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FEDERAL ELECTION COMMISSION
Washington, DC 20463

AGENDA DOCUMENT NO. 21-28-A
AGENDA ITEM
For the meeting of June 10, 2021
SUBMITTED LATE

MEMORANDUM

TO: The Commission
FROM: Steven T. Walther
Commissioner *Steven T. Walther*
DATE: June 3, 2021
RE: Amended Directive 68 – Enforcement Procedures

I am proposing edits to Commission Directive 68, Enforcement Procedures. I have asked that this draft be placed on the agenda for the June 10, 2021, Open Meeting.

Attachments:

1. Draft of Amended Directive 68
2. Draft of Amended Directive 68 – Redline

FEDERAL ELECTION COMMISSION		
MANUAL OF DIRECTIVES	COMMISSION DIRECTIVE:	
	REVOKES: (Revises the version effective on December 14, 2017)	NO. 68
	EFFECTIVE DATE:	
SUBJECT:		
Enforcement Procedures		

The purpose of this directive is to provide written guidelines on providing status reports to complainants, 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 COMPLAINANTS, RESPONDENTS, AND THE COMMISSION

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 complainants, 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 nine (9) 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 a *sua sponte* submission, and at every six (6) month interval thereafter.
2. After the Commission Finds RTB. The Office of General Counsel and the Office of Alternative Dispute Resolution will provide complainants, respondents, and the Commission with a status report if the Commission has not voted on the matter within six (6) months of the reason to believe finding and at every six (6) month interval thereafter.
3. The Office of General Counsel and the Office of Alternative Dispute Resolution will request that any matter that has not had a Commission vote in one year from the date of receipt or from eighteen (18) months of the Commission’s vote to find reason to believe will be placed on the next Executive Session agenda in order to provide an update to the Commission regarding the progression of the matter.

4. All status reports to complainants and respondents shall adhere to the confidentiality requirements of the Federal Election Campaign Act.

B. Content.

1. The status report to complainants and respondents shall include the following information:
 - a. The matter number and date of receipt of the complaint, *sua sponte*, submission, or referral;
 - b. Whether the matter is pending with the Office of General Counsel, the Office of Alternative Dispute Resolution, or the Commission; and
 - c. A reasonable estimate as to the date by which the Commission is expected to vote on the matter.

2. The status report for each of these matters to the Commission shall include the following information:

- a. The matter number and date of receipt of the complaint, *sua sponte* submission, or referral;
- b. The date the matter was assigned to an attorney or staff member;
- c. A detailed status report regarding the matter and the Office of General Counsel's progress on developing its recommendations or progressing with an investigation; and
- d. A reasonable estimate as to the date by which the Office of General Counsel expects to circulate its next General Counsel's Report, Memorandum to the Commission, or other enforcement document containing recommendations to the Commission.

- C. Timing. The Office of General Counsel or the Office of Alternative Dispute Resolution will provide the status report to complainants, respondents, and the Commission within five (5) business days of the matter reaching nine (9) months from receipt and again six (6) months from a reason to believe finding and at every six (6) month interval thereafter. The Office of General Counsel or the Office of Alternative Dispute Resolution will circulate the status report to the Commission on a 72-hour no objection basis, with each Commissioner having the option to object and place a matter on the next Executive Session agenda.

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. For all enforcement matters for which there is a pending First General Counsel's Report ("FGCR") before the Commission, a list that includes, for each matter:
 - a. the date of receipt of a complaint or referral'
 - b. the date of assignment of an enforcement matter to the staff person or attorney;
 - c. the date of the Office of General Counsel's recommendations to the Commission;
 - d. the number of days between the date of receipt of a complaint or referral and date of submission of the FGCR to the Commission;
 - e. the number of days between date of assignment to staff and date of submission of the FGCR to the Commission;
 - f. the number of days between date of receipt of a complaint or referral and Commission inaction calculated by the close of the quarter;
 - g. the number of days between date of assignment to staff and Commission inaction calculated by the close of the quarter;
 - h. the number of days between the date of submission of the FGCR to the Commission and Commission inaction calculated by the close of the quarter;
 - i. all dates that a matter was requested to be held over; and
 - j. the name(s) of the requestor(s) and any pertinent information provided by the person holding the matter over.

The enforcement matters identified in this subsection shall be listed according to the date of the receipt of the complaint, *sua sponte* submission, or referral.

