences with the language "On____, the Federal Election Commission found that there is reason to believe _____ violated _____." You should use this letter as is, and be certain not to amend it to state that the matter was generated by a referral from another agency. The inclusion of the Factual and Legal Analysis with the notification letter lets the respondent know that the matter arose from information ascertained by the Commission in the normal course of carrying out its supervisory responsibility, and no further clarification is needed.

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nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

ENFORCEMENT PROCEDURE 1989-6

FEDERAL ELECTION COMMISSION
Washington, DC 20463

February 3, 1989

MEMORANDUM
[retyped]

TO: Enforcement Staff

FROM: Lois G. Lerner
Associate General Counsel

SUBJECT: Miscellaneous Information

Please include a statement regarding the amount of financial activity, receipts and disbursements in all late filer conciliation agreements.

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

The Commission has asked that we do not include vote percentages by which the candidate won or lost the election in Factual and Legal Analyses. Continue to include such information in the reports, however.

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nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

ENFORCEMENT PROCEDURE 1989-4

FEDERAL ELECTION COMMISSION
Washington, DC 20463

January 12, 1989

MEMORANDUM
[retyped]

TO: Enforcement Staff

FROM: Lois G. Lerner
Associate General Counsel

SUBJECT: Computing Civil Penalties in Non-filer MURs

It has come to my attention that in handling non-filer referrals from RAD the Enforcement Staff has not computed the number of days that a report is late on a consistent basis. When stating in the General Counsel's Report the number of days that a report is late, the number should represent the days between when the report was due and when the General Counsel's Report is routed to your team leader for final review, assuming the late report still has not been filed. Thus, in clarification, the date of the referral from RAD should not be used. A check to see if the report has been filed should be done just prior to submission of the report to your team leader.

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nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

P89-3

NOTE: * Forms and letters were revised in May 1990 -- refer to the All-in-1 Library forms for changes re: the Certificate of Compliance

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

January 12, 1989

MEMORANDUM

TO: Enforcement Staff

FROM: Lois G. Lerner
Associate General Counsel

SUBJECT: Forms pertaining to the Right to Financial Privacy Act of 1978

It has come to my attention that the forms in the Enforcement formbook are not complete with respect to the requirements of the Right to Financial Privacy Act of 1978 when more than a person's name, address, type of account, and account number are being sought from a bank or financial institution via a Commission subpoena or order.

Thus, certain notice requirements must be met when you send to a bank or financial institution a subpoena for documents and/or an order to submit answers which involve more than just the disclosure of a person's name, address, type of account, or account number. The Act defines person as an individual or a partnership of less than five persons. Under the Act, we are required to notify the person (customer) whose records are being sought. Such notice must occur on or before the date that the bank or financial institution receives the subpoena and order. The customer whose records are being sought must also be provided with: 1) a copy of the subpoena and order to the bank or financial institution 2) a motion to quash, and 3) an affidavit. The bank or financial institution is sent a cover letter, the subpoena and order, and a certificate of compliance with the Right to Financial Privacy Act.

Specific language must appear in the notice letter to the customer. Such language appears in the attached form letter to counsel (new form 86A), and the attached form letter to a customer without counsel (new form 86B). Because the notice to the customer must occur on or before notice to the bank or financial institution it should be sent by Airborne Overnight Delivery.

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nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

To update your formbook discard old forms 85 and 86, and insert the following new forms:

Form 85 - Attachment to Order to Bank or Financial Institution when seeking customer's name, address, account type, or account number only

Form 86A - Letter to Customer's Counsel

Form 86B - Letter to Customer without counsel

Form 86C - Motion to Quash

Form 86D - Affidavit

Form 86E - Letter to Bank or Financial Institution

Form 86F - Attachment to Order and Subpoena to Bank or Financial Institution

Form 86G - Certificate of Compliance with the Right to Financial Privacy Act

Attached for your information is a copy of 12 U.S.C. § 3405, the requirements of which must be followed before we can certify compliance to the bank or financial institution.

Attachments

Forms
12 U.S.C. § 3405

cc: Lawrence M. Noble

(G) the Securities and Exchange Commission;

(H) the Secretary of the Treasury, with respect to the Bank Secrecy Act and the Currency and Foreign Transactions Reporting Act (Public Law 91-508, Title I and II); or

(I) any State banking or securities department or agency; and

(7) "law enforcement inquiry" means a lawful investigation or official proceeding inquiring into a violation of, or failure to comply with, any criminal or civil statute or any regulation, rule, or order issued pursuant thereto.

Pub.L. 95-630, Title XI, § 1101, Nov. 10, 1978, 92 Stat. 3697.

Historical Note

Reference in Text. The Bank Secrecy Act, referred to in par. (6)(H), probably means Pub.L. 91-508, Title I, Oct. 26, 1970, 84 Stat. 1114, which is classified principally to chapter 21 (section 1951 et seq.) of this title. For complete classification of this Act to the Code, see Tables volume.

The Currency and Foreign Transaction Reporting Act, as amended, referred to in par. (6)(H), is Pub.L. 91-508, Title II, Oct. 26, 1970, 84 Stat. 1118, which is classified generally to chapter 21 (section 1951 et seq.) of Title 31, Money and Finance. For complete classification of this Act to the Code, see Short Title note set out under section 1951 of Title 31 and Tables volume.

Effective Date. Section effective upon the expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub.L. 95-630, set out as an Effective Date note under section 3416 of this title.

Short Title. Section 1100 of Pub.L. 95-630 provided that: "This title [which enacted this chapter] may be cited as the 'Right to Financial Privacy Act of 1978'."

Legislative History. For legislative history and purpose of Pub.L. 95-630, see 1978 U.S.Code Cong. and Adm.News, p. 9273.

Code of Federal Regulations

Coverage, etc., see 12 CFR 14.1 et seq.

§ 3402. Access to financial records by Government authorities prohibited; exceptions

Except as provided by section 3403(c) or (d), 3413, or 3414 of this title, no Government authority may have access to or obtain copies of, or the information contained in the financial records of any customer from a financial institution unless the financial records are reasonably described and—

(1) such customer has authorized such disclosure in accordance with section 3404 of this title;

(2) such financial records are disclosed in response to an administrative subpena or summons which meets the requirements of section 3405 of this title;

(3) such financial records are disclosed in response to a search warrant which meets the requirements of section 3406 of this title;

(4) such financial records are disclosed in response to a judicial subpena which meets the requirements of section 3407 of this title; or

(5) such financial records are disclosed in response to a formal written request which meets the requirements of section 3408 of this title.

Pub.L. 95-630, Title XI, § 1102, Nov. 10, 1978, 92 Stat. 3697.

Historical Note

Effective Date. Section effective upon the expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub.L. 95-630, set out as an Effective Date note under section 3416 of this title.

Legislative History. For legislative history and purpose of Pub.L. 95-630, see 1978 U.S.Code Cong. and Adm.News, p. 9273.

§ 3403. Confidentiality of financial records

Release of records by financial institutions prohibited

(a) No financial institution, or officer, employee, or agent of a financial institution, may provide to any Government authority access to or copies of, or the information contained in, the financial records of any customer except in accordance with the provisions of this chapter.

Release of records upon certification of compliance with chapter

(b) A financial institution shall not release the financial records of a customer until the Government authority seeking such records certifies in writing to the financial institution that it has complied with the applicable provisions of this chapter.

Notification to Government authority of existence of relevant information in records

(c) Nothing in this chapter shall preclude any financial institution, or any officer, employee, or agent of a financial institution from notifying a Government authority that such institution, or officer, employee, or agent has information which may be relevant to a possible violation of any statute or regulation.

Release of records as incident to perfection of security interest, proving claim in bankruptcy, collecting debt, or processing application with regard to Government loan, loan guarantee, etc.

(d)(1) Nothing in this chapter shall preclude a financial institution, as an incident to perfecting a security interest, proving a claim in bankruptcy, or otherwise collecting on a debt owing either to the financial institution itself or in its role as a fiduciary, from providing copies of any financial record to any court or Government authority.

(2) Nothing in this chapter shall preclude a financial institution, as an incident to processing an application for assistance to a cus-

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tomer in the form of a Government loan, loan guaranty, or loan insurance agreement, or as an incident to processing a default on, or administering, a Government guaranteed or insured loan, from initiating contact with an appropriate Government authority for the purpose of providing any financial record necessary to permit such authority to carry out its responsibilities under a loan, loan guaranty, or loan insurance agreement.

Pub.L. 95–630, Title XI, § 1103, Nov. 10, 1978, 92 Stat. 3698.

Historical Note

Effective Date. Section effective upon the expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub.L. 95–630, set out as an Effective Date note under section 3701b of this title.

Legislative History. For legislative history and purpose of Pub.L. 95–630, see 1978 U.S.Code Cong. and Adm.News, p. 9273.

Notes of Decisions

1. Expectation of confidentiality

A bank depositor has right to expect that the bank will, to extent permitted by law, treat as confidential all information regarding his account and any transactions relating thereto; accordingly, absent compulsion by law, a bank may not make any disclosures concerning a depositor's account without express or implied consent of the depositor. Suburban Trust Co. v. Waller, 1979, 408 A.2d 758, 44 Md.App. 333.

§ 3404. Customer authorizations

Statement furnished by customer to financial institution and Government authority; contents

(a) A customer may authorize disclosure under section 3402(1) of this title if he furnishes to the financial institution and to the Government authority seeking to obtain such disclosure a signed and dated statement which—

(1) authorizes such disclosure for a period not in excess of three months;

(2) states that the customer may revoke such authorization at any time before the financial records are disclosed;

(3) identifies the financial records which are authorized to be disclosed;

(4) specifies the purposes for which, and the Government authority to which, such records may be disclosed; and

(5) states the customer's rights under this chapter.

Authorization as condition of doing business prohibited

(b) No such authorization shall be required as a condition of doing business with any financial institution.

