

**FEDERAL ELECTION COMMISSION**

**FISCAL YEAR 2010  
CONGRESSIONAL JUSTIFICATION &  
PERFORMANCE BUDGET**



**May 7, 2009**

Concurrently submitted to Congress and  
the Office of Management and Budget

## TABLE OF CONTENTS

Proposed Appropriation Language .....	1
Executive Summary .....	1
Budget Request by Object Class.....	3
Commission Structure.....	4
The Mission of the Federal Election Commission .....	5
Strategic Goal and Framework .....	6
Objective A – Transparency .....	6
Objective B – Compliance .....	10
Objective C – Development of the Law .....	15
Office of Inspector General .....	19

**Proposed Appropriation Language**

**FEDERAL ELECTION COMMISSION**

**SALARIES AND EXPENSES**

For necessary expenses to carry out the provisions of the Federal Election Campaign Act of 1971, as amended, \$64,000,000, of which not to exceed \$5,000 shall be available for reception and representation expenses.

**FEDERAL ELECTION COMMISSION**

**BUDGET REQUEST**

**EXECUTIVE SUMMARY**

Based on OMB guidance, the Federal Election Commission (FEC) requests \$64,000,000 for fiscal year 2010. This submission is based on the appropriation provided to the FEC under the Omnibus Appropriations Act of 2009, Pub.L. No. 111-8, plus a \$382,000 increase (0.6 percent). This funding increase is less than the anticipated cost of living adjustment for staff, a scheduled rent increase, and anticipated adjustments to major information technology maintenance contracts and licensing agreements. Together these built-in, fixed-cost increases for FY 2010 are estimated at nearly \$1.5 million. A brief summary of this request is presented in **Table 1** below.

<b>Table 1: Budget Summary</b>					
<b>Category:</b>	<b>FY 2008 Appropriated</b>	<b>FY 2009 Appropriated</b>	<b>FY 2008- FY2009 Percent Change</b>	<b>FY 2010 Request</b>	<b>FY 2009- FY2010 Percent Change</b>
<b>Personnel</b>	\$42,498,848	\$44,312,810	4.3%	\$45,977,069	3.8%
<b>Non-Personnel Rent</b>	\$4,787,089	\$5,705,136	19.2%	\$5,755,351	0.9%
<b>Non-Personnel Other</b>	\$11,938,063	\$13,600,054	13.9%	\$12,226,580	-9.8%
<b>Total</b>	\$59,224,000	\$63,618,000	7.4%	\$64,000,000	0.6%

With the exception of an annual rent increase, the FEC anticipates allocating the entire \$382,000 increase to the agency's most important resource, its staff, in order to meet at least part – about one-third – of the anticipated 2010 COLA and other salary increases.

<b>Table 2: Components of the Budget Request</b>	
FY 2009 Appropriated Budget	\$63,618,000
Increase	\$382,000
Built-in requirements to maintain current services <sup>1</sup> (non-add)	(\$1,476,134)
Shortfall (non-add)	(-\$1,094,134)
FY 2010 Budget Request	\$64,000,000

---

<sup>1</sup> This figure includes adjustments for inflation and costs-of-living increases (COLAs), as well as increased personnel costs, cost escalation associated with on-going contracts and an annual rent increase.

