



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

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TESTIMONY BEFORE THE  
SUBCOMMITTEE ON ELECTIONS  
OF THE  
COMMITTEE ON HOUSE ADMINISTRATION

U.S. HOUSE OF REPRESENTATIVES

HEARING: *FEDERAL ELECTION COMMISSION:  
REVIEWING POLICIES, PROCESSES AND PROCEDURES*

NOVEMBER 3, 2011

## Introduction

The Federal Election Commission appreciates this Subcommittee hearing, and welcomes the feedback from its oversight committee. The Commissioners and staff look forward to continuing to work with the Subcommittee on Elections and the Committee on House Administration as each performs its oversight function.

As you know, the Federal Election Commission was established by the *Federal Election Campaign Act Amendments of 1974*.<sup>1</sup> Congress created the Commission to strengthen the integrity of the federal campaign finance process under the *Federal Election Campaign Act*.<sup>2</sup> The Commission is also responsible for administering the public funding program for Presidential campaigns and nominating conventions under the *Presidential Election Campaign Fund Act* and the *Presidential Primary Matching Payment Account Act*.<sup>3</sup> The *Federal Election Campaign Act*, which is the foundation of federal campaign finance regulation, reflects Congress's efforts to ensure that voters are fully informed about the sources of candidates' financial support. The *Act* also imposes amount limitations and source prohibitions on contributions received by federal candidates, political party committees and other political committees. Public confidence in the political process depends not only on laws and regulations to ensure transparency of campaign finance, but also on the knowledge that noncompliance may lead to enforcement proceedings.

The Federal Election Commission's mission is to prevent corruption or the appearance of corruption in federal campaign finance by administering and enforcing federal campaign finance laws. The primary objectives of the FEC are:

- to facilitate transparency through public disclosure of campaign finance activity;
- to encourage voluntary compliance with the *Federal Election Campaign Act* by providing information and policy guidance to the public, media, political committees and election officials on the *Act* and Commission regulations and to enforce the statute through audits, investigations and civil litigation; and
- to develop the law by administering and interpreting the *Federal Election Campaign Act* as well as the *Presidential Election Campaign Fund Act* and the *Presidential Primary Matching Payment Account Act*.

To accomplish its legislative mandate, the FEC is directed by six Commissioners, all of whom appear before the Subcommittee on Elections today. Currently, 346 employees (which includes the Commissioners) support the agency in accomplishing its mission. The Commission

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<sup>1</sup> *Federal Election Campaign Act Amendments of 1974*, Public Law 93-443, 88 Stat. 1263 (1974).

<sup>2</sup> *Federal Election Campaign Act of 1971*, Public Law 92-225, 86 Stat. 3 (1972), as amended (*FECA* or the *Act*). *FECA* is codified at 2 U.S.C. §§ 431 to 455.

<sup>3</sup> *Presidential Election Campaign Fund Act*, Public Law 92-178, 85 Stat. 562 (1971), *codified at* 26 U.S.C. §§ 9001 to 9013; and *Presidential Primary Matching Payment Account Act*, Public Law 93-443, 88 Stat. 1297 (1974), *codified at* 26 U.S.C. §§ 9031 to 9042.

maintains a website at [www.fec.gov](http://www.fec.gov) and its offices at 10th and E Streets, Northwest, in Washington, D.C. The Federal Election Commission received an appropriation of \$66,367,000 for Fiscal Year (FY) 2011.

**I. FEC's PERFORMANCE AND OPERATIONS**

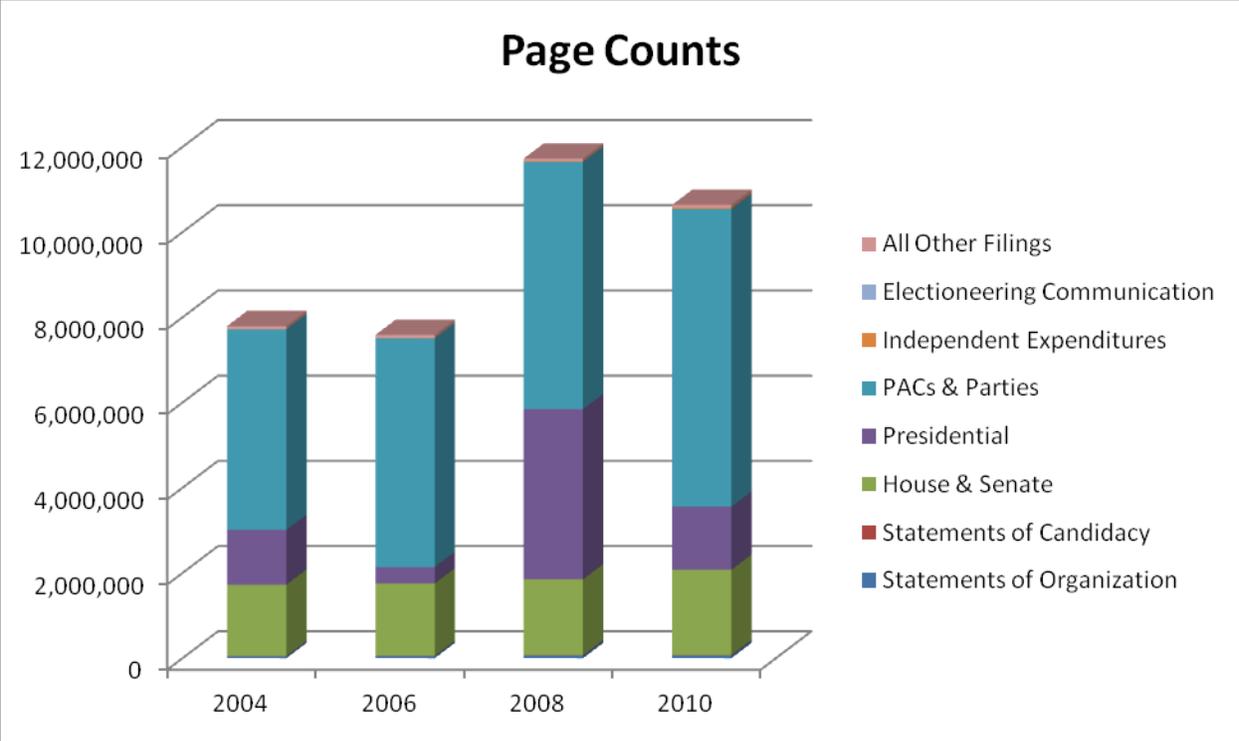
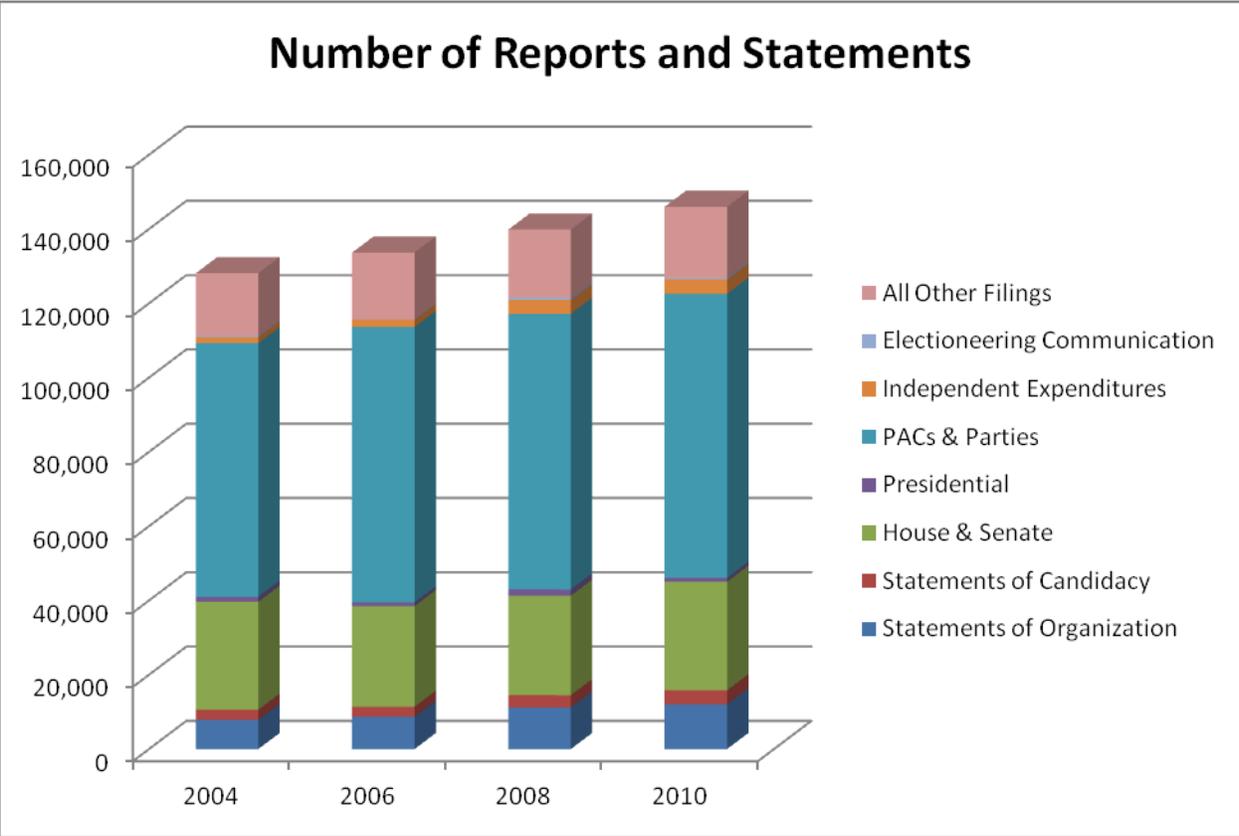
**A. DISCLOSING CAMPAIGN FINANCE INFORMATION**