Right of customer to access to financial institution's record of disclosures

(c) The customer has the right, unless the Government authority obtains a court order as provided in section 3409 of this title, to obtain a copy of the record which the financial institution shall keep of all instances in which the customer's record is disclosed to a Government authority pursuant to this section, including the identity of the Government authority to which such disclosure is made.

Pub.L. 95–630, Title XI, § 1104, Nov. 10, 1978, 92 Stat. 3698; Pub.L. 96–8, Mar. 7, 1979, 93 Stat. 5.

Historical Note

1979 Amendment. Subsec. (d). Pub.L. 96–8 struck out subsec. (d) which had directed that all financial institutions promptly notify all of their customers of their rights under this chapter, that the Board of Governors of the Federal Reserve System prepare a statement of customers' rights under this chapter, and that the supplying of such a statement to their customers by the financial institutions be deemed compliance with the notification requirement.

Effective Date. Section effective upon the expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub.L. 95–630, set out as an Effective Date note under section 3701b of this title.

Legislative History. For legislative history and purpose of Pub.L. 95–630, see 1978 U.S.Code Cong. and Adm.News 9273. See, also, Pub.L. 96–8, 1979 U.S.Code Cong. and Adm.News, p. 7.

Library References

Records ⚷64.

Notes of Decisions

1. Wrongful disclosure

Bank, which became suspicious when its depositor made deposit of $[illegible] in $20 and $100 bills with sequential serial numbers and which contacted local police department and supplied it with photographs taken of depositor, thus leading to investigation ultimately resulting in mistaken robbery charge to be filed against depositor, wrongfully disclosed such information without express or implied consent of depositor. Suburban Trust Co. v. Waller, 1979, 408 A.2d 758, 44 Md.App. 333.

§ 3405. Administrative subpoena and summons

A Government authority may obtain financial records under section 3402(2) of this title pursuant to an administrative subpoena or summons otherwise authorized by law only if—

(1) there is reason to believe that the records sought are relevant to a legitimate law enforcement inquiry;

(2) a copy of the subpoena or summons has been served upon the customer or mailed to his last known address on or before the date on which the subpoena or summons was served on the financial institution together with the following notice which shall state with reasonable specificity the nature of the law enforcement inquiry:

"Records or information concerning your transactions held by the financial institution named in the attached subpoena or summons are being sought by this (agency or department) in ac-

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the following purpose: If you desire that such records or information not be made available, you must:

"1. Fill out the accompanying motion paper and sworn statement or write one of your own, stating that you are the customer whose records are being requested by the Government and either giving the reasons you believe that the records are not relevant to the legitimate law enforcement inquiry stated in this notice or any other legal basis for objecting to the release of the records.

"2. File the motion and statement by mailing or delivering them to the clerk of any one of the following United States district courts:

"3. Serve the Government authority requesting the records by mailing or delivering a copy of your motion and statement to

"4. Be prepared to come to court and present your position in further detail.

"5. You do not need to have a lawyer, although you may wish to employ one to represent you and protect your rights.

If you do not follow the above procedures, upon the expiration of ten days from the date of service or fourteen days from the date of mailing of this notice, the records or information requested therein will be made available. These records may be transferred to other Government authorities for legitimate law enforcement inquiries, in which event you will be notified after the transfer."; and

(3) ten days have expired from the date of service of the notice or fourteen days have expired from the date of mailing the notice to the customer and within such time period the customer has not filed a sworn statement and motion to quash in an appropriate court, or the customer challenge provisions of section 3410 of this title have been complied with.

Pub.L. 95-630, Title XI, § 1105, Nov. 10, 1978, 92 Stat. 3699.

Historical Note

References in Text. The Right to Financial Privacy Act of 1978, referred to par. (2), in Title XI of Pub.L. 95-630, Nov. 10, 1978, 92 Stat. 3697, which is classified generally to this chapter (section 3401 et seq.). For complete classification this Act to the Code, see Short Title note set out under section 3401 of this title and Tables volume.

Effective Date. Section effective upon the expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub.L. 95-630, set out as an Effective Date note under section 3403 of this title.

Legislative History. For legislative history and purpose of Pub.L. 95-630, see 1978 U.S.Code Cong. and Adm.News, p. 9273.

Library References

Administrative Law and Procedure ⇐468.

C.J.S. Public Administrative Bodies and

West's Federal Forms

Actions by United States or officers thereof, see §§ 1000 to 1072.
Administrative subpoenas, enforcement of, see § 6004 et seq.

Notes of Decisions

1. Relevance to law enforcement inquiry

Record established reasonably that records sought were relevant to legitimate law enforcement inquiry, thus requiring enforcement of administrative subpoena issued by Department of Agriculture directing bank to produce for examination and copying certain financial records of suspected violator of Packers and Stockyards Act, 1921, section 203 et seq. of Title 7, to aid in an investigation of violation, even though affidavit gave insufficient information to enable suspect to make a defense, since no charge had been made. Brittingham v. U. S. Dept. of Agriculture, D.C.Ky.1979, 480 F.Supp. 321.

§ 3406. Search warrants

Applicability of Federal Rules of Criminal Procedure

(a) A Government authority may obtain financial records under section 3402(3) of this title only if it obtains a search warrant pursuant to the Federal Rules of Criminal Procedure.

Mailing of copy and notice to customer

(b) No later than ninety days after the Government authority serves the search warrant, it shall mail to the customer's last known address a copy of the search warrant together with the following notice:

"Records or information concerning your transactions held by the financial institution named in the attached search warrant were obtained by this (agency or department) on (date) for the following purpose: . You may have rights under the Right to Financial Privacy Act of 1978."

Court-ordered delays in mailing

(c) Upon application of the Government authority, a court may grant a delay in the mailing of the notice required in subsection (b) of this section, which delay shall not exceed one hundred and eighty days following the service of the warrant, if the court makes the findings required in section 3409(a) of this title. If the court so finds, it shall enter an ex parte order granting the requested delay and an order prohibiting the financial institution from disclosing that records have been obtained or that a search warrant for such records has been executed. Additional delays of up to ninety days may be granted by the court upon application, but only in accordance with this subsection. Upon expiration of the period of delay of notification of the customer, the following notice shall be mailed to the customer along with a copy of the search warrant:

"Records or information concerning your transactions held by the

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1988

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Procedure 1988-22

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 12, 1988

MEMORANDUM

TO: Enforcement Staff

FROM: Lois G. Lerner
Associate General Counsel

SUBJECT: Notification to Respondents in Complaints

It has come to my attention that the identification and notification of respondents in externally generated MURs is not being handled in a consistent manner by Enforcement staff. This memorandum is intended to clarify which persons or entities should be treated as respondents at the outset so that the identification is handled on a uniform basis.

Often when a complaint is filed the caption will specifically name the respondents, or the body of the complaint will state that "this is a complaint against ... ." When this occurs all of those persons or entities listed or named are respondents, including the candidate if named. [1] Moreover, pursuant to our treasurer policy, if a registered political committee is named as a respondent, then the treasurer of that committee is a respondent as well, even if the complainant does not specifically name the treasurer. Furthermore, if the complaint states that it is against, for example, ABC PAC, a registered political committee, and its Executive Director, then the respondents would be the political committee, the treasurer, and the Executive Director. With respect to unregistered committees, the treasurer would not normally be made a respondent unless the complaint named the treasurer, or the allegations indicate that the unregistered committee had failed to register and report with the Commission.

When a complaint is filed stating that it is against a specific respondent either in the caption or the body, and another person or entity is implicated with respect to a violation of the Act, that person or entity should also be

1. If a complaint is filed against the authorized committee of a candidate and the candidate is not named as a respondent, a copy of the letter to the authorized committee should be sent to the candidate.

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considered to be a respondent even though the complainant did not explicitly state that the complaint was being filed against that person or entity. For example, if the complainant states that "this is a complaint against Smith for Congress for accepting an excessive contribution from XYZ PAC," then the respondents would be Smith for Congress, the treasurer of Smith for Congress, XYZ PAC, and the treasurer of XYZ PAC. Thus, you should read the complaint in its entirety in order to identify the respondents. By notifying all of the persons or entities who appear to have violated the Act, you will have the benefit of receiving information from all parties involved prior to writing the First General Counsel's Report.

When preparing the notification letters for Docket to send, be sure to include the names of all of the respondents in the acknowledgment letter sent to the complainant. These names should appear in the sentence: "This letter acknowledges receipt on _____, 198_, of your complaint alleging possible violations of the Federal Election Campaign Act of 1971, as amended, by _____."

Also, please remember that once a person or individual is notified that they are a respondent, a recommendation must be made with respect to that person or entity at some point during the course of the MUR before the entire file can be closed.

I encourage you to consult with your supervisor if you have any question whatsoever as to identification of respondents.

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

ENFORCEMENT PROCEDURE 1988-21

FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM
[retyped]

TO: Enforcement Staff

FROM: Lois G. Lerner
Associate General Counsel

SUBJECT: Non-Specific No Reason to Believe Recommendations

DATE: August 23, 1989

When making a non-specific recommendation that the Commission find no reason to believe that the respondent have violated "any provisions of the Federal Election Campaign Act of 1971, as amended," please add "on the basis of the complaint filed in MUR ___."

This will avoid problems if, in another more specific complaint concerning the activity, we do wish to go forward on the allegations.

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nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

P88-19

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 27, 1988

MEMORANDUM

TO: Enforcement Staff

FROM: Lois G. Lerner
Associate General Counsel

SUBJECT: Waiver of Confidentiality

All Matters Under Review are governed by 2 U.S.C. § 437g(a)(12)(A) which states that any notification or investigation made by the Commission may not be made public without the written consent of the respondent. Thus, under this section of the Act the Commission may not disclose any information about a MUR or even acknowledge that it is investigating a particular person or entity until the MUR file is closed. (Note, however, that the Press Office is permitted to acknowledge whether a complaint has been filed against a specific person or entity only if the name of the complainant and respondents are given, but no other information may be disclosed.) However, in the event a respondent informs the Commission in writing that he or she waives confidentiality, Commission approval of the waiver is not required. This is in contrast to 2 U.S.C. § 437g(a)(4)(B)(i) where the written consent of both the Commission and the respondent is required before information concerning conciliation negotiations can be made public.