<b>Table 3: Budget Request by Object Class</b>				
<b>Object Class</b>	<b>Personnel</b>	<b>FY 2008 Actual</b>	<b>FY 2009 Estimate</b>	<b>FY 2010 Request</b>
1110	Full Time Permanent	29,741,722	32,674,232	33,957,604
1130	Other than Permanent	965,186	1,325,000	1,364,750
1150	Premium Pay, Overtime	52,093	50,000	50,000
1152	Cash Awards	600,688	642,000	642,000
1210	Personnel Benefits	8,515,276	9,596,578	9,962,715
1301	Benefits of Former Personnel	3,000	25,000	0.00
	<b>Subtotal, Personnel</b>	<b>39,877,965</b>	<b>44,312,810</b>	<b>45,977,069</b>
	<b>Non-Personnel</b>			
2101	Travel & Transport of Things	352,202	382,468	380,000
2311	Rent	5,278,876	5,705,136	5,755,351
2335	Postage, Printing and Microfilm	412,883	368,916	313,916
2511	Training and Tuition	367,575	452,213	450,000
2514	IT Contracts	4,240,620	5,199,432	4,565,000
2521	Other Contracts	1,603,767	2,088,805	2,225,840
2531	Federal Agency Services	836,564	999,927	1,002,040
2572	Software and Hardware	1,804,721	1,182,141	925,000
2601	Supplies & Publications	922,504	824,432	825,000
3100	Equipment Purchases	107,005	83,641	75,000
3102	Capitalized IT Equipment	2,241,800	1,770,108	1,255,784
3103	Non-Capitalized IT Equipment	751,598	247,971	250,000
	<b>Subtotal, Non Personnel</b>	<b>18,920,115</b>	<b>19,305,190</b>	<b>18,022,931</b>
	<b>TOTAL</b>	<b>58,798,080</b>	<b>63,618,000</b>	<b>64,000,000</b>

## COMMISSION STRUCTURE

The FEC ([www.fec.gov](http://www.fec.gov)) is an independent regulatory agency with responsibility for administering, enforcing, defending and interpreting the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. 431 - 55 (FECA, or the Act). The Commission is also responsible for administering the Federal public funding programs for Presidential campaigns and party conventions. This responsibility includes certifying and auditing all participating candidates and committees, and enforcement of the public funding laws.

The FEC is structured to foster bipartisan decision-making. To accomplish its legislative mandate, the FEC is directed by six Commissioners, who are appointed by the President with the advice and consent of the Senate. By law, no more than three Commissioners can be members of the same political party. Each member serves a six-year term and two seats are subject to appointment every two years. The Commission's Chairmanship rotates among the members, with no member serving as Chairman more than once during his or her term. The Commissioners meet regularly to formulate policy and to vote on significant legal and administrative matters. The Act requires at least four votes for the Commission to take any official action.

As part of its responsibilities, the FEC ensures transparency in the Federal campaign finance system by enforcing the Act's requirement that all Federal candidates and Federal political committees file financial disclosure reports, and by making the disclosure reports and the data contained in them available to the public through the Commission's internet-based public disclosure system. The FEC also has exclusive responsibility for civil enforcement of the Act, including the handling of civil litigation arising from any legal actions brought by or against the Commission. Additionally, the Commission promulgates regulations implementing the Act and issues advisory opinions responding to inquiries, generally from the regulated community.

Fiscal year 2008 presented the FEC with a unique challenge in conducting its day-to-day operations. Specifically, for the first six months of the calendar year the Commission only had two Commissioners and therefore lacked a quorum and was unable to take action on many core business matters. This situation impacted the agency's ability to achieve several of its performance goals and other key activities.

## THE MISSION OF THE FEDERAL ELECTION COMMISSION

**To prevent corruption in the Federal campaign process by administering, enforcing and formulating policy with respect to Federal campaign finance statutes.**

Congress created the Federal Election Commission to enforce the Federal Election Campaign Act. The Act reflects Congress's belief that democracy works best when voters can make informed decisions in the political process; decisions based, in part, on knowing the sources of candidates' financial support. Public confidence in the political process depends not only on laws and regulations to ensure transparency, but also on the knowledge that those who disregard the campaign finance laws will face concrete consequences for non-compliance – hence, the Commission's focus on effective and fair enforcement of the law.

The primary objectives of the FEC are to (1) facilitate transparency through public disclosure of campaign finance activity; (2) encourage voluntary compliance by providing information and policy guidance to the public, media, political committees and election officials on the FECA and Commission regulations and enforcing the statute through audits, investigations and civil litigation; and (3) develop the law by administering and interpreting the FECA as well as the Presidential Election Campaign Fund Act and the Presidential Primary Matching Payment Account Act.

Voluntary compliance with the requirements of the Act is a particular focus of the Commission's efforts, and the enforcement program is one mechanism designed to ensure voluntary compliance with the Act's contribution limits and prohibitions, as well its disclosure provisions. Because of the large, and rising, number of political committees, and the ever-growing number of financial disclosure reports filed with the FEC, voluntary compliance is essential to enforcing the requirements of the Act. Accordingly, the Commission devotes considerable resources to encouraging voluntary compliance through widespread dissemination to the public, the press, political committees, and State election officials of educational materials related to Federal campaign finance laws.