Disclosing the sources and amounts of funds used to finance federal elections is one of the most important duties of the FEC. The campaign finance reports are accessible to the public through the FEC's website at <http://www.fec.gov/disclosure.shtml>. By making disclosure reports available online, the FEC provides the public with up-to-date information about the financing of federal elections and political committees' compliance with campaign finance law. The table immediately below presents the Total Receipts and Disbursements Reported to the FEC by all entities that disclosed to the FEC over the last four completed election cycles. The number of reports filed in connection with Presidential elections and Congressional elections are presented in a graph further below, along with the number of pages in those reports.

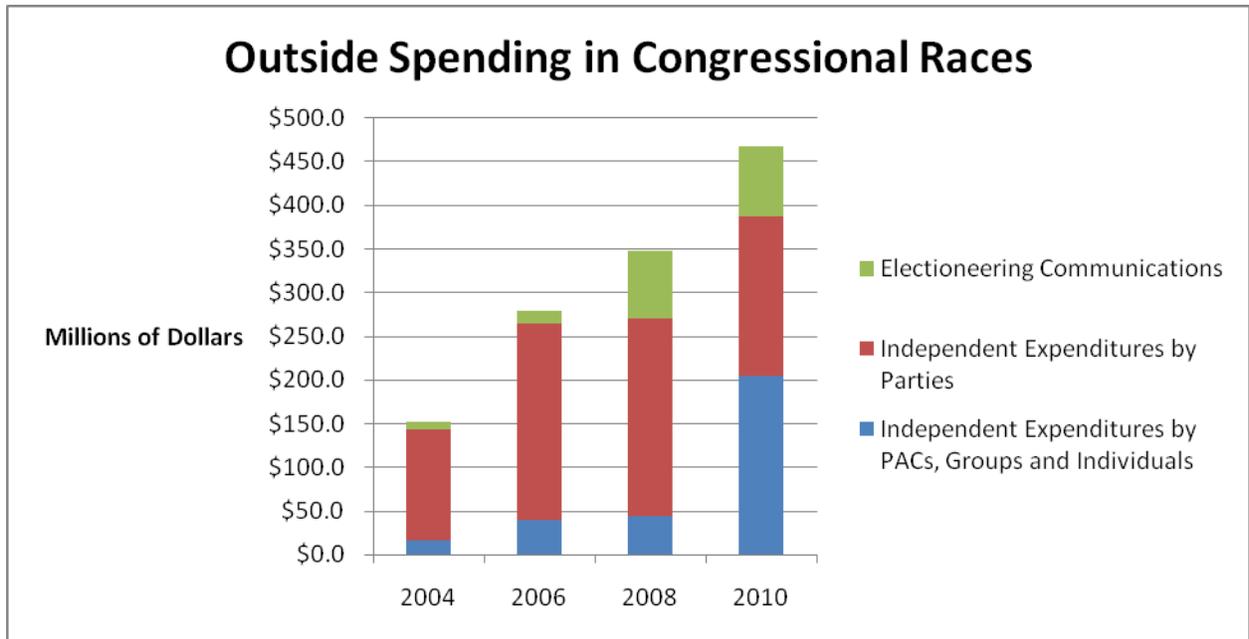
**Total Receipts and Disbursements Reported**

Election Cycle	Total Receipts	Total Disbursements
2004	\$5,576,832,000	\$5,482,785,000
2006	\$4,157,020,000	\$4,351,136,000
2008	\$8,383,471,000	\$8,414,847,000
2010	\$4,945,817,000	\$5,095,153,000