3. A list of all enforcement matters that have been pending for more than nine (9) months from the date of receipt of a complaint, *sua sponte* submission, or referral 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. This list shall also indicate the date of receipt of the complaint, *sua sponte* submission, or referral, the number of days between the date of receipt of the complaint, *sua sponte* submission, or referral and Commission inaction calculated by the close of the quarter, and the date upon which each respondent was sent a status report in accordance with Section I, above. The enforcement matters identified in this subsection shall be listed according to the date of receipt of the complaint, *sua sponte* submission or referral. The Office of General Counsel should be prepared to discuss the details and status of each of these matters, as well as a timeline for proceeding when presenting its status report to the Commission.
4. 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 the Office of General Counsel, the date(s) upon which the

- 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. OGC should be prepared to discuss each of these matters and a timeline for proceeding when presenting its status report to the Commission.
5. 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.
 6. 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. An appropriately redacted version of the quarterly report shall be publicly disclosed in an easily accessible manner on the Commission's website within fifteen (15) days of circulation of the unredacted report to the Commission.

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. This report will be an automatic agenda item for the next regularly scheduled Executive Session. The Case Management Committee will be available to discuss the details and status, as well as a timeline for proceeding, for these statute of limitations-sensitive matters.
- 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. Efforts to date related to resolution of the matter, as well as 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. 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 eighteen (18) months. If possible, First General Counsel’s Reports must circulate at least twelve (12) months prior to any violation falling outside of the statute of limitations. 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 attorney) statute of limitations-sensitive matters within fifteen (15) days of receipt of the complaint, referral, or *sua sponte* submission.
- C. First General Counsel’s Reports. In statute of limitations-sensitive matters, the Office of General Counsel will assign 30-day deadlines to the circulation of the First General Counsel’s Report to the Commission, and the Office of General Counsel will submit the First General Counsel’s Report to the Commission’s Secretary for circulation consistent with Section II of Commission Directive 52 (Circulation Vote Procedures).
- D. After the Commission finds RTB. In statute of limitations-sensitive matters, the Office of General Counsel, the Alternative Dispute Resolution Office, the Reports Analysis Division, or the Audit Division will request that a matter be placed on the next Executive Session agenda where it appears that the Commission will be unable to resolve a statute of limitations-sensitive matter 45 days prior to the date that part of the activity will fall outside of the statute of limitations.

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 _____.

FEDERAL ELECTION COMMISSION		
MANUAL OF DIRECTIVES	COMMISSION DIRECTIVE:	
	REVOKES: <u>(Revises the version effective on December 14, 2017s Section 11.B</u>	NO. 68
		EFFECTIVE DATE: <u>December 14, 2017</u>
SUBJECT: <p style="text-align: center;">Enforcement Procedures</p>		

The purpose of this directive is to provide written guidelines on providing status reports to complainants, 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 COMPLAINANTS, RESPONDENTS, AND THE COMMISSION

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 complainants, 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-nine (129)~~ 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-six (126)~~ month interval thereafter.
2. After the Commission Finds RTB. The Office of General Counsel and the Office of Alternative Dispute Resolution will provide complainants, respondents, and the Commission with a status report if the Commission has not voted on the matter within ~~twelve-six (126)~~ months of the reason to believe finding and at every ~~twelve-six (126)~~ month interval thereafter.
3. The Office of General Counsel and the Office of Alternative Dispute Resolution will request that any matter that has not had a Commission vote in one year from the date of receipt or from eighteen (18) months of the Commission’s vote to find reason to believe will be placed on the next Executive Session agenda in order to provide an update to the Commission regarding the progression of the matter.

B. Content.

1. The status report to complainants and respondents shall include the following information:

- 1) a. The matter number and date of receipt of ~~a-the~~ complaint, *sua sponte*, submission, or referral;
- 2) b. Whether the matter is pending with the Office of General Counsel, the Office of Alternative Dispute Resolution, or the Commission; and
- c. A reasonable estimate as to the date by which the Commission is expected to vote on the matter.
- 3)1) d. All status reports to complainants and respondents shall adhere to the confidentiality provisions of the Federal Election Campaign Act.

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2. The status report for each of these matters to the Commission shall include the following information:

- a. The matter number and date of receipt of a complaint, *sua sponte* submission, or referral;
- b. The date the matter was assigned to an attorney;
- c. A detailed status report regarding the matter and the Office of General Counsel's progress on developing its recommendations or progressing with an investigation; and
- a-d. A reasonable estimate as to the date by which the Office of General Counsel expects to circulate its next General Counsel's Report, Memorandum to the Commission, or other enforcement document containing recommendations to the Commission.