## STRATEGIC GOAL AND FRAMEWORK

As reflected in the Commission's FY 2008-2013 Strategic Plan, the FEC's mission is supported by a single, overarching strategic goal:

To protect the integrity of the Federal campaign process by providing transparency, enforcing contribution restrictions, and fairly administering the FECA and related statutes.

The FEC pursues this strategic goal through three objectives – transparency, compliance, and development of the law - that guide the Commission in accomplishing its mission and planning for future progress. These objectives and strategic activities, which are described below, also provide the framework needed to effectively measure the Commission's success in achieving its strategic goal.<sup>2</sup>

### Objective A: Transparency

#### Receiving Accurate and Complete Campaign Finance Disclosure Reports and Making Them Available to the Public

The FEC meets the objective of transparency by:

- Creating and maintaining a state-of-the-art electronic filing system to collect financial disclosure reports from Federal candidates and political committees;
- Making financial disclosure reports available to the public in a timely, efficient and useful manner;
- Reviewing these reports to ensure that they are accurate and complete; and
- Encouraging candidates and political committees to correct inaccurate or incomplete reports.

The FEC gauges its effectiveness in this area through the following performance measures:

Performance Measure	FY 08 Goal	FY 08 Actual
Meet the statutory requirement to make reports and statements filed on paper with the FEC available to the public within 48 hours of receipt.	100%	100%
Process reports within 30 days of receipt as measured quarterly.	95%	91%

<sup>2</sup> Although the FEC refined its performance measures in FY 2008 to enhance its ability to capture the data needed to assess the effectiveness of its operations, as previously mentioned, the lack of a quorum for the first six months of calendar year 2008 adversely impacted the agency's ability to achieve several of its FY 2008 performance targets.

## ***Filing***

The Commission's mandatory electronic filing (“e-filing”) regulations (*see* 11 CFR § 104.18) require any candidate or political committee that receives contributions or makes expenditures in excess of \$50,000 in a calendar year, or that has reason to expect to do so, to submit its FEC disclosure reports electronically.<sup>3</sup>

The primary function of the e-filing system is to act as the point of entry for submission of electronically filed campaign finance disclosure reports, providing streamlined processing and faster public access to the reports. Specifically, this system provides for public disclosure of electronically filed reports via the FEC’s website within minutes of a report being filed. When a committee files a financial disclosure report on paper, FEC staff must first electronically scan the report and then manually enter the disclosed information into the FEC’s electronic database.

## ***Public Disclosure***

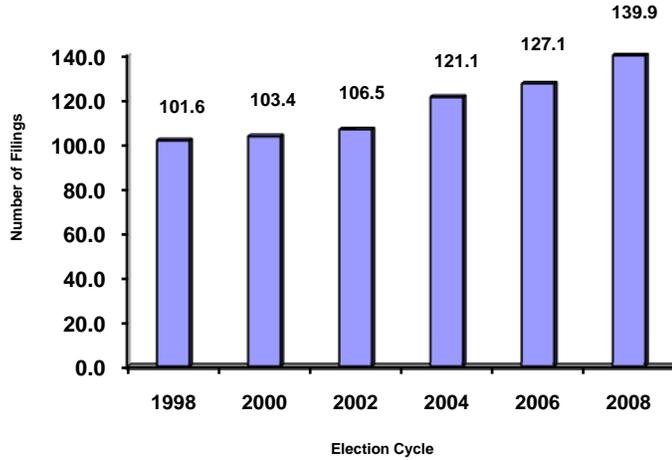
One of the FEC’s most important responsibilities is to receive campaign finance reports, which detail the sources and amounts of funds used to finance Federal elections, and to make these reports available to the public in a timely and efficient manner. The Commission’s Public Disclosure Division ensures that copies of all filings are available for public inspection within 48 hours of receipt. The public can access the campaign finance reports and data at <http://www.fec.gov/disclosure.shtml> and at the FEC’s Washington DC headquarters.