### Reports Filed with the FEC

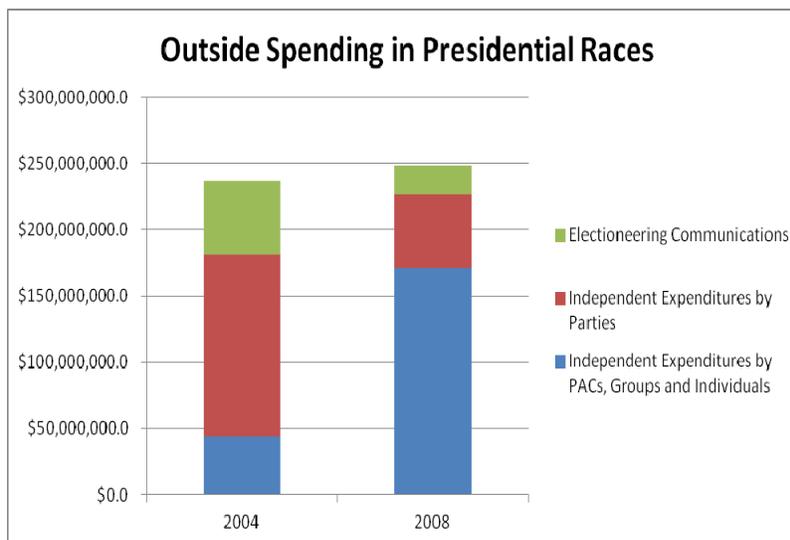
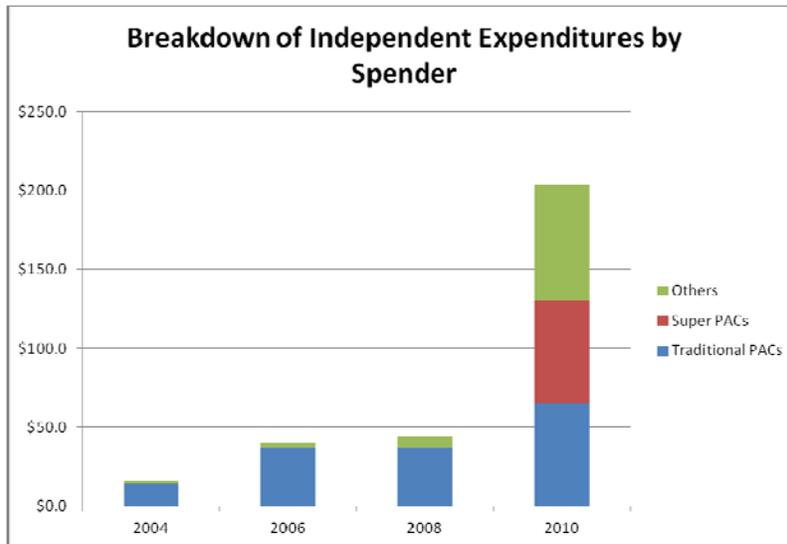


While campaign finance activity reported to the FEC has risen steadily over the past several cycles, major court decisions after the 2008 election cycle have changed the regulatory environment by removing restrictions on the use of financial resources. Notably in *Citizens United v. FEC*,<sup>4</sup> the Supreme Court held in January 2010 that corporations and unions may use their general treasury funds to pay for electioneering communications and independent expenditures. Subsequently, the U.S. Court of Appeals for the D.C. Circuit held in *SpeechNow.org v. FEC*<sup>5</sup> that certain political committees that make only independent expenditures, but do not make any contributions to federal candidates, may accept funds in unlimited amounts. These committees have come to be known as “IEOPCs” or “Super PACs.” Previously, FECA imposed a \$5,000 contribution limit on contributions received by all political committees. An increase in “outside spending” (that is, spending by other than candidates and parties) in connection with Congressional races, especially in independent expenditures made by political action committees (PACs), other groups and individuals, was already apparent in the 2010 cycle. As detailed in the charts below, independent expenditures made by traditional PACs, Super PACs, and “others,” which includes individuals and other groups that are not political committees, showed a more than four-fold increase between the 2008 and 2010 elections. Typically, election-related spending is lower in non-Presidential election cycles.



<sup>4</sup> *Citizens United v. FEC*, 558 U.S. ---, 130 S.Ct. 876 (Jan. 21, 2010).

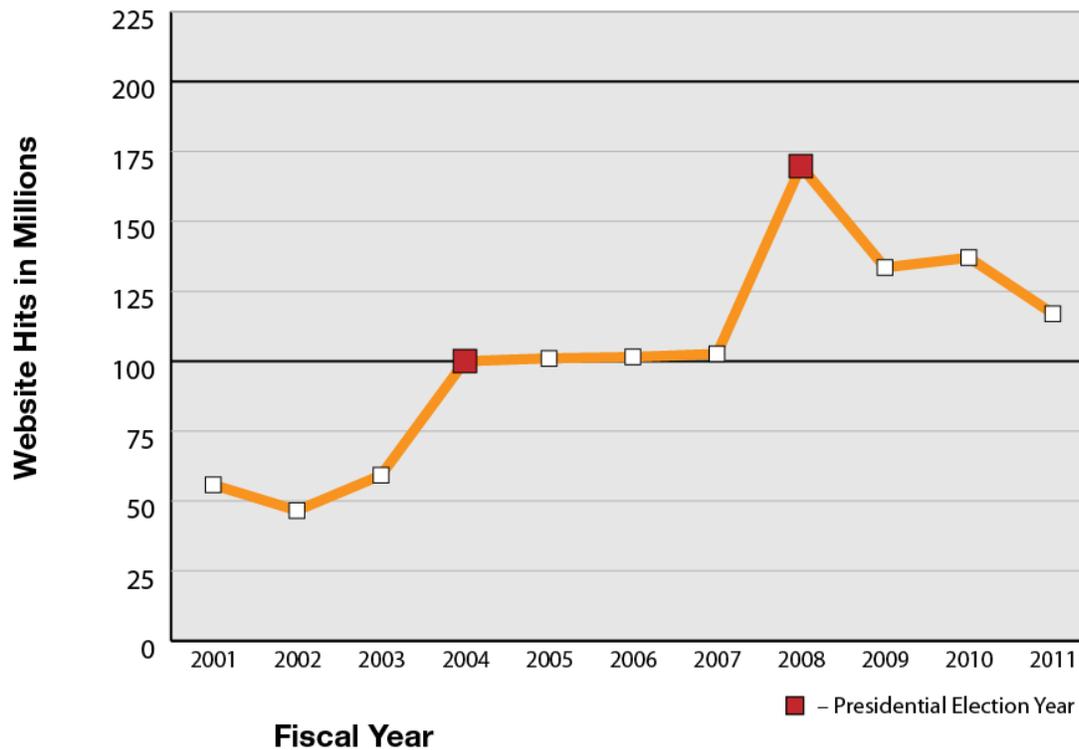
<sup>5</sup> *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C.Cir. Mar. 26, 2010)(*en banc*).



The Commission took a number of steps during FY 2011 to ensure that it will be fully successful in its mission to receive reports and make public reports filed in connection with the 2012 elections, and it has augmented its programs to help make data from these reports, and other campaign finance information, available to the public in new and more accessible formats. First, the FEC continues to make information about independent expenditures and electioneering communications available in nearly real time as the information is received. Second, the FEC has also initiated a project to provide a portal for summary presentations of information for PACs and party committees. These new presentations offer improved navigation and display data through charts, graphs and other visualizations that help provide context for the information so that users will be able to design their own data queries. Third, the Commission also expanded the federal campaign finance disclosure platform, which includes both the data catalog and the federal campaign finance maps, by adding information covering multiple election cycles. These enhancements make it easier for public visitors to [www.fec.gov](http://www.fec.gov) to view, research and understand the complex and growing universe of campaign finance information disclosed to the Commission.