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C. Timing. The Office of General Counsel or the Office of Alternative Dispute Resolution will provide the status report to complainants, respondents, and the Commission within five (5) business days of the matter reaching ~~twelve-nine (129)~~ months from receipt and ~~twelve-six (126)~~ months from a reason to believe finding. The Office of General Counsel or the Office of Alternative Dispute Resolution will ~~also~~ circulate the status report to the Commission ~~status report to the Commission~~ on a 72-hour no objection basis, with each Commissioner having the option to object and place a matter on the next Executive Session agenda. ~~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) 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,

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pre-probable cause conciliation, post-probable cause conciliation, investigation, and case closings) and statistical information on civil penalties;

2) 2. For all enforcement matters for which there is a pending First General Counsel's Report ("FGCR") before the Commission, a list that includes, for each matter:

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- a. the date of receipt of a complaint or referral
- b. the date of assignment of an enforcement matter to the staff attorney;
- c. the date of the Office of General Counsel's OGC's recommendations to the Commission;
- d. the number of days between the date of receipt of a complaint or referral and date of submission of the FGCR to the Commission;
- e. the number of days between date of assignment to the staff attorney staff and date of submission of the FGCR to the Commission;
- f. the number of days between date of receipt of a complaint or referral and Commission inaction calculated by the close of the quarter;
- g. the number of days between date of assignment to staff and Commission inaction calculated by the close of the quarter;
- h. the number of days between the date of submission of the FGVCR to the Commission and Commission inaction calculated by the close of the quarter;
- i. all dates that a matter was requested to be held over; and
- j. the name(s) of the requestor(s) and any pertinent information provided by the person holding the matter over

The enforcement matters identified in this subsection shall be listed according to the date of the receipt of the complaint, sua sponte submission, or referral of submission of the FGCR.

3) 2) A list of all enforcement matters that have been pending for more than twelve nine (129) months from the date of receipt of a complaint, sua sponte submission, or referral 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. This list shall also indicate the date of receipt of the complaint, sua sponte submission, or referral, the number of days between the date of receipt of the complaint or referral and Commission inaction calculated by the close of the quarter, and the date upon which each respondent was sent a status report in accordance with Section I, above. The enforcement matters identified in this subsection shall be listed according to the date of receipt of the complaint, sua sponte submission, or referral. The Office of General Counsel should be prepared to discuss the details and status of each of these matters, as well as a timeline for proceeding when presenting its status report to the Commission.

4)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 the Office of General Counsel~~OGC~~, the date(s) upon which the 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. The Office of General Counsel should be prepared to discuss each of these matters and a timeline for proceeding when presenting its status report to the Commission.

5)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. An appropriately redacted version of the quarterly report shall be publicly disclosed in an easily accessible manner on the Commission's website within fifteen (15) days of circulation of the unredacted report to the Commission.

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. This report will be an automatic agenda item for the next regularly scheduled Executive Session. The Case Management Committee will be available to discuss the details and status, as well as a timeline for proceeding, for these statute of limitations-sensitive matters.

~~A.~~

B. Content. The report of all statute of limitations-sensitive compliance matters shall include the following information:

- 1) ~~a~~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) Efforts to date related to resolution of the matter, as well as 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, t~~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 eighteen (182)~~ months. If possible, First General Counsel’s Reports must circulate at least twelve (12) months prior to any violation falling outside of the statute of limitations. 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 ~~receipt of the last response to the complaint, or referral, or within fifteen (15) days of receipt of a~~ sua sponte submission.
- C. First General Counsel’s Reports. In statute of limitations-sensitive matters, the Office of General Counsel will assign 30-day deadlines to the circulation of the First General Counsel’s Report to the Commission, and the Office of General Counsel will submit the First General Counsel’s Report to the Commission’s Secretary for circulation consistent with Section II of Commission Directive 52 (Circulation Vote Procedures).
- D. After the Commission finds RTB. In statute of limitations-sensitive matters, the Office of General Counsel, the Alternative Dispute Resolution Office, the Reports Analysis Division, or the Audit Division will request that a matter be placed on the next Executive Session agenda where it appears that the Commission will be unable to resolve a statute of

limitations-sensitive matter 45 days prior to the date that part of the activity will fall outside of the statute of limitations.

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 14, 2017~~.

(Signed by Alec Palmer, Staff Director)