As shown in **Figure 1**, during the 2008 election cycle, the Commission received almost 140,000 reports and statements, with the equivalent of 11.7 million pages of financial data, filed by approximately 8,000 political committees reporting \$8.3 billion in spending. This represents a nearly 16 percent increase in the number of reports received between the 2004 and 2008 Presidential election cycle and a 35 percent increase over the 2000 cycle. Additionally, the 2008 election cycle reports and statements disclosed an unprecedented number of contributors, which has led to a significant increase in the number of pages associated with the filings.

---

<sup>3</sup> These requirements do not currently apply to Senate candidates or to other persons or entities that only support Senate candidates. Those persons and entities file paper reports instead with the Secretary of the Senate, and the FEC manually scans the reports and enters them into the electronic database. Two bills that would require Senate committees to file campaign finance reports electronically (S. 482 and S. 752) are pending before Congress. In March 2009, the Commission renewed its Legislative Recommendations to require Senate committees to file campaign finance reports electronically.

Figure 1 -- Total Reports and Statements Filed by Election Cycle (in thousands)



As illustrated in **Figures 2 and 3**, not only has there been a dramatic rise in the number of campaign finance reports and statements files provided to the FEC, but rate of growth in the receipt and disbursement of funding has been even more pronounced. These figures show that every Presidential election cycle since 1992 has seen new records in total contributions (receipts) and spending (disbursements), with the 2008 elections significantly boosting this trend.

Figure 2 - Receipts in Presidential Election Cycles (in billions)

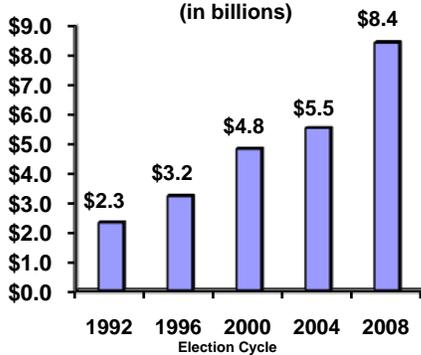
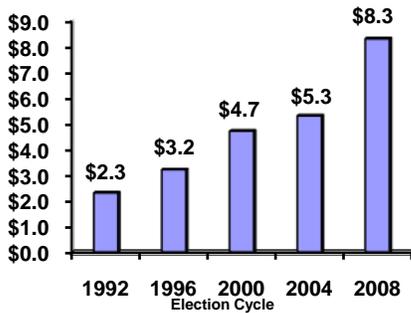
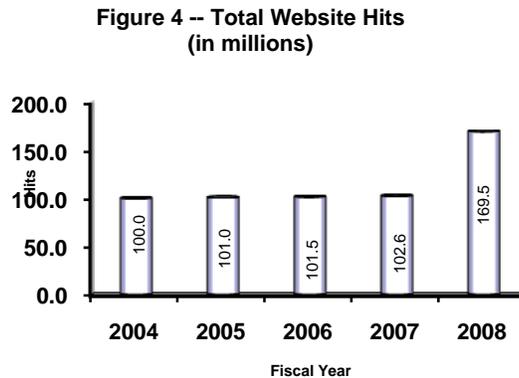


Figure 3- Disbursements in Presidential Election Cycles (in billions)



## *The FEC Website*

The FEC website ([www.fec.gov](http://www.fec.gov)) provides access to the campaign finance data that has been submitted by candidates and committees. The public's interest in campaign finance information is illustrated in **Figure 4** below. During FY 2008, the website received nearly 170 million hits, a significant increase over prior years.