In addition to the overall increase in disclosure activity, the FEC’s website and electronic filing systems are also subject to “spikes” of increased use. For example, in a single week—between October 1 and October 8, 2010—individuals reported \$3.8 million and PACs reported \$15.5 million in independent expenditures. Similarly, while the FEC’s website averaged 45,000 hits per day in FY 2011, on the July 15 reporting deadline the site received 108,981 hits in one day. The Commission has taken steps to ensure that it can accept both very large reports and a very large number of electronically filed reports, while accommodating spikes in web traffic without creating delays in disclosure. This year the FEC initiated a project to improve the website’s performance. The Commission has also upgraded its electronic filing systems with more powerful servers to handle heavier loads and made changes to the way it allocates its processing resources to separate the receipt of reports from the initial processing of those filings. This change allows more filings to pass through the process at any one time and speeds overall processing by reducing competition for computer resources.

The public’s interest in campaign finance information found on the FEC’s website is illustrated in the figure below, which shows a continued high number of hits on the FEC’s website by users seeking campaign finance data and other information. During FY 2011, the website received approximately 117 million hits.



In FY 2011, the FEC made 100 percent of the financial disclosure reports and statements available to the public within 48 hours of receipt by the Commission. The information on those reports and statements is then coded for entry into the FEC database. The agency’s goal is to code and enter data about reported transactions for 95 percent of the reports within 30 days of

receipt. For FY 2011, the FEC was able to process 71 percent of all reports within 30 days of receipt.

In addition to making campaign finance reports available to the public, the FEC works to ensure that the information disclosed is accurate and complete. The Office of Compliance's Reports Analysis Division (RAD) reviews all filed statements and financial reports to track compliance with the law and to ensure that the public record provides a full and accurate representation of campaign finance activity. Analysts provide frequent telephone assistance to committee officials who have reporting questions or compliance problems.

If RAD identifies an error, omission, need for additional clarification or possible prohibited activity, a request for additional information (RFAI) is sent to the committee, affording the committee an opportunity to correct the public record, if necessary. If the committee is able to resolve the FEC's concerns, it may avoid further Commission action. Should the committee not address the FEC's concerns sufficiently, the FEC may initiate an audit, begin an enforcement action or utilize alternative dispute resolution (ADR) to remedy the apparent violation.

In FY 2011, RAD reviewed 72,790 out of 77,588 documents filed during FY 2011 and is well on its way to evaluating 100 percent of the documents received. As part of an ongoing effort to assist the filing community with compliance, RAD continues to offer extended phone coverage on filing due dates and has initiated a program to send RFAIs *via* e-mail, to reduce costs and to ensure timely notification to committees.

## B. PROMOTING COMPLIANCE WITH THE *FEDERAL ELECTION CAMPAIGN ACT*

### 1. Encouraging Compliance Through Education

Helping those subject to the Commission's jurisdiction understand their obligations under federal campaign finance laws is an essential component of voluntary compliance. The FEC, through its Office of Communications, places a significant emphasis on encouraging compliance. The Office of Communications consists of the following offices:

- the Information Division,
- the Public Disclosure Division,
- the Press Office and
- the Office of Congressional Affairs.

The Commission's website is its most important source of instantly accessible information about complying with the *Federal Election Campaign Act* and Commission regulations. Political participants and the general public can use the website to search Commission rulemakings, advisory opinions, completed audits and closed enforcement matters. During FY 2011, the FEC made a number of significant enhancements to the website's search capabilities. For example, it launched a Searchable Electronic Rulemaking System that allows users to search public documents developed in the course of the Commission's rulemaking

process. The Commission also completed work on its Audit Report Search System, which provides a searchable database of audit reports approved by the Commission since 1976.

As it prepares for the 2012 elections, the FEC continues to provide comprehensive educational materials *via* the website as well, to help the regulated community better understand new regulations and requirements under the campaign finance law. For example, the Commission now provides information about changes in the law on a “Recent Developments” web page. The FEC also continues to provide enhanced and expanded instructional videos available through the site’s E-Learning center and a “Compliance Map” that provides easy access to state-by-state information detailing filing deadlines and the timeframes for certain pre-election obligations under the *Act*.

The Commission also encourages voluntary compliance through outreach programs. The FEC hosts instructional conferences and seminars in Washington, D.C., and in other cities across the country, where Commissioners and staff explain the *Act*’s requirements to candidates and political committees. These conferences specifically address recent changes in the campaign finance laws and focus on fundraising and reporting regulations. Additionally, Commission staff meets with political committees upon request and responds to telephone inquiries and written requests from those seeking information about the law and assistance in filing disclosure reports. This year, the Commission made a number of changes to its outreach program to make the program more cost effective for the agency and more affordable for candidates and committees that attend conferences and seminars. In FY 2011, the FEC held six lower-cost one-day seminars at the FEC’s offices in Washington, D.C. The FEC also held one regional conference in Minneapolis, Minnesota. All of the Commission’s conferences and seminars have been consistently highly rated by attendee evaluations. In FY 2012, regional conferences will be held in San Diego, California and Miami, Florida, and five one-day seminars will be held at the FEC. Many Committee staff members have previously participated in these educational events, and that opportunity for the exchange of ideas is always welcome.

The Commission has also taken steps in the past year to augment its educational outreach programs to provide more cost-effective access to information. For example, the Commission has launched a YouTube channel and E-Learning page to allow the public the convenience of participating in trainings without the costs of travel. The agency has also initiated a program to provide live, interactive webinars to provide additional distance learning opportunities to the public.

## 2. Enforcing *FECA*’s Requirements

### *a. Enforcement and Compliance Processes*

The Commission’s statutory obligation is to administer, interpret and enforce the *Federal Election Campaign Act*, which serves the compelling governmental interest in deterring corruption and the appearance of corruption in financing elections. In doing so, the Commission must remain mindful of the First Amendment’s guarantees of freedom of speech and association, and the practical implication of its actions on the political process.

The FEC has exclusive jurisdiction over civil enforcement of federal campaign finance laws and consults with the U.S. Department of Justice, as appropriate, on matters involving both civil and criminal enforcement of the *Act*. Commission enforcement actions, which are handled primarily by the Office of General Counsel (OGC), originate from a number of sources, including external complaints, referrals from other government agencies and internal referrals from the Audit or Reports Analysis Divisions.

To augment OGC's traditional enforcement role, the Office of Compliance manages several programs that seek to remedy alleged violations of the *Act* and encourage voluntary compliance. These programs include:

- the Alternative Dispute Resolution Program,
- the Administrative Fine Program and
- the Audit Division.