When you receive a letter from a respondent waiving confidentiality under 2 U.S.C. § 437g(a)(12)(A), you should prepare a memo to the Commission informing them of the waiver. See Attachment 1. (If you are in the process of preparing a General Counsel's Report when the waiver is received, simply include the information in the report that you would normally include in the memo.) The memo should note that the waiver does not automatically place all documents in the MUR on the public record, particularly if there are other respondents involved in the MUR who have not waived confidentiality, and that a waiver of confidentiality by the respondent does not affect the Commission's ability to assert disclosure privileges as to information or documents. It should also note that if a request is received for information about the MUR, the request will be

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processed as any other request would be pursuant to the Freedom of Information Act and the Government in the Sunshine Act. The memo should recommend that the Commission approve the mailing of a letter to the respondent who requested the waiver acknowledging its receipt of the waiver. See Attachment 2.

Finally, if you have any questions or doubts in a given context, please consult with your supervisor before releasing any information.

Attachments
1 -- Memo
2 -- Letter

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MEMORANDUM

TO: The Commission

FROM: Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel
(except Track 3)

SUBJECT: MUR _____
Waiver of Confidentiality

(Identify the respondent submitting the waiver, and state the date that it was received. State whether there are other respondents in the MUR, and note whether they have waived confidentiality as well. If there are other respondents in the MUR who have not waived confidentiality, state that the waiver pertains solely to the information in the MUR concerning the instant person or entity waiving confidentiality.)

By making this waiver, _____ has requested that the Commission not apply the confidentiality provision of 2 U.S.C. § 437g(a)(12)(A) to this matter. However, that section merely provides that any notification or investigation shall not be made public by the Commission without the written consent of the person receiving such notification or the person with respect to whom such investigation is made. By its terms, section 437g(a)(12)(A) does not impose an affirmative duty on the Commission to publicize this matter at this time [as it pertains to _____]. Therefore, this Office will respond to requests for information subject to the following considerations. First, requests must be in writing. Second, such requests would be considered by the Commission subject to the provisions of the Freedom of Information Act, the Government in the Sunshine Act, and all relevant privileges which would limit or preclude the release of such requested information.

II. RECOMMENDATION

Approve the attached letter.

Attachment
1 - Waiver
2 - Letter

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

_____
_____
_____
_____

Re: MUR _____
(Respondent's Name)

Dear _____:

This is in response to your letter dated _____ 1988, wherein you waive your right to confidentiality in the above-captioned matter, pursuant to 2 U.S.C. § 437g(a)(12)(A). Your waiver is hereby acknowledged by the Commission.

The Commission will consider requests for information concerning this matter subject to the following considerations. First, requests must be in writing. Second, such requests will be considered by the Commission subject to the provisions of the Freedom of Information Act, the Government in the Sunshine Act, and all relevant privileges which limit or preclude the release of such requested information.

[Please note that this waiver pertains to information concerning you alone, and does not pertain to any other respondents in the matter. Thus, you may not disclose any information pertaining to the other respondents in this matter until you are notified by the Commission that the entire file in this matter is closed.]

If you have any questions please contact _____ _____, the [attorney] [staff member] assigned to this matter, at (202)376-_____.

Sincerely,

Lawrence M Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

This document does not bind the Commission,
nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

ENFORCEMENT PROCEDURE 1988-17

FEDERAL ELECTION COMMISSION
Washington, DC 20463

August 5, , 1988

MEMORANDUM
[retyped]

TO: Enforcement Staff

FROM: Lois G. Lerner
Associate General Counsel

SUBJECT: Conciliation Agreements

Lately, I have seen several conciliation reports, indicating that [a] lower civil penalty is in order because the excessives have been repaid. The agreements, however, have not reflected the repayment. Although there may be exceptions, the general rule is, if there has been a repayment, the agreement should say so—if no repayment has been made, the agreement should require a repayment.

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nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

ENFORCEMENT PROCEDURE 1988-14

FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM
[retyped]

TO: Enforcement Staff

FROM: Lois G. Lerner
Associate General Counsel

SUBJECT: Matters Involving Organizations with Both a State and Federal Accounts

DATE: June 27, 1988

A question has arisen concerning the proper format for naming respondents in matters where the federal and non-federal accounts of the same organization are being named as respondents for the same violation. An example of the proper form is set forth below:

1) Find reason to believe that the Pennsylvania Democratic State Committee (federal/non-federal accounts) and Frank McDonnell, as treasurer, violated 11 C.F.R. § 102.5.

Note, however, that where the accounts have distinct names or treasurers, they should be listed separately.

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nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

ENFORCEMENT PROCEDURE 1988-13

FEDERAL ELECTION COMMISSION
Washington, DC 20463

June 14, 1988

MEMORANDUM
[retyped]

TO: Enforcement Staff

FROM: Lois G. Lerner
Associate General Counsel

SUBJECT: Civil Penalties in Late/Nonfiler Referrals

A question has arisen concerning the calculation of the civil penalty in late/nonfiler referrals under the new procedure whereby we simultaneously find "RTB" and mail out a proposed conciliation agreement. In those situations where at the time of the General Counsel's recommendation to find "RTB," the respondent has not filed the report(s) at issue, the conciliation agreement being recommended for approval should contain a civil penalty using the nonfiler schedule. See the Memorandum to the Commission, dated March 5, 1986, at Pages 5-6. However, in the event the respondent files the missing report(s) subsequent to the "RTB" finding, the respondent becomes a late filer for purposes of the civil penalty schedule. Thus, if there are conciliation negotiations, the fact that the report(s) was ultimately filed should be reflected in both the facts of the agreement and the amount of the negotiated civil penalty. If on the other hand, the respondent files the report(s) and submits a signed agreement, without negotiation, the original language and civil penalty amount will remain the agreement.

Please consult with your team leader if you have questions about specific civil penalties in your cases.

cc: Lawrence M. Noble
Rick Bader

This document does not bind the Commission,
nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

88-12

cl

FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

6/2/88

MEMORANDUM

TO: Enforcement and Litigation Staff

FROM: Lois G. Lerner LGL
Associate General Counsel for Enforcement

Richard Bader RBB
Associate General Counsel for Litigation

SUBJECT: Notification in MURs at the Conclusion of Litigation

Under our procedures a MUR is considered closed when the Commission votes to "close the file." Frequently, however, the Commission will authorize this Office to institute a civil action for relief against a respondent after attempts at conciliation are unsuccessful. When this happens there is no recommendation within the MUR to "close the file," although for statistical purposes the file is considered closed when civil suit is authorized.1/

With respect to notification, where the Commission votes to "close the file" in a MUR, all respondents (and the complainant, if any,) are immediately sent letters stating that the MUR file is closed. In those MURS, however, where authorization is received to file suit, the respondents to be named in the suit will be sent a letter notifying them of the suit authorization.

1/ In MURS involving more than one respondent, the Commission may vote to "close the file as it pertains" to some of the respondents, and then later authorize civil suit against the remaining respondents with whom conciliation was unsuccessful. In this situation, a "close the file" recommendation is not put forth. Also, if civil suit is authorized against one respondent in a MUR, and then subsequently the Commission accepts a conciliation agreement with another respondent in the MUR, the final report should not contain a "close the file" recommendation, but instead a recommendation to "close the file as it pertains to" the respondent involved in the conciliation agreement. In this situation, the MUR is considered closed for statistical purposes on the date the Commission approves the recommendation to "close the file as it pertains to...." the last respondent.

This document does not bind the Commission,
nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

Usually, any other respondents in such a MUR have already been sent letters telling them that the file is closed as it pertains to them, and that they will be notified when the entire file is closed.

In order to ensure that all the respondents in those MURs that have been transferred to litigation are notified that the MUR file is closed, the following procedures are to be implemented at the conclusion of the litigation or pre-litigation:

1) The attorney handling the pre-litigation or litigation will advise the Assistant General Counsel for Enforcement and the staff person who handled the MUR that the pre-litigation or litigation has concluded. The litigation will be considered to be concluded at the expiration of the applicable period for appeal. This notification will occur through the use of the attached form (Attachment 1). Where appropriate in externally generated MURs, the attorney will provide the staff person with a copy of the court's final order or judgment.

2) At the discretion of the Associate General Counsel for Litigation, the attorney assigned to the litigation will send a final memorandum to the Commission advising of the conclusion of the litigation. A memo will be prepared by Litigation in all matters settled in pre-litigation. Attached to the final memo will be copies of letters to all parties in the pre-litigation or litigation, stating that the Commission's consideration of the matter is concluded and advising that additional factual and legal materials may be submitted within ten days to appear on the public record. See examples at Attachment 2. The memo will also include a blanket recommendation to send the appropriate letters to all other parties in the MUR, including the complainant, if any.

3) If Litigation has sent a final memorandum to the Commission, the staff person who originally handled the MUR will be responsible for preparing and sending letters to those respondents who were not a party to the litigation or pre-litigation, and the complainant, if any, advising that the file is closed. If Litigation has not sent a final memorandum to the Commission, the staff person who handled the MUR will be responsible for sending a brief memo to the Commission requesting authorization to send notification letters to all respondents and the complainant, if any, in the MUR advising that

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nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

the file is closed. The proposed letters should be attached to the memo.

(4) The Enforcement staff is to use Form 60 to notify the respondents, and Form 66 to notify the complainant that the Commission's consideration of the matter is concluded and that the file is closed. A copy of the court's final order or judgment should be sent to the complainant, or if pre-litigation is involved, a copy of the signed conciliation agreement.2/ The date that the Commission approved the recommendations in the final memorandum (either from Litigation or Enforcement) is the date that the Commission's consideration of the matter was concluded. This date is to be inserted in the letter.

cc: Lawrence M. Noble

2/ As noted at the bottom of form 66, in those MURs where the litigation did not involve all respondents in the MUR, the form must be amended to state the Commission's final action with respect to each respondent, and enclose a copy of the applicable conciliation agreement or General Counsel's Report.