The Commission's Alternative Dispute Resolution Program is designed to resolve matters swiftly by encouraging the settlement of less-complex enforcement matters using a streamlined process that focuses on remedial measures for candidates and political committees, such as training, internal audits and hiring compliance staff. Violations involving the late submission of, or failure to file, disclosure reports are subject to the Administrative Fine Program. Under this program, the Commission assesses monetary penalties and considers challenges to the penalty assessments. Finally, the Audit Division conducts mandatory audits under the public funding statutes and performs "for cause" audits under the *Federal Election Campaign Act* in those cases where political committees do not appear to be in substantial compliance with the *Act*.

If the Commission cannot settle or conciliate a matter involving an alleged violation of the federal campaign finance statutes, the Commission may initiate civil litigation, and will file and prosecute a civil action in federal district court to address the alleged violation. Depending on the size and complexity of the lawsuit, such cases may be resolved quickly or may require a significant amount of resources for several years.

#### *b. Recent Enhancements to the Processes and Procedures*

In recent years, the Commission focused significant attention on formalizing existing practices and ensuring that enforcement and compliance procedures are fair, efficient and transparent. Most significantly, the Commission has revised its procedures to permit respondents to request a hearing prior to a probable cause determination in enforcement proceedings.<sup>6</sup> In addition, the Commission has established an agency procedure to define formally the scope of documents that will be provided to respondents at certain stages in enforcement proceedings in order to ensure that respondents are given relevant information ascertained by the Commission during an investigation.<sup>7</sup> Additional improvements include: providing additional notice and opportunity to request to respond to new facts and arguments in probable cause briefing; placing

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<sup>6</sup> In October 2009, the Commission revised these procedures. FEC, *Amendment of Agency Procedures for Probable Cause Hearings*, 74 Fed. Reg. 55443 (Oct. 28, 2009) revising FEC, *Procedural Rules for Probable Cause Hearings*, 72 Fed. Reg. 64919 (Nov. 19, 2007).

<sup>7</sup> FEC, *Agency Procedure for Disclosure of Documents and Information in the Enforcement Process*, 76 Fed. Reg. 34986 (June 15, 2011).

First General Counsel's Reports on the public record; publishing an *Enforcement Guidebook* that explains the enforcement process; and providing notice and an opportunity to be heard to non-complaint generated respondents.<sup>8</sup>

The Commission has also added procedures to the audit process. In July 2009, the Commission revised its audit procedures to permit audited committees to request to appear before the Commission prior to issuance of a Final Audit Report.<sup>9</sup> In August 2011, the Commission made permanent a program that allows committees to have legal questions considered by the Commission earlier in the review and audit processes.<sup>10</sup> In April 2011, the Commission revised its Directive on Processing Audit Reports to help achieve a greater degree of consistency, both in process and result, in the final audit reports issued by the Commission.<sup>11</sup>

*c. Compliance and Enforcement Results for Fiscal Year 2011*

For FY 2011, the Commission processed 145 enforcement cases in an average of 10.1 months, which included \$527,125 in negotiated civil penalties. The Commission closed 129 of these cases (or 89%) within 15 months. The Commission is currently pursuing five lawsuits that it initiated and that arise from enforcement actions. One of these cases is in active litigation, and the other four are cases in which final judgment has been entered and the Commission is seeking to collect civil penalties. The Commission is presently defending four lawsuits that challenge its disposition of enforcement actions, including one seeking review of an administrative fine.

During FY 2011, the Commission's ADR Office processed 25 cases to closure and negotiated \$43,950 in civil penalties. The Commission met its 155-day processing benchmark in 84 percent of ADR cases, exceeding the goal of meeting this benchmark in 75 percent of cases.

The Administrative Fine Program is administered by the Commission's Office of Administrative Review (OAR) and Reports Analysis Division. For FY 2011, RAD processed 100 percent of the reason to believe recommendations within 60 days of the subject report's due date. During FY 2011, OAR reviewed 60 challenges submitted by committees in response to an RTB finding or civil money penalty. OAR reviewed 100 percent of these challenges within 60 days of receipt.

Since the Administrative Fine Program's inception in July 2000 through September 30, 2011, the Commission has closed 2,350 cases and assessed fines of \$4.1 million. Most

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<sup>8</sup> FEC, *Agency Procedure Following the Submission of Probable Cause Briefs by the Office of General Counsel* (forthcoming), available at [http://www.fec.gov/agenda/2011/mtgdoc\\_1153a.pdf](http://www.fec.gov/agenda/2011/mtgdoc_1153a.pdf); FEC, *Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record*, 74 Fed. Reg. 66132 (Dec. 14, 2009); FEC, *Guidebook for Complainants and Respondents on the FEC Enforcement Process* (Dec. 2009), available at [http://www.fec.gov/em/respondent\\_guide.pdf](http://www.fec.gov/em/respondent_guide.pdf); FEC, *Agency Procedure for Notice to Respondents in Non-Complaint Generated Matters*, 74 Fed. Reg. 38617 (Aug. 4, 2009).

<sup>9</sup> FEC, *Procedural Rules for Audit Hearings*, 74 Fed. Reg. 33140 (July 10, 2009).

<sup>10</sup> FEC, *Policy Statement Regarding a Program for Requesting Consideration of Legal Questions by the Commission*, 76 Fed. Reg. 45798 (Aug. 1, 2011).

<sup>11</sup> FEC, *Directive on Processing Audit Reports*, Dir. No. 70 (April 26, 2011), available at [http://www.fec.gov/directives/directive\\_70.pdf](http://www.fec.gov/directives/directive_70.pdf).

importantly, the Administrative Fine Program continues to succeed in reducing the number of late and non-filed reports, thereby increasing campaign finance transparency through the timely disclosure of campaign finance activity. The Committee on House Administration was instrumental in the bipartisan passage of a bill extending the Administrative Fine Program through reports covering 2013. The Commission urges the Committee to make this cost-effective, successful program permanent.

As discussed above, the Commission recently adopted procedures that provide additional opportunities for audited committees to respond to potential findings, as well as more opportunities for the Commission to review audit reports prior to approval. The most significant of the changes provides audited committees an opportunity to request a hearing before the Commission prior to final approval of the audit report. The performance measures related to audits have not been revised to reflect these changes the audit report processing system. The Commission will continue to review the effect these procedures have on performance measures related to audits.

In FY 2011, the Commission approved 22 audit reports of non-Presidential committees. Five of the audits with findings were completed within an average of ten months. The average processing time of the 19 audits with findings was approximately 25 months. Two audits with no findings were completed within an average of 90 days. The average processing time for the three audits with no findings was 143 days. Of the 14 Presidential audits related to the 2008 election cycle, 11 were completed by the end of FY 2011.

### C. INTERPRETING AND DEVELOPING THE CAMPAIGN FINANCE LAWS

The Commission responds to questions from the various persons about how the *Federal Election Campaign Act* applies to specific situations by issuing advisory opinions (AOs). In addition, Congressional action, judicial decisions, petitions for rulemaking, Commission initiatives, or other changes in campaign finance often necessitate that the Commission update or adopt new regulations.