This document does not bind the Commission,
nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

MEMORANDUM

TO: _____

FROM: _____

DATE: _____

Check either A or B and the applicable boxes within:

A. / / The **PRE-LITIGATION** relating to MUR _____ was concluded in the following manner:

_____

_____

_____

_____

The Commission's final consideration of this matter occurred on _____, and it has authorized the sending of notification letters to all parties in the MUR, including the complainant, if any.

B. / / The **LITIGATION** relating to MUR _____ was concluded in the following manner:

_____

_____

_____

_____

The appeal period expired on _____.

/ / The Commission's final consideration of this matter occurred on _____, and it has authorized the sending of notification letters to all parties in the MUR, including the complainant, if any.

/ / A final memorandum to the Commission has not been prepared.

cc: Lois Lerner

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nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 10, 1988

E. Daniel Dellicompagni, Treasurer
California Young Republican PAC
7822 Seaglen Drive
Huntington Beach, CA 92648

Re: Federal Election Commission v. California Young Republican PAC-Federal, et al., (Pre-Litigation) (formerly MUR 2150).

Dear Mr. Dellicompagni:

This is to notify you that on March 7, 1988, the Commission voted to accept the signed conciliation agreement you previously submitted in settlement of the above-captioned matter. A copy of that agreement, which has now been executed on behalf of the Commission, is enclosed for your files.

This concludes the Commission's consideration of this matter. The original signed copy of the conciliation agreement will now be forwarded, together with other portions of the Commission's permanent file in MUR 2150, to the Commission's Public Disclosure Division for placement on the public record. See 11 C.F.R. § 4.4. Should you wish to submit any additional legal or factual materials to be placed on the public record in connection with this matter, please do so within ten days. Such materials should be sent to the Office of the General Counsel.

Thank you again for your cooperation. Should you have any questions, please contact me immediately at (202) 376-5690.

Sincerely,

Robert W. Bonham III

Robert W. Bonham, III
Attorney

Enclosure.

Attachment 2, p.1

This document does not bind the Commission,
nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 9, 1988

Raymond B. Harding, Esquire
845 Third Avenue
New York, NY 10022

Re: Federal Election Commission v. Liberal Party Federal Campaign Committee, No. 84-Civ-5552(JMC)(S.D.N.Y.), and MUR 1739, In the Matter of the Liberal Party of New York State (1983) (Pre-Litigation).

Dear Mr. Harding:

This is to notify you that on March 3, 1988, the Commission voted to accept the signed consent order and conciliation agreement, both of which you previously submitted on behalf of your client, the Liberal Party of New York State, in settlement of the above-captioned matters. Copies of those documents, which have now been executed on behalf of the Commission, are enclosed for your files.

For your information, this concludes the Commission's consideration of these matters. The consent order will now be forwarded to the clerk of the court for filing. Similarly, the conciliation agreement will be forwarded, together with portions of the Commission's permanent file in the two administrative enforcement matters, to the Commission's Public Disclosure Division for placement on the public record. See 11 C.F.R. § 4.4. Should you wish to submit any additional legal or factual materials to be placed on the public record in connection with those matters, please do so within ten days. Such materials should be sent to the Office of the General Counsel.

Thank you again for your cooperation. Should you have any questions, please contact Robert Bonham, the litigation attorney assigned to these matters, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

Enclosures

Attachment 2, p.2

This document does not bind the Commission,
nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

Revised 3/88

Form 66
Closing Letter to Complainant
at the conclusion of litigation*

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

_____
_____
_____

RE: MUR _____

Dear _____:

This is in reference to the complaint [you] filed [on behalf of _____] with the Federal Election Commission on _____, 198_, concerning _____
_____

After conducting an investigation the Commission found probable cause to believe _____ violated _____, [a] provision(s) of [the Federal Election Campaign Act of 1971, as amended.] [Chapters 95 and 96 of Title 26, United States Code.] The Commission was unable to settle the matter through a conciliation agreement and, therefore, authorized the filing of a civil suit in United States District Court. [Describe how the litigation ended, and, if appropriate, include a copy of the court's order or judgment.] The Commission's consideration of this matter was concluded on _____, 198_, and the file is now closed.

If you have any questions, please contact _____, the [attorney] [staff member] assigned to this matter, at (202) 376-_____.

Sincerely,

Lawrence M. Noble
General Counsel

by phone

BY: Lois G. Lerner
Associate General Counsel
(except Track 3)

[Enclosure]

*NOTE: This letter is sent only at the conclusion of litigation in the MUR. In those MURs where the litigation did not involve all respondents in the MUR, this letter must be amended to state the Commission's final action with respect to each respondent, and enclose the applicable Conciliation Agreement or General Counsel's Report. For MURs where suit was authorized but the case was settled through a conciliation agreement prior to the filing of the suit, use form 57 instead.

Attach. + 3 c.

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nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

Revised 3/88

Form-6
Letter Notifying Respondent
That Entire File
Has Been Closed

_____
_____
_____
_____

RE: MUR ___
[Name of Respondent]

Dear _____:

This is to advise you that the entire file in this matter has now been closed and will become part of the public record within 30 days. Should you wish to submit any legal or factual materials to be placed on the public record in connection with this matter, please do so within ten days. Such materials should be sent to the Office of the General Counsel.

Should you have any questions, contact _____, the [staff member] [attorney] assigned to this matter, at (202) 376-____.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel
(except Track 3)

NOTE: If the respondent is a committee, send a cc to the candidate.

at

This document does not bind the Commission,
nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

Procedure 1988-12

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

6/2/88

MEMORANDUM

TO: Enforcement and Litigation Staff

FROM: Lois G. Lerner LGL
Associate General Counsel for Enforcement

Richard Bader RBB
Associate General Counsel for Litigation

SUBJECT: Notification in MURs at the Conclusion of Litigation

Under our procedures a MUR is considered closed when the Commission votes to "close the file." Frequently, however, the Commission will authorize this Office to institute a civil action for relief against a respondent after attempts at conciliation are unsuccessful. When this happens there is no recommendation within the MUR to "close the file," although for statistical purposes the file is considered closed when civil suit is authorized.1/

With respect to notification, where the Commission votes to "close the file" in a MUR, all respondents (and the complainant, if any,) are immediately sent letters stating that the MUR file is closed. In those MURS, however, where authorization is received to file suit, the respondents to be named in the suit will be sent a letter notifying them of the suit authorization.

1/ In MURS involving more than one respondent, the Commission may vote to "close the file as it pertains" to some of the respondents, and then later authorize civil suit against the remaining respondents with whom conciliation was unsuccessful. In this situation, a "close the file" recommendation is not put forth. Also, if civil suit is authorized against one respondent in a MUR, and then subsequently the Commission accepts a conciliation agreement with another respondent in the MUR, the final report should not contain a "close the file" recommendation, but instead a recommendation to "close the file as it pertains to" the respondent involved in the conciliation agreement. In this situation, the MUR is considered closed for statistical purposes on the date the Commission approves the recommendation to "close the file as it pertains to...." the last respondent.

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

Usually, any other respondents in such a MUR have already been sent letters telling them that the file is closed as it pertains to them, and that they will be notified when the entire file is closed.

In order to ensure that all the respondents in those MURs that have been transferred to litigation are notified that the MUR file is closed, the following procedures are to be implemented at the conclusion of the litigation or pre-litigation:

1) The attorney handling the pre-litigation or litigation will advise the Assistant General Counsel for Enforcement and the staff person who handled the MUR that the pre-litigation or litigation has concluded. The litigation will be considered to be concluded at the expiration of the applicable period for appeal. This notification will occur through the use of the attached form (Attachment 1). Where appropriate in externally generated MURs, the attorney will provide the staff person with a copy of the court's final order or judgment.

2) At the discretion of the Associate General Counsel for Litigation, the attorney assigned to the litigation will send a final memorandum to the Commission advising of the conclusion of the litigation. A memo will be prepared by Litigation in all matters settled in pre-litigation. Attached to the final memo will be copies of letters to all parties in the pre-litigation or litigation, stating that the Commission's consideration of the matter is concluded and advising that additional factual and legal materials may be submitted within ten days to appear on the public record. See examples at Attachment 2. The memo will also include a blanket recommendation to send the appropriate letters to all other parties in the MUR, including the complainant, if any.

3) If Litigation has sent a final memorandum to the Commission, the staff person who originally handled the MUR will be responsible for preparing and sending letters to those respondents who were not a party to the litigation or pre-litigation, and the complainant, if any, advising that the file is closed. If Litigation has not sent a final memorandum to the Commission, the staff person who handled the MUR will be responsible for sending a brief memo to the Commission requesting authorization to send notification letters to all respondents and the complainant, if any, in the MUR advising that

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

the file is closed. The proposed letters should be attached to the memo.

(4) The Enforcement staff is to use Form 60 to notify the respondents, and Form 66 to notify the complainant that the Commission's consideration of the matter is concluded and that the file is closed. A copy of the court's final order or judgment should be sent to the complainant, or if pre-litigation is involved, a copy of the signed conciliation agreement.2/ The date that the Commission approved the recommendations in the final memorandum (either from Litigation or Enforcement) is the date that the Commission's consideration of the matter was concluded. This date is to be inserted in the letter.

cc: Lawrence M. Noble

2/ As noted at the bottom of form 66, in those MURs where the litigation did not involve all respondents in the MUR, the form must be amended to state the Commission's final action with respect to each respondent, and enclose a copy of the applicable conciliation agreement or General Counsel's Report.

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

MEMORANDUM

TO: _____

FROM: _____

DATE: _____

Check either A or B and the applicable boxes within:

A. / / The **PRE-LITIGATION** relating to MUR _____ was concluded in the following manner:

_____

_____

_____

_____

The Commission's final consideration of this matter occurred on _____, and it has authorized the sending of notification letters to all parties in the MUR, including the complainant, if any.

B. / / The **LITIGATION** relating to MUR _____ was concluded in the following manner:

_____

_____

_____

_____

The appeal period expired on _____.

/ / The Commission's final consideration of this matter occurred on _____, and it has authorized the sending of notification letters to all parties in the MUR, including the complainant, if any.

/ / A final memorandum to the Commission has not been prepared.

cc: Lois Lerner

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nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 10, 1988

E. Daniel Dellicompagni, Treasurer
California Young Republican PAC
7822 Seaglen Drive
Huntington Beach, CA 92648

Re: Federal Election Commission v. California Young Republican PAC-Federal, et al., (Pre-Litigation) (formerly MUR 2150).

Dear Mr. Dellicompagni:

This is to notify you that on March 7, 1988, the Commission voted to accept the signed conciliation agreement you previously submitted in settlement of the above-captioned matter. A copy of that agreement, which has now been executed on behalf of the Commission, is enclosed for your files.

This concludes the Commission's consideration of this matter. The original signed copy of the conciliation agreement will now be forwarded, together with other portions of the Commission's permanent file in MUR 2150, to the Commission's Public Disclosure Division for placement on the public record. See 11 C.F.R. § 4.4. Should you wish to submit any additional legal or factual materials to be placed on the public record in connection with this matter, please do so within ten days. Such materials should be sent to the Office of the General Counsel.

Thank you again for your cooperation. Should you have any questions, please contact me immediately at (202) 376-5690.

Sincerely,

Robert W. Bonham, III
Attorney

Enclosure.

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nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 9, 1988

Raymond B. Harding, Esquire
845 Third Avenue
New York, NY 10022

Re: Federal Election Commission v. Liberal Party Federal Campaign Committee, No. 84-Civ-5552(JMC)(S.D.N.Y.), and MUR 1739, In the Matter of the Liberal Party of New York State (1983) (Pre-Litigation).

Dear Mr. Harding:

This is to notify you that on March 3, 1988, the Commission voted to accept the signed consent order and conciliation agreement, both of which you previously submitted on behalf of your client, the Liberal Party of New York State, in settlement of the above-captioned matters. Copies of those documents, which have now been executed on behalf of the Commission, are enclosed for your files.

For your information, this concludes the Commission's consideration of these matters. The consent order will now be forwarded to the clerk of the court for filing. Similarly, the conciliation agreement will be forwarded, together with portions of the Commission's permanent file in the two administrative enforcement matters, to the Commission's Public Disclosure Division for placement on the public record. See 11 C.F.R. § 4.4. Should you wish to submit any additional legal or factual materials to be placed on the public record in connection with those matters, please do so within ten days. Such materials should be sent to the Office of the General Counsel.

Thank you again for your cooperation. Should you have any questions, please contact Robert Bonham, the litigation attorney assigned to these matters, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

Enclosures

This document does not bind the Commission,
nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

Revised 3/88

Form 66
Closing Letter to Complainant
at the conclusion of litigation*

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

_____
_____
_____

RE: MUR _____

Dear _____:

This is in reference to the complaint [you] filed [on behalf of _____] with the Federal Election Commission on _____, 198_, concerning _____
_____

After conducting an investigation the Commission found probable cause to believe _____ violated _____, [a] provision(s) of [the Federal Election Campaign Act of 1971, as amended.] [Chapters 95 and 96 of Title 26, United States Code.] The Commission was unable to settle the matter through a conciliation agreement and, therefore, authorized the filing of a civil suit in United States District Court. [Describe how the litigation ended, and, if appropriate, include a copy of the court's order or judgment.] The Commission's consideration of this matter was concluded on _____, 198_, and the file is now closed.

If you have any questions, please contact _____, the [attorney] [staff member] assigned to this matter, at (202) 376-_____.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel
(except Track 3)

[Enclosure]

*NOTE: This letter is sent only at the conclusion of litigation in the MUR. In those MURs where the litigation did not involve all respondents in the MUR, this letter must be amended to state the Commission's final action with respect to each respondent, and enclose the applicable Conciliation Agreement or General Counsel's Report. For MURs where suit was authorized but the case was settled through a conciliation agreement prior to the filing of the suit, use form 57 instead.

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nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

Revised 3/88

Form-6.
Letter Notifying Respondent
That Entire File
Has Been Closed

_____
_____
_____
_____

RE: MUR ___
[Name of Respondent]

Dear _____:

This is to advise you that the entire file in this matter has now been closed and will become part of the public record within 30 days. Should you wish to submit any legal or factual materials to be placed on the public record in connection with this matter, please do so within ten days. Such materials should be sent to the Office of the General Counsel.

Should you have any questions, contact _____, the [staff member] [attorney] assigned to this matter, at (202) 376-____.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel
(except Track 3)

NOTE: If the respondent is a committee, send a cc to the candidate.

This document does not bind the Commission,
nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

ENFORCEMENT PROCEDURE 1988-6

FEDERAL ELECTION COMMISSION
Washington, DC 20463

February 11, 1988

MEMORANDUM
[retyped]

TO: Enforcement Staff

FROM: Lois G. Lerner
Associate General Counsel
for Enforcement

SUBJECT: "10 Day" Letters

If we send respondents a final conciliation offer with a specified time frame in which to respond (i.e., 10 days from receipt of letter), please be sure to send the letter certified mail return receipt so we have a record of receipt date in the event the matter goes to litigation.

cc: Lawrence M. Noble
Rick Bader

This document does not bind the Commission,
nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

ENFORCEMENT PROCEDURE 1988-3

FEDERAL ELECTION COMMISSION
Washington, DC 20463

January 25, 1988

MEMORANDUM
[retyped]

TO: Enforcement Staff

FROM: Lois G. Lerner
Associate General Counsel
for Enforcement

SUBJECT: Out of Office on Travel

Whenever you are away from the office on travel status, it is important that you leave with your team secretary or with [the Associate General Counsel's secretary], an itinerary and number where you can be reached. Emergencies may arise where we need to contact you regarding a MUR. It is also a good idea to check in once a day on the 800 line (800-424-9530) to find out if anyone needs to speak to you.

cc: Lawrence M. Noble

This document does not bind the Commission,
nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

ENFORCEMENT PROCEDURE 1988-2

FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM
[retyped]

TO: Enforcement Staff

FROM: Lois G. Lerner
Associate General Counsel for Enforcement

SUBJECT: Committee Treasurers

DATE: January 20, 1988

This is just a reminder, that when we have a recommendation against a committee and its treasurer and we do not know the name of the treasurer, the recommendation should read:

Find RTB that Acme Committee and its treasurer violated ....

NOT

Find RTB that Acme Committee and its treasurer, as treasurer, violated ....

Once you learn the treasurer's name, you will refer to "Mary Smith, as treasurer,."

cc: Lawrence M. Noble

This document does not bind the Commission,
nor does it create substantive or procedural rights.
For more information, see http://www.fec.gov/law/procedural_materials.shtml.

Procedure 1988-1

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 15, 1988

MEMORANDUM

TO: Enforcement Staff

FROM: Lois G. Lerner
Associate General Counsel

SUBJECT: Briefs

Please take note that briefs should not contain discussions of pre-probable cause conciliation efforts. Please do not even include statements that pre-probable cause negotiations occurred but were not fruitful.

You are reminded to add your name at the end of each report you submit, i.e., Staff Person: Joe Jones.

cc: Lawrence M. Noble

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1987

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ENFORCEMENT PROCEDURE 1987-21

FEDERAL ELECTION COMMISSION
Washington, DC 20463

November 13, 1987

MEMORANDUM
[retyped]

TO: Enforcement Staff

FROM: Lois G. Lerner
Associate General Counsel

SUBJECT: "Dymally Plus"

Attached is a memo concerning the "Dymally" rule. For those of you who are new it may be confusing. (It may be confusing to the "old timers" as well!) But I think it's important to be aware of the rule. If you have questions, please talk to your team leader. Team leaders with questions, please see me.

cc: Lawrence M. Noble

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FEDERAL ELECTION COMMISSION
Washington, DC 20463

January 16, 1986

MEMORANDUM

TO: Enforcement Staff

FROM: Kenneth A. Gross
Associate General Counsel

SUBJECT: Dymally Plus

On January 14, 1986, the Commission added a new wrinkle to the Dymally plus rule. It is now the Dymally plus-minus rule. As to all entities which we would have found RTB and take no further action under the existing rule, we will defer recommendations until the recipient candidate committee has had an opportunity to respond.

Thus, when preparing your 1st G.C report, recommend RTB against all those parties who exceeded the limit by more than two times, and the recipient committee. Hold off recommendations against the other contributors until after we have heard from the recipient committee. If that response provides information as to one or some of the contributors which would cause us to believe that they did not violate the law, then we would eliminate that individual from the list of excessive contributors.

[This change in approach will alleviate some of the work prior to preparing the 1st G.C. report even though we will eventually have to make RTB and take further action recommendations against all or most of the individuals. In order to expedite the preparation of these matters, while we are awaiting response from the recipient committee we should be preparing the RTB, take no further action recommendation on the individual legal and factual analyses which are time-consuming to prepare. It we had to eliminate a few based the committee's response, that should not be difficult.]
[Note: Above paragraph replaced by Enforcement Procedure 2007-3]

Also be sure that the legal and factual notice to the recipient committee lists the names of all the excessive contributors.

cc: Charles N. Steele
Lawrence . Noble

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ENFORCEMENT PROCEDURE 1987-19

FEDERAL ELECTION COMMISSION
Washington, DC 20463

November 5, 1987

MEMORANDUM
[retyped]

TO: Enforcement Staff

FROM: Lois G. Lerner
Associate General Counsel

SUBJECT: Compliance with Conciliation Agreements

It has come to my attention that, despite memos to the contrary, some staff believe it is Docket's responsibilities to monitor compliance with conciliation agreements. Docket does check on these, but it is your responsibility to make sure the civil penalty and any documents required to be filed have been received. This should not be too burdensome, since most agreements require compliance within 30 days of signing. Allowing for mailing, you should check on these about 35 to 40 days after they have been sent.