The Commission issued several AOs addressing the implications of the *Citizens United*, *SpeechNow.org*, and *EMILY's List v. FEC* decisions.<sup>12</sup> During FY 2011, the Commission completed within the deadlines 100% of the 28 AOs considered.<sup>13</sup> The Commission completed work on two 20-day AO request and three 30-day AO requests during FY 2011. While *FECA* provides for 20-day and 60-day AOs, the Commission also issues AOs within 30 days for time-sensitive, highly significant AO requests.

During FY 2011, the Commission did not issue any final regulations. Two interpretive rules of existing Commission regulations were issued in FY 2011: one on electronic contribution

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<sup>12</sup> *EMILY's List v. FEC*, 581 F.3d 1 (2009). The Advisory Opinions were AO 2011-12 (MajorityPAC); AO 2011-11 (Colbert); AO 2010-10 (Commonsense Ten) and AO 2010-09 (Club for Growth).

<sup>13</sup> Four 60-day advisory opinions and one 20-day advisory opinion had extended deadlines, and the remainder were completed within the statutory deadlines of 20 or 60 days or the 30-day deadline under the Commission's initiative.

redesignations and the other on reporting independent expenditures.<sup>14</sup> The Commission has continued to work on a number of significant rulemaking projects during FY 2011, including rulemakings to comply with the court decisions in *Citizens United*, *SpeechNow.org*, *EMILY's List*, and *Carey v. FEC*.<sup>15</sup> In this regard, the Commission published two Notices of Availability of petitions for rulemaking submitted separately by Representative Chris Van Hollen, which concerns reporting independent expenditures, and the James Madison Center for Freedom of Speech, which concerns the *Citizens United v. FEC* decision.<sup>16</sup> Comments have been received on both notices. In addition, the Commission issued additional guidance for issues related to *Carey v. FEC*, and the *SpeechNow.org* and *EMILY's List* cases.<sup>17</sup> Recently, the Commission approved an Advance Notice of Proposed Rulemaking regarding disclaimers appearing on Internet ads.<sup>18</sup> Lastly, together with the Office of Government Ethics, the Commission recently completed final rules on standards of conduct for FEC Commissioners and employees.

#### D. ADMINISTERING THE PRESIDENTIAL PUBLIC FUNDING PROGRAM

The Commission's responsibilities also include administering the public funding of Presidential elections, as provided in the *Presidential Primary Matching Account Act* and the *Presidential Election Campaign Fund Act*. Through the public funding program, the federal government provides: (i) matching funds to candidates seeking their party's Presidential nomination, (ii) grants to Presidential nominating conventions and (iii) grants to Presidential nominees for their general election campaigns.

The program is funded by taxpayers who voluntarily check off the \$3 designation for the Presidential Election Campaign on their income tax returns. The percentage of taxpayers who check off the designation for the Presidential Election Campaign Fund continues to decline. Recent statistics from the Internal Revenue Service show the following check off rates:

Calendar Year	Percent of Tax Returns with PECF Designation
2007	8.28 %
2008	7.38 %
2009	7.28 %
2010	6.59 %

<sup>14</sup> FEC, *Interpretive Rule Regarding Electronic Contributor Redesignations*, 76 Fed. Reg. 16233 (Mar. 23, 2011) and FEC, *Interpretive Rule on When Certain Independent Expenditures Are "Publicly Disseminated" for Reporting Purposes*, 76 Fed. Reg. 61254 (Oct. 4, 2011).

<sup>15</sup> *Carey v. FEC*, Civ. No. 11-259-RMC (D.D.C. Aug. 19, 2011).

<sup>16</sup> FEC, *Rulemaking Petition: Independent Expenditure Reporting*, 76 Fed. Reg. 36000 (June 21, 2011); FEC, *Rulemaking Petition: Independent Expenditures and Electioneering Communications by Corporations and Labor Organizations*, 76 Fed. Reg. 36001 (June 21, 2011).

<sup>17</sup> FEC, *Statement on Carey v. FEC, Reporting Guidance for Political Committees that Maintain a Non-Contribution Account* (forthcoming), available at: <http://www.fec.gov/press/Press2011/20111006postcarey.shtml>.

<sup>18</sup> FEC, *Internet Communication Disclaimers* (forthcoming), available at: [http://www.fec.gov/agenda/2011/mtgdoc\\_1158a.pdf](http://www.fec.gov/agenda/2011/mtgdoc_1158a.pdf).

Thus far in the 2012 Presidential election cycle, no candidate has yet applied for matching funds for the 2012 Presidential primary elections. The 2012 general election grant for the major party committee candidates is estimated to be \$91,604,607. The Republican National Committee and Democratic National Committee were each paid \$17,689,800 in public funds for their 2012 Presidential Nominating Conventions. (The payments were made to the Committees on July 1 and September 22, 2011, respectively. Additional payments based on final inflation adjustments of approximately \$600,000 for each convention are scheduled for early 2012.)

The balance in the Presidential Election Campaign Fund as of September 30, 2011, is \$197,139,691, according to the U.S. Treasury. This amount is unusually large for this program account, due to reduced candidate participation in the Presidential public funding programs in the 2008 election cycle. With this level of funding at this point in this cycle, a temporary shortfall of public funding that has occurred in prior election cycles is not going to be an issue in the 2012 Presidential election cycle.

In 2008, eight primary candidates participated in public funding programs, and their campaigns received \$22 million of public funds. The two major Presidential nominating conventions received a net amount of \$30 million. (The Republican National Convention returned \$3.8 million of the \$16.8 million it received due to the cancellation of one night of its convention.) Senator McCain's Presidential campaign received \$84 million in public funds for the 2008 general election campaign.

#### E. THE 2011 FEC LEGISLATIVE RECOMMENDATIONS

The *Federal Election Campaign Act* authorizes the Commission to make recommendations for legislative action. On March 16, 2011, the Commission approved four Legislative Recommendations for 2011. The Recommendations are:

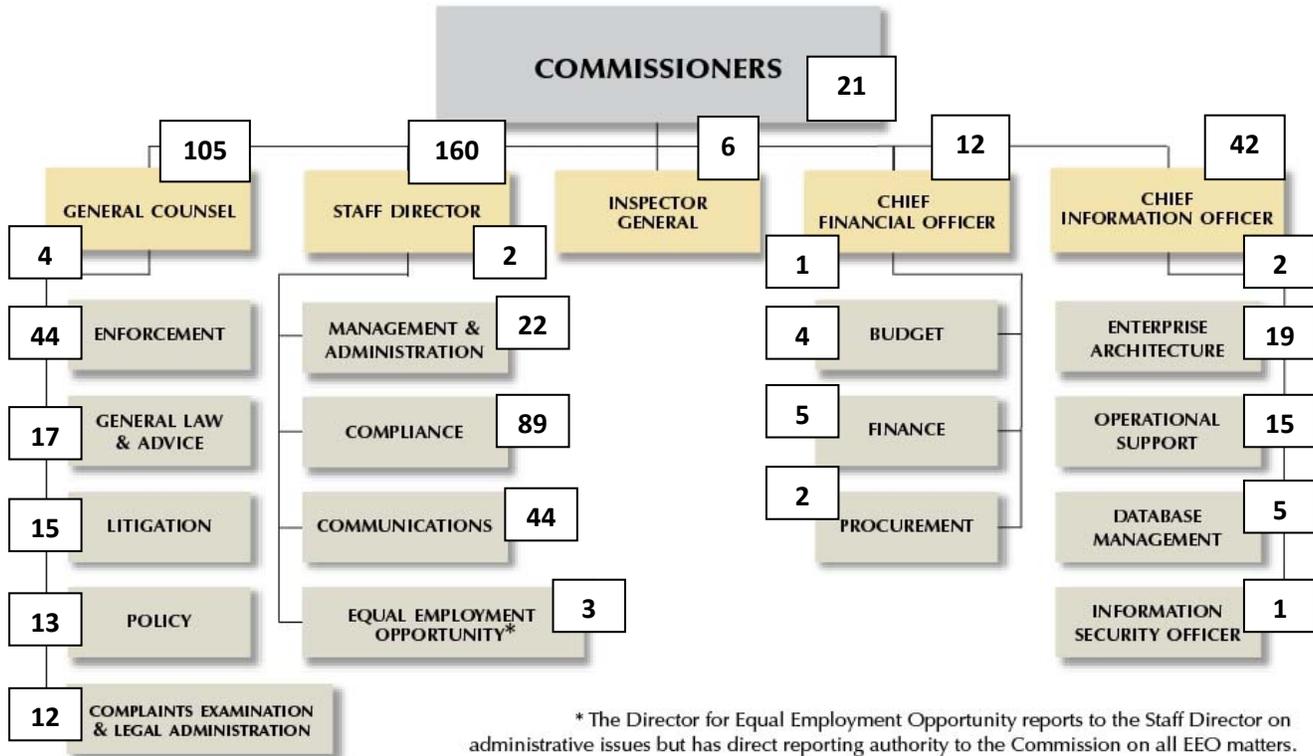
- Electronic Filing of Senate Reports
- Fraudulent Misrepresentation of Campaign Authority
- Conversion of Campaign Funds
- Pay Levels for the Staff Director and General Counsel and Authority to Create Senior Executive Service Positions

The Commission's 2011 Legislative Recommendations can be found at <http://www.fec.gov/law/legrec2011.pdf> and are also attached.

#### F. FEC's ALLOCATION OF STAFF

In order to accomplish its mission and meet the requirements of other legislation, the Federal Election Commission has arranged its employees into various mission-related or support offices. The organizational chart below depicts that arrangement and has been annotated with the number of employees in each of the organizational units.

**FEC's Organizational Structure and Employees' Distribution  
346 Employees as of November 1, 2011**



The Office of Compliance includes the Reports Analysis Division (50), the Audit Division (34), the Alternative Dispute Resolution Office (2), and the Office of Administrative Review (1) (which conducts part of the Administrative Fine Program). The Office of Communications includes the Public Disclosure Division (23), the Information Division (14), the Press Office (5) and Congressional Affairs (2).

In addition to the positions shown above, the Commission has posted vacancy announcements for 15 additional positions: six in the Office of General Counsel, six in the Office of Staff Director, two in the Office of Chief Information Officer and one in the Office of Chief Financial Officer.

## II. FEC's BUDGET

### A. GENERAL INFORMATION

The chart below presents the appropriations the Federal Election Commission has received in FYs 2010 and 2011, the amounts provided in the bills pending before the House of Representatives and Senate for FY 2012, the amount provided in the current continuing resolution and the amount the FEC requested for FY 2013 in its September 2011 submission to the Office of Management and Budget (OMB). The *Federal Election Campaign Act* requires

that, whenever the FEC submits any budget request to OMB, the Commission must concurrently transmit a copy of the budget request to Congress.

<b>Fiscal Year</b>	<b>Source</b>	<b>Amount</b>
FY 2010	Enacted	\$66,500,000
FY 2011	Enacted	\$66,367,000
FY 2012	House Bill	\$66,367,000
FY 2012	Senate Bill	\$66,367,000
FY 2012	<i>Continuing Appropriations Act, 2012</i> <sup>19</sup>	\$65,369,504
FY 2013	Budget Request to OMB	\$67,998,561 <sup>20</sup>

As this chart shows, the FEC's appropriation was slightly reduced from FY 2010 to FY 2011. Both Appropriations Committees have approved level funding for FY 2012, and the FEC has requested only a two percent increase for FY 2013. The Commission is well aware of the constraints on federal spending generally, and although the FEC's appropriation is a small portion of discretionary spending, the Commission appreciates the support of its mission that Congress has shown by maintaining these appropriation levels in this climate.

While funding amounts for the FEC have been fairly level, the Commission faces rising costs. Even with salary freezes, personnel costs rise with increased costs for benefits. Non-personnel costs increase as well, including some by contractual provision. The Commission is continually reviewing its operations and processes for opportunities to enact cost-saving measures. Over the past two years, the Commission has critically analyzed every position vacated through attrition to determine whether the agency could absorb the loss of that position by using existing staff resources. Similarly, the FEC has also reduced its spending for travel and training, making difficult decisions regarding discretionary spending and operating within decreased funding levels. The agency has also modified a number of processes to reduce or eliminate the need for paper copies, saving the agency both paper and printing charges.

In FY 2012, the FEC will look to modernize key disclosure applications like FECFILE. The current FECFILE software was developed in a non-web environment and is overdue to be modernized to a web-based architecture to allow for more efficient and user-friendly filing of financial reports. The agency anticipates reducing contract support costs related to FECFILE by moving this work in-house. In addition, in 2010 the agency canceled its Employee Express

<sup>19</sup> Public Law 112-36, 125 Stat. 386 (2011).

<sup>20</sup> This was the amount of the FEC's FY 2013 Budget Request to OMB. In accordance with OMB guidance, in that request the FEC also described budgets with funding levels reduced from the FY 2012 baseline by five and ten percent, which equates to \$63,175,000 and \$59,850,000, respectively.

contract because the information available through that contract was also available to all employees through the U.S. Department of Agriculture, National Finance Center, *via* the Employee Personal Page. In 2011, the Office of General Counsel reviewed its use of both Lexis/Nexis and Westlaw and was able to reduce those costs as well. Both of these changes provided permanent, long-term savings to the agency. As part of the Commission's long-term planning efforts, it has undertaken the development of a Strategic Human Capital Management Plan and the revision of its Strategic Plan. Both of these initiatives will identify opportunities for reducing costs, streamlining procedures and improving efficiency.