In the event respondents have not complied, call them or send one letter indicating they must comply within 10 days or we will recommend suit. If they still do not comply, prepare a suit authorization report.

cc: Lawrence M. Noble

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ENFORCEMENT PROCEDURE 1987-18

FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM
[retyped and updated]

TO: Enforcement Staff

FROM: Lois G. Lerner
Associate General Counsel for Enforcement

SUBJECT: Subpoena Enforcement

DATE: November 3, 1987

If the Commission authorizes subpoena enforcement in a matter and then the respondent adequately complies with the discovery request prior to our filing suit, the Enforcement staff person is responsible for sending a report [revised/formerly "CIR"] to the Commission indicating that it is no longer necessary to file suit. Although these reports circulate, Litigation is not always aware that respondents have complied, so please notify [revised/formerly "Ivan"] the Assistant General Counsel for District Court Litigation when this occurs

cc: Lawrence M. Noble
Ivan Rivera

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1987-15

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 14, 1987

MEMORANDUM

TO: Enforcement Staff

FROM: Lois G. Lerner
Associate General Counsel

SUBJECT: 2 U.S.C. § 441a(d)

Recently a question has arisen when dealing with coordinated expenditure cases as to what section to cite for the violation: Section 441a(d) sets forth the limits of the national committees with regard to Presidential, House and Senate candidates as well as the limits of State and local committees with regard to House and Senate candidates. Section 441a(f) states that it is a violation to make expenditures in violation of the limits of Section 441a.

In most cases of excessive expenditures, we should cite both Sections 441a(d) and 441a(f) because the first specifies the applicable limits and the second says you cannot exceed the limits specified in Section 441a. Because Section 441a(d) does not provide for State or local committees making expenditures for presidential candidates, however, you should cite only Section 441a(f) in situations where the State or local committee has made such expenditures and explain the rationale for doing so in the report.

cc: Lawrence M. Noble

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ENFORCEMENT PROCEDURE 1987-13

FEDERAL ELECTION COMMISSION
Washington, DC 20463

September 16, 1987

MEMORANDUM
[retyped]

TO: Enforcement Staff

FROM: Lois G. Lerner
Associate General Counsel

SUBJECT: 11 C.F.R. § 102.5(a) Violations

Recently, in several instances where we have made recommendations that a violation of 11 C.F.R. § 102.5(a) occurred in situations where one organization has both a State and federal account, the Commission has directed this Office to send a single comprehensive Factual and Legal Analysis and letter reflecting these findings to the Organization instead of one notification to the non-federal account and one to the federal account.

Please follow this procedure unless unusual circumstances warrant deviation from that course. The analysis and letter should detail both sides of the violation and name all parties.

cc: Lawrence M. Noble

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ENFORCEMENT PROCEDURE 1987-12

FEDERAL ELECTION COMMISSION
Washington, DC 20463

September 2, 1987

MEMORANDUM
[retyped]

TO: Enforcement Staff

FROM: Lois G. Lerner
Associate General Counsel

SUBJECT: Conciliation Agreements

Recently I have noticed several non-filer agreements that do not include a statement of the law. Please make sure all conciliation agreements contain:

1) the facts,

2) a statement of the law, and

3) a statement of the violation (admission clause).

Also, do not forget the admission clause should read "[i]n violation of ...."

cc: Lawrence M. Noble

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For more information, see http://www.fec.gov/law/procedural_materials.shtml.

87-9

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 5, 1987

MEMORANDUM

TO: Enforcement Staff

FROM: Lois G. Lerner
Associate General Counsel

SUBJECT: Staff Responsibility -- Suit Authorization

the Assistant G.C. for District Court Litigation

When the Commission authorizes suit in a matter, but allows the respondent one final opportunity to accept an agreement before instituting that suit, it is the Enforcement staff person's responsibility to notify Litigation of the status of the matter at the end of the time period involved. For instance, if the Commission authorizes suit, but sends a final offer to the respondents indicating that they have 10 days to accept, the staff person should notify [redacted] at the close of that period whether an agreement was reached or suit should be filed. */

Recently, in two instances, the staff person has failed to follow-up on these situations and, in one case, our 90 day authorization to file suit has expired. We now have to return to the Commission and request new authorization.

I have attached a new form we will use to expedite the process and Docket will send reminder notices concerning these situations, but remember, the primary responsibility is on the staff person handling the MUR and he or she will be held accountable.

Copies of the form will be kept where the blue cards are and can be filled in by hand.

*/ In limited circumstances the time period may be extended for a day or two, but no longer.

Attachment

cc: Lawrence M. Noble
Retha Dixon

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8/87

Notice to Litigation of Expiration of Last Opportunity to Conciliate Before Suit

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Date _____

MEMORANDUM

TO: Ivan Rivera
Assistant General Counsel
for Litigation

FROM: Lois G. Lerner
Associate General Counsel

THRU: _____
Assistant General Counsel

MUR _____

On _____ the Commission authorized this Office to file suit in MUR _____ if a signed conciliation agreement was not received within _____ days of respondents' receipt of the Commission's Notice.

The requisite number of days has passed and an agreement has/has not* been reached. Therefore, you should/should not* file suit.

cc: Lawrence M. Noble

* Circle the appropriate phrases.

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87-4

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 18, 1987

MEMORANDUM

TO: Enforcement Staff

FROM: Lois G. Lerner
Associate General Counsel

SUBJECT: Extension of Time Requests

As you know, the Commission recently revised its extension of time policy to allow more flexibility in this Office. Although we now have the authority to grant longer extensions, they should not be granted beyond 20 days except in unusual circumstances.

So that we can better monitor the granting of extensions, please put a note on your letter of extension package with the original due date, the extended due date and the number of days of the extension.

Thank you.

* Use the attached form.

cc: Lawrence M. Noble

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Date _____

MEMORANDUM

TO: Lois G. Lerner
Associate General Counsel

FROM: (Attorney/Staff Person)

SUBJECT: Extension of time - (MUR, RAD, etc)

Respondents:

_____

_____

Original Due Date:

Extended Due Date:

Number of Days Extended:

cc: The File
(Team Leader)

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Procedure 1987-3

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 10, 1987

MEMORANDUM

TO: Enforcement Staff and Team Leaders

FROM: George F. Rishel
Acting Associate General Counsel

SUBJECT: Extensions of Time in Enforcement Matters

On June 4, 1987, the Commission approved certain changes regarding the Office of the General Counsel's authority for granting and denying extensions of time in enforcement matters. A copy of the agenda document and certification are attached. Please study them to familiarize yourself with the change.

Please note, however, that although this Office has authority to grant extensions up to 30 days in most instances, this Office's policy has not changed and is to grant extensions of no more than 15-20 days. Do not start thinking in terms of "now we can give 30 days." If extensions of 30 days become the norm, our authority may be cut back to 20 days. The additional authority will permit us to grant a second extension of short duration (as long as the total does not exceed 30 days) without first obtaining Commission approval.

Also, you should note that our authority permits us to grant extensions up to 45 days for responses to RTB notifications and probable cause briefs. Our policy is to grant no more than 30 days. The additional authority will permit us to grant additional time where exceptional circumstances exist. For instance, such circumstances may exist where the Commission has issued a lengthy set of interrogatories or has requested numerous documents.

When you receive a written request for an extension of time, you should discuss it with your supervisor immediately to determine an appropriate response that conforms with OGC and Commission policy. All requests should be responded to in writing, either granting or denying them, in whole or in part, and in a timely fashion. All responses should be expedited in typing and review.

Attachments

cc: Lawrence M. Noble
Lois G. Lerner

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	Agenda Document #87-55
Extensions of Time in	)	
Enforcement Matters	)	

CERTIFICATION

I, Mary W. Dove, recording secretary for the Federal Election Commission meeting on June 4, 1987, do hereby certify that the Commission decided by a vote of 6-0 to take the following actions in the above-captioned matter:

1. Authorize the General Counsel to grant one or more extensions of time during the compliance process not to exceed 30 days from the original due date (except for responses to reason to believe findings and for responsive probable cause briefs).

2. Authorize the General Counsel to grant one or more extensions of time for responses to reason to believe findings and for responsive probable cause briefs not to exceed 45 days from the original due date.

Commissioners Aikens, Elliott, Josefiak, McDonald, McGarry, and Thomas voted affirmatively for this decision.

Attest:

6-4-87
Date

Mary W. Dove
Mary W. Dove
Administrative Assistant

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AGENDA DOCUMENT #87-55

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

May 22, 1987

MEMORANDUM

TO: The Commission

FROM: Lawrence M. Noble
Acting General Counsel

SUBJECT: Extensions of Time in Enforcement Matters

On January 29, 1987, the Commission requested the Office of the General Counsel to submit a report on the policy of granting extensions of time in enforcement matters and to include recommendations for amendments to the policy regarding such extensions. This memorandum is submitted in response to that request to assist the Commission in considering this policy. It discusses (1) the statutory and regulatory framework, (2) past and present policies, and (3) the experience with the present policy.

The memorandum also contains several recommendations for improvements in the Commission's current policy for processing extension of time requests. These recommendations are intended to reduce the time expended in considering requests for extensions of time by authorizing this office to grant such requests in more instances without Commission approval. The history of the Commission's policy in this area and the suggested improvements are discussed in greater detail below.

I. Commission Policy Regarding Extensions of Time Requests in Enforcement Matters

A. Statutory and Regulatory Framework

The Federal Election Campaign Act of 1971, as amended, 2 U.S.C. § 431 et seq. (the "Act"), and Commission regulations provide respondents with an opportunity to submit responses to the allegations made against them at several stages of the enforcement process.

AGENDA ITEM
For Meeting of: 6-4-87

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First, the Act and regulations provide respondents with a 15-day time period "after notification" or receipt of a copy of the complaint in which to make a response. 2 U.S.C. § 437g(a)(1); 11 C.F.R. § 111.6(a). Respondents are also provided with an opportunity to respond to the Commission's reason to believe determination. The Act and regulations provide that the Commission shall notify respondents of any reason to believe findings made in externally or internally generated matters. Neither the Act nor the regulations currently provide for any response to such notification or set any time frame for making a response. 2 U.S.C. § 437g(a)(2); 11 C.F.R. § 111.9(a). The notification letters, however, provide a 15-day period for respondents to reply to RTB findings.

In addition, respondents may submit a response to a probable cause brief. The Act and regulations provide respondents with a 15-day time period after "receipt" of the General Counsel's probable cause brief in which the respondents may file a responsive brief with the Commission and the Office of the General Counsel. 2 U.S.C. § 437g(a)(3); 11 C.F.R. § 111.16(c).

B. Previous Policy

Requests for extensions of time will generally occur with respect to responses submitted at these three stages of the enforcement process.1/ The Commission has previously considered its policy with respect to granting or denying such requests in 1981 and 1985. On each of these occasions, the Commission adopted a policy intended to facilitate consideration of extension of time requests and to reduce the time expended in processing such requests.

1/ Although extensions of time may be made at other times in the enforcement process, this memorandum focuses on only these three stages.

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For example, this Office's 1981 memorandum (dated February 17, 1981) setting forth recommendations regarding extensions of time noted:

> Present practice involves forwarding requests for extensions together with recommendations to the Commission for its approval. This process is not only time consuming and burdensome for the Commission, but it usually results in a decision to grant or deny the request after the expiration of the time period requested.

To address these problems, this Office was authorized in 1981 to grant or deny extensions of time requests, up to 30 days, for requests which were received within the original time period and which were for good cause. Commission approval, however, was required for requests exceeding 30 days or for requests for additional extensions or for those made after the expiration of the original due date, even if the initial extension was for less than 30 days.

C. Present Policy Regarding Extensions of Time Requests

As part of more comprehensive revisions to the enforcement process, changes were made to the extension of time policy in 1985. This Office's memorandum noted that providing full 30-day extensions of time during the compliance process often led to the protraction of the resolution of a MUR. See Agenda Document #85-51, pages 62-65. Therefore, the Commission revised the extension of time policy to reduce the length of an extension that could be granted by this Office and to require Commission approval of untimely requests.

The principal features of the present extension policy are:

(1) this Office is authorized to grant extensions of time of up to 20 days at each stage of the compliance process;

(2) requests must be made at least 5 days before the original due date and must be in writing and show good cause why the extension should be granted; and

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(3) Commission approval is required for requests outside these guidelines such as for extensions of more than 20 days, for requests made later than 5 days before the original due date, and for subsequent requests for additional extensions from the same respondents.

II. Experience with the Present Policy

The perception exists that the present extension of time process has become cumbersome to administer in a timely fashion. Where Commission approval is required, a report or memorandum with a recommendation and a proposed response letter is prepared and circulated on a 48-hour tally vote basis. The response letter is sent after this Office receives the certification of the Commission's action. For several reasons, this process has been taking more time than is desirable and may result in decisions to grant or deny extensions that are made on or after the requested due date. The likelihood of such occurrences increases where short extensions are requested or where an objection is made to the report or memorandum to place it on the agenda.

For instance, where this Office grants a 15 to 20 day extension to respond to a complaint, a request for an additional 5 or 10 days (often made near the first extension's due date) requires Commission approval. Similarly, Commission approval is required for initial requests made later than 5 days before the original due date, even if such requests are for only a 5 to 10 day extension. In both types of situations, it has been difficult, if not impossible, to prepare and circulate a memorandum and to obtain Commission approval in time to respond before the requested due date.

This Office also notes that all notifications of complaints, reason to believe findings, and probable cause briefs are currently sent by regular mail. Yet, in all three instances, the date of receipt begins the time period for a response or for requesting an extension of time. This Office must either estimate the date of receipt based on when the notification was mailed or accept representations made by respondents, particularly where respondents assert that there was delay in the receipt of the notification. Consequently, it is often difficult

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to ascertain the original due date for the response in order to determine if the request should be granted or denied, either in whole or in part, or if it requires Commission approval.

III. Recommended Improvements

The Office of the General Counsel is of the opinion that the processing of extension of time requests can be made less cumbersome if additional improvements are made to present procedures and policy.2/ This Office does recommend that the Commission continue its present policy of requiring that all requests for extensions of time be made in writing and explain the grounds for good cause for the requested extension and that all requests for extensions of time that do not meet the following guidelines continue to be submitted to the Commission for approval. To facilitate consideration of such requests, this Office makes the following recommendations.

First, it is recommended that the Commission authorize this Office to grant extensions of time up to 30 days for responses to complaint notifications. Because this is a critical stage in the enforcement process, this Office would seek to limit extensions to no more than 15 or 20 days and would grant 30 days only where exceptional good cause is demonstrated.

Second, this Office recommends that it be given discretion to grant or deny extension requests up to 45 days for responses to RTB findings and for responsive probable cause briefs. Greater flexibility in the granting or denying of such requests at these stages is warranted because a better assessment of the complexity of the matter and the circumstances showing good cause can be made. Extensions beyond 30 days, however, would be granted only in exceptional circumstances.

2/ This Office notes that it has already undertaken steps internally to address delays in processing requests for extensions of time. On January 9, 1987, the Associate General Counsel instituted a system to expedite the typing (from draft to final) of responses to extensions of time and memoranda where Commission approval is required. This system is coordinated on a daily basis by the executive secretary to the Associate General Counsel. It is anticipated that this system will reduce delays in processing these requests and memoranda.

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Third, this Office also recommends that Commission approval no longer be required for requests for extensions of time that are submitted later than 5 days prior to the original due date as long as the requested extension does not exceed 30 days from the original due date for responses to complaints or 45 days from the original due date for responses to RTB findings and probable cause briefs. The elimination of this requirement in these circumstances will significantly reduce both the number of reports requiring preparation and circulation and the time for responding to most requests for extensions of time.

The following example will illustrate these recommendations. For instance, where a respondent receives a copy of the complaint on May 1, 1987, the response will be due on May 16, 1987. This Office could grant an extension of time totaling 30 days or until June 16, 1987. Under the above guidelines, this Office could grant any request for extensions of time, whenever received, and whether or not a previous extension had been granted, as long as the new due date for the response does not fall after June 16, 1987. Commission approval will be required for any extension to a date after June 16, 1987.

In those cases where the granting of extensions of time will delay the submission of the General Counsel's Reports with reason to believe or probable cause recommendations, this Office will prepare and circulate a timely report on a 24-hour, no-objection basis (yellow) informing the Commission that extensions have been granted, the grounds for granting them, and the new due dates for the responses.

In view of these recommendations, this Office does not at this time recommend a new form for those extension of time requests submitted to the Commission for action. The revised enforcement forms include, as Form 89, a memorandum form for submitting such requests to the Commission. Further revisions to this form, if any, will depend upon the experience with using the form.

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1986

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ENFORCEMENT PROCEDURE 1986-6

Date: December 4 1986

MEMORANDUM

TO: Enforcement Staff

FROM: Lois G. Lerner
Associate General Counsel

SUBJECT: Recommendations in Complaint Generated Matters

Please remember to make "reason to believe" or "no reason to believe" recommendations regarding ALL respondents, including candidates, who have been name in and notified of the complaint. Otherwise, the file in the matter may be closed without informing all notified parties of the outcome of the Commission's consideration of the allegations.

cc: Charles N. Steele
Lawrence M. Noble

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ENFORCEMENT PROCEDURE 1986-3

Date: November 17, 1986

MEMORANDUM

TO: Enforcement Staff

FROM: Lois G. Lerner
Associate General Counsel

SUBJECT: Presumption of Affiliation Among Party Committees

When reviewing complaints or referrals concerning excessive contributions by state, county or other local political committees, don't forget to apply the presumption of affiliation at 11 C.F.R. § 110.3(b)(2)(ii) (p. 88 of the 1986 Regs). Unless you can show that the presumption does not apply, such committees share one contribution limit. Consequently, if another state or local committee has already contributed the maximum to a particular candidate or committee, the presumably affiliated committee may not contribute to the same candidate or committee. In most cases, the presumption will provide the basis for an RTB finding, after which you will need to ask questions concerning the affiliation issue.

cc: Charles N. Steele
Lawrence M. Noble

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ENFORCEMENT PROCEDURE 1986-2

Date: November 14, 1986

MEMORANDUM

TO: Enforcement Staff

FROM: Lois G. Lerner
Associate General Counsel

SUBJECT: No Reason to Believe Notifications in Internally Generated Matters

There appears to be some confusion among staff as to whether we send "no reason to believe" notification letters in internally generated matters. This is to remind you that both internally and externally generated respondents should be notified regarding any reason to believe or no reason to believe finding.

Attached is a sample of the letter that should be sent in internally generated matters where the Commission has found no reason to believe the respondent has violated the Act.

Cc: Charles N. Steele
Lawrence M. Noble

[Atttachment—see updated forms]

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AGENDA DOCUMENT NO. X01-17

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

2001 JAN 26 P 12: 50

FEDERAL ELECTION COMMISSION
Washington, DC 20463

January 26, 2001

SENSITIVE

MEMORANDUM

TO: The Commission

FROM: Lois G. Lerner
Acting General Counsel

SUBJECT: Modifications to the Enforcement Priority System and Public Financing Enforcement Priority System for Media Exemption Cases

On November 14, 2000, the Commission directed the Office of General Counsel to examine its procedures under the Enforcement Priority System ("EPS") and Public Financing Enforcement Priority System ("EPS II") for handling cases where the media exemption is clearly implicated by the assertions made in the complaint. Specifically, in the context of discussing MURs 4929 (NBC, CBS, *et al.*), 5006 (Hardball), 5090 (Harley Carnes, WCBS) and 5117 (New York Times), Commissioners expressed a desire to minimize the resources allocated to processing reports for matters that clearly fall within the media exemption. The Commission requested OGC to propose a method for quickly disposing of matters clearly falling within the media exemption regulations. *See* 2 U.S.C. § 431(9)(B)(i); 11 CFR §§ 100.7(b)(2) and 100.8(b)(2).