## B. INFORMATION TECHNOLOGY PROJECTS

Information technology provides a critical means for the Commission to achieve its mission, and consequently the Commission devotes considerable resources to Information Technology program.<sup>21</sup> In fact, during FY 2011, approximately 45% of the FEC's non-personnel budget was spent on information technology costs. The Commission is in the midst of several multi-year initiatives, and it plans to continue these efforts for several additional years. Typically, these initiatives have three stages: research and selection of the best solution; development and testing of prototypes; and development, deployment and training of final versions of the project. While previous years investments in the various initiatives have already begun to provide benefits to the agency's Information Technology program, and therefore to the public users of that system as well, the full benefit of these investments will not be achieved until the initiatives are completed.

### 1. Data Warehouse

The FEC's data warehouse framework allows FEC staff and the public to retrieve information stored across a range of systems by providing a single source of reliable, time-oriented and subject-oriented data in an easy-to-access, flexible form. In FY 2011, the FEC team, including a technical team and subject matter experts, worked closely with a data warehouse contractor to successfully implement the data warehouse prototype. In FY 2012, the agency intends to begin taking advantage of the data warehouse infrastructure currently being implemented in the data warehouse prototype. For example, the FEC intends to replace the existing campaign finance search processes currently available on the Commission's website. The current processes are limited by the amount of data available for searches (*e.g.*, including contributions from individuals only if the amount is at least \$200, and with no ability to search committee operating expenditures) and also by narrow search criteria and an antiquated format for displaying results. These processes remained unchanged for more than a decade and thus required investments in staff time and resources for improvement.

The FEC began its data warehousing project in FY 2009. The prototype was completed in FY 2011, and implementation of the FEC data warehouse is expected to span FY 2012 to FY 2014.

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<sup>21</sup> Additionally, Information Technology security is a particular concern for the Federal Election Commission due to the confidential aspects of the enforcement and compliance programs, in addition to the interest in protecting personal identification information.

## 2. Enterprise Content Management System

Following a study in FY 2009, the FEC launched an agency-wide Enterprise Content Management (ECM) system for sharing and storing documents in a way that fosters collaboration between FEC offices, maximizes efficiency and supports compliance with agency document policies and records management. Following the initial deployment with an initial user group, in FY 2010 the FEC began transitioning additional staff to its ECM system. Although the system has only been live for FEC staff for a short time, the agency has already begun to realize efficiencies in automating workflow processes through ECM. All of the agency's staff will use the ECM system by FY 2014, and the ECM system will also form the base for the initiation of Enterprise Search Capability.

## 3. Enterprise Search Capability

Agency-wide Enterprise Search Capability will allow FEC staff and the public to search multiple and disparate content sources with one query. With Enterprise Search, a user can perform searches of multiple data sources and receive results that are sorted and arranged into a useful form. In the FEC's context, this capability would permit a website user, for example, to perform a single topic search to find Commission regulations, advisory opinions, audit reports, and enforcement documents that address a particular topic, instead of requiring separate searches in each of those databases. This project was begun in FY 2011, and the first phase of implementation will begin in FY 2012. This phase focuses on Enterprise Search tool selection and the enhancement of existing website search functionalities. In the future, the agency intends to expand the Enterprise Search infrastructure to search across ECM and FEC e-mail databases as well and expects to complete this project by FY 2015.

## 4. Website Improvement

The Commission places a high priority on ensuring the effective use of technology and internal procedures to optimize its communication with the public. During FY 2011, the Commission continued to take advantage of the data catalog platform implemented during the previous year to expand the range of federal campaign finance information provided to the public through searchable, sortable and downloadable data technologies. The FEC also enhanced its data catalog and the federal campaign finance maps available on its homepage to provide data across multiple election cycles. As part of this commitment to making campaign finance information easier to access and more complete, the Commission began a project to provide a portal on the FEC website for summary presentation of PAC and party activity. The portal will offer better navigation and enhanced visual presentations of the data to help put the information into a larger context and allow users to better understand campaign finance trends. The Commission is equally committed to responding to trends in how users access information on [www.fec.gov](http://www.fec.gov). In order to serve the increasing number of people accessing the FEC website *via* mobile devices, the Commission has begun work to ensure that the most popular web content is formatted for mobile device users.

## 5. Server Improvements

In FY 2011, the agency also invested significant funding in improving its Information Technology infrastructure—including hardware and software. These improvements are an investment to provide the necessary support for the initiatives described above, as well as enhancing website architecture to ensure that the FEC website can handle a high volume of traffic, especially during a website traffic spike. As noted previously, the Information Technology infrastructure investments will provide the capacity to accept very large electronically filed reports and to accept a very large number of such reports, without delaying disclosure of the reported information.

### C. HUMAN CAPITAL AND STRATEGIC PLANNING INITIATIVES

In June 2009, the Office of Personnel Management (OPM) performed an evaluation of the FEC's human capital management. With new staff on board since that evaluation, the FEC developed a new approach to addressing its human capital challenges and obtained OPM's concurrence with its new approach in January 2011. Since then, the FEC has made considerable progress in implementing this plan. The Commission filled several leadership positions during the year, including the Staff Director, General Counsel and the Deputy Staff Director for Management and Administration.

As recommended in the OPM evaluation, the FEC is also drafting a Strategic Human Capital Management Plan to initiate succession planning; to ensure the agency acquires, develops and maintains the best talent; to improve Human Resources policies and procedures and to measure individual employee performance effectively. Additionally, the Commission will critically evaluate the distribution of its workforce and identify any missing skills and competencies required for effective and efficient delivery of the Commission's new strategic direction and priority initiatives.

Two-thirds of the Federal Election Commission's employees are in a collective bargaining unit and are represented by the National Treasury Employees Union (NTEU). The Commission will work cooperatively with the NTEU in developing its Strategic Human Capital Management Plan. In addition, the FEC chartered a Labor Management Forum under the authority of Executive Order 13522, *Creating Labor-Management Forums to Improve Delivery of Governmental Services*.<sup>22</sup> The Forum is intended to promote improvements in overall FEC efficiency and effectiveness, improve employee satisfaction, assist in the development of cooperative and productive labor-management relations and encourage the involvement of employees in workplace issues through their union representatives. In FY 2011, the Forum identified its members and goals, along with metric for measuring its success at meeting those goals.

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<sup>22</sup> The President, *Creating Labor-Management Forums to Improve Delivery of Governmental Services*, Exec. Order 13522, 74 Fed. Reg. 66203 (Dec. 14, 2009).

The Commission has also begun developing a new Strategic Plan, as required by the *GPRA Modernization Act of 2010*.<sup>23</sup> The Commission will seek input from the Committee on House Administration on its revised Strategic Plan, along with input from other external stakeholders.

## **Conclusion**

The Commission appreciates the interest of the Subcommittee in the FEC's policies, processes and procedures. This document together with the materials the Commission provided to the Subcommittee in its preparation for this hearing provide a thorough review of the Federal Election Commission's policies, processes and procedures. The Commissioners would be happy to respond to any questions you may have today or in further written submissions.

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<sup>23</sup> *GPRA Modernization Act of 2010*, Pub. Law 111-352, 124 Stat. 3866 (2011).