This Office proposes that cases clearly falling within the media exemption would be identified under EPS and EPS II under "Category A. Initial Considerations - Preliminary," as cases falling within the media exemption and, therefore, included in the next case closing report to the Commission,[1] without further consideration of the remaining rating criteria. *See* attached exhibit.

Using the standards set forth in the Commission's regulations, OGC will determine whether the allegations center on communications made by a legitimate media organization that is not owned or controlled by a political party, political committee, or candidate. In the event the allegations in the complaint fall within the criteria, OGC will not rate the case, but instead will recommend that it be closed through EPS or EPS II.

---

[1] Where a complaint contains allegations in addition to those involving the media exemption OGC will rate the matter.

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AGENDA DOCUMENT NO. X93-25

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

93 APR 14 PM 3:47

SENSITIVE

EXECUTIVE SESSION

APR 20 1993

MEMORANDUM

April 14, 1993

TO: The Commission

FROM: Lawrence M. Noble
General Counsel

Lois G. Lerner
Associate General Counsel

SUBJECT: ENFORCEMENT PRIORITY SYSTEM

I. Background

On September 22, 1992, the Office of the General Counsel forwarded a memorandum to the Commission concerning the development of a system to prioritize enforcement cases. This Office presented the Commission with the preliminary case rating list under the enforcement priority system on December 10, 1992. In January of this year, the Implementation Team was established to incorporate the enforcement priority system into a comprehensive framework for effective case management. The Implementation Team consists of the following members: Mary Mastrobattista, Chairperson, Jonathan Bernstein, Teresa Hennessy, Helen Kim, Lisa Klein, Abigail Shaine and Anne Weissenborn. The ultimate goal of the implementation process is to prioritize those cases which most warrant the use of the Commission's limited resources.

Specific issues addressed by the Implementation Team include: (1) establishing realistic time goals for completing cases; (2) determining the enforcement staff's caseload, including the number of cases per team and the types of cases per team; (3) formulating a system for handling incoming cases and cases currently on the enforcement docket pending assignment to staff; (4) developing a system for re-rating cases; and (5) targeting for closing those cases deemed not worth pursuing.

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[redacted]

Although the priority system identifies cases that most warrant the use of the Commission's resources, the system does not distinguish cases on the basis of whether it appears that there is reason to believe that the Act has been violated. Thus, cases that may merit a recommendation of "no reason to believe" will continue to go forward to the Commission if they rate high enough under the priority system [redacted]

II. Implementation of the Priority System

A. Time Goals

The first issue addressed by the Implementation Team was the establishment of realistic time goals for completing cases. [redacted]

In addition, time goals have been established for each procedural step in [redacted]

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[redacted]

These time frames are viewed as goals, not limits. Furthermore, the goals do not preclude a determination to expand or contract the time frames for a specific case. This Office recognizes that, by their very nature, some cases will require more time to complete than the proposed goals, while other cases will require less time. Once the system is in place, this Office will monitor and measure the effectiveness of these time frame goals, along with our day to day work processes, in a continuing effort to achieve effective case management.

B. Caseload

Under the present system, all incoming cases are immediately assigned to staff. Because of the number of enforcement cases, staff are not able to work on all assigned cases in a timely manner. A staff member may be unable to work on a case assigned to him for several months, when another staff member may be in a position to work on the case at that time. Consequently, a case may be inactive for several months even though another enforcement staff member is available to work on that case. Under the proposed system, the enforcement caseload will consist of cases which staff are actively working on within the established time frame goals. Cases not currently assigned will be retained on the central enforcement docket and will be assigned as staff become available. The active caseload for enforcement is based upon the established time frame goals, and upon the assumption that each enforcement team will consist of an Assistant General Counsel, 5 attorneys and 1-2 paralegals.

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C. Central Enforcement Docket

The Office of the General Counsel has developed a system for handling incoming cases and cases currently on the enforcement docket pending assignment to staff. After cases have been assigned to the enforcement teams using the factors set forth in Section B, the remaining open cases will be retained on the central enforcement docket. Once an assigned case is closed, or transferred to litigation following unsuccessful efforts to resolve the matter through post-probable cause conciliation, a new case will be assigned to the team from the central enforcement docket.

The central enforcement docket will be maintained by staff under the supervision of the Associate General Counsel for Enforcement. The central enforcement docket will consist of inactive cases that were not assigned to an enforcement team during the initial implementation phase and all subsequent incoming cases prior to assignment. Staff maintaining the central enforcement docket will be responsible for all duties associated with incoming cases: notifying respondents, handling inquiries relating to incoming cases, responding to requests for extension of time, receiving responses and rating cases under the priority system. Furthermore, the enforcement docket staff will be responsible for handling all subsequent correspondence related to matters on the enforcement docket which have not been assigned to an enforcement team. [redacted]

The Associate General Counsel for Enforcement, the Assistant General Counsels for Enforcement and the enforcement docket staff will be the core group who will meet on a regular basis to review the enforcement docket. These review meetings

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will provide an opportunity to assign cases by giving thought to overall law enforcement concerns and caseload considerations. During the meetings, the group will review priority system case ratings for new cases, the Assistant General Counsels for Enforcement will report on the availability of their teams for new case assignments and new cases will be assigned to teams from the enforcement docket using the system outlined above.

D. Re-rating of Cases

This Office recognizes that events inevitably will arise that will necessitate the re-rating of cases. Commission action, criminal convictions, death, discovery responses, intervening judicial decisions and other changes in circumstances may well alter the relative significance of a particular case. Active cases will be re-rated by the staff member assigned to the case. Inactive cases will be re-rated by the enforcement docket staff.

The effect of re-rating a case will depend, in part, on the nature of the underlying event. [redacted]

E. Cases Targeted for Closing

This Office envisions the implementation of the enforcement priority system as a two-step process: an initial implementation and the subsequent on-going application of the priority system. Due to the fact that our present caseload far exceeds our resources, the initial implementation phase includes a one-time closing of a large number of cases to get our caseload to a manageable level. This Office has targeted two categories of cases for this initial closing: (1) cases where all activity occurred prior to January 1, 1989 and (2) cases that rated low on the priority system. Once the initial implementation is completed, recommendations will be made to the Commission on a quarterly basis to close cases which fall into two categories: (1) cases that rated low on the priority system and (2) inactive cases which have remained on the central enforcement docket without being assigned to an enforcement team within a specified time period.

The categories of cases targeted for closing reflect the need to allocate enforcement resources efficiently to provide maximum law enforcement value. Currently, significant enforcement resources are devoted to cases involving activity which occurred prior to January 1, 1989. These cases tend to be resource intensive because of the difficulty in investigating stale activity and pursuing stale evidence. Thus, this Office believes that focusing our efforts on more recent cases would

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more efficiently allocate our limited resources.

Similarly, the processing of low rating cases requires a considerable expenditure of resources resulting in only limited enforcement value. Closing these cases would allow this Office to allocate sufficient resources to higher priority cases to provide maximum law enforcement value.

Attached to this memorandum is a list of cases, where all activity occurred prior to January 1, 1989, which this Office has targeted for closing.[5] (Attachment 3). Given that the reason for closing the cases is a cutoff date for activity, no further discussion of these cases is included. This list does not include cases involving activity that extended beyond January 1, 1989. Because of the policy concerns involving the public funding of presidential campaigns, Title 26 audit referrals are excluded from this list. Also excepted from this list are cases in which the Commission has invested considerable resources and which will require a minimum amount of resources to close, i.e., cases that have reached the probable cause stage.[6]

The second group of cases targeted for closing is the Tier 3 cases, i.e., cases rated below 30 under the priority system. (Attachment 1, pages 13-23). This Office identified these cases for closing because they have less significance relative to the higher rated cases. Because these cases are being targeted for closing based on the merits of the individual case, attached to this memorandum is a short narrative for each Tier 3 case. (Attachment 2). The narratives include a brief explanation of each case, the principal respondents, the priority system rating and the applicable factors that distinguish these cases from the higher rated cases. The list of low rated cases targeted for closing does not include those cases that fall into Tier 4, e.g., straight forward excessives. Exempted from this list are cases where presidential committees are respondents and probable cause briefs have been forwarded to them.[7] The exclusion of these cases recognizes the policy concerns of publicly funded

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office has invested to forward the briefs. Also exempted from this list are cases where a compelling reason exists to keep a particular case on the enforcement docket.[8]

This Office plans to make a recommendation by memorandum to the Commission six months from the date the system is approved to close the cases targeted for closing. In the interim, these cases will be put on inactive status. Waiting six months from the date the system is approved to recommend that the targeted cases be closed will enable this Office to gain experience with the system and to determine how well the system is working. Secondly, a six month waiting period will allow this Office to prepare the enforcement files in accordance with the requirements of the Freedom of Information Act.

Once the initial implementation phase is completed, this Office will recommend by quarterly memoranda to the Commission that incoming cases rating low under the priority system be closed without a recommendation regarding reason to believe findings, unless a case falls into Tier 4 or unless a compelling reason exists to keep a particular case on the enforcement docket. Furthermore, this Office will recommend by quarterly memoranda to the Commission that inactive cases that remain on the enforcement docket for a specified period of time without being assigned to an enforcement team be closed. [redacted] Cases on the enforcement docket will be reviewed during periodic meetings, as discussed in Section C, so that no case will remain inactive for a significant time without consideration for assignment to an enforcement team.

III. Conclusion

While recognizing that implementation of the enforcement priority system is an on-going process that will require measurement, follow-up and continual adjustment, this Office believes that our proposed initial implementation is a major step toward effective case management.

IV. Recommendations

1. Approve the implementation of the enforcement priority system outlined in this memorandum.

[redacted]