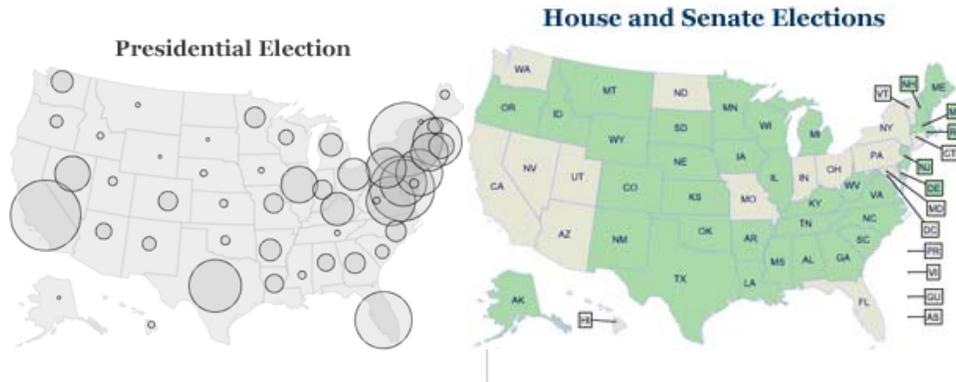
To make campaign finance data even more accessible to the public, the FEC launched interactive maps during the 2008 Presidential election cycle providing users immediate access to contribution information. This tool enabled users to access the amount of funds raised on a State-by-State basis, cash-on-hand, and the distribution of contributions by amount with a simple click at [www.fec.gov/DisclosureSearch/mapApp.do](http://www.fec.gov/DisclosureSearch/mapApp.do).

Furthermore, users can now access lists of contributors by name, city, and amounts of contributions within the first three digits of any zip code. Contribution data are updated within one day of the FEC's receipt of electronically filed Presidential disclosure reports.

The FEC also recently released a major enhancement to the Presidential map improving functionality and performance. The Presidential map now includes detailed information on each candidate's campaign expenditures. This map is an easy-to-use online tool for obtaining detailed information about the Presidential campaigns and how they spend their money, including the payee name, purpose, date and amount of each campaign expenditure. Improvements include easier search capabilities, quick access to summary and expenditure information, one-click downloading, better graphics, and a new and very useful "compare" feature.

Building on the success of the Presidential campaign finance map, the FEC also recently launched a House and Senate campaign finance research tool based on the same map interface that has made the Presidential Map research tool so successful. The House and Senate map allows the user to select candidates for comparison using bar charts to display such financial categories as contribution and disbursement totals, debts and cash on hand. It also presents itemized contributions and disbursements by category and includes links to images of reports filed by the candidate and the candidate's committees.

**Campaign Finance Maps.** Campaign finance information is now available via easy-to-use maps of the United States for [Presidential](#), [House and Senate](#) Elections.



Both campaign finance maps lay the groundwork for similar presentations of political action committee (PAC) and party committee data, contributor histories and historical data for all committee types.

### **Objective B: Compliance**

#### **Education and Enforcement**

The Commission pursues the objective of compliance through:

- Expanding awareness of campaign finance laws by creating and disseminating educational materials, and through instructional conferences and workshops;
- Responding to complaints alleging violations of campaign finance laws;
- Imposing civil penalties for late-filed and non-filed disclosure reports;
- Conducting audits in a timely and efficient manner;
- Working with the Department of Justice in prosecuting criminal violations of the Act; and
- Making findings in completed compliance matters available to the public in a timely and useful manner.

The FEC gauges its effectiveness in this area through the following performance measures:

<b>Performance Measure</b>	<b>FY 08 Goal</b>	<b>FY 08 Actual</b>
Conduct educational conferences and host roundtable workshops on the campaign finance law each election cycle, achieving a mean satisfaction rating of 4.0 on a 5.0 scale.	100%	100%
Issue press releases summarizing completed compliance matters within two weeks of a matter being made public by the Commission.	100%	22%
Issue quarterly press releases containing summaries of campaign finance data.	100%	100%

<b>Performance Measure</b>	<b>FY 08 Goal</b>	<b>FY 08 Actual</b>
Process enforcement cases within an average of 15 months of receipt.	100%	66%
Process cases assigned to Alternative Dispute Resolution within 155 days of a case being assigned.	75%	64%
Process reason-to-believe recommendations for the Administrative Fines Program within 60 days of the original due date of the subject untimely or unfiled report.	75%	79%
Process challenges in the Administrative Fines Program within 60 days of a challenge being filed.	75%	14%
Conclude non-Presidential audits with findings in an average of 10 months, excluding time delays beyond the Commission's control, such as subpoenas and extension requests.	100%	95%
Conclude non-Presidential audits with no findings in an average of 90 days from beginning of fieldwork.	100%	100%
Conclude Presidential audits in an average of 24 months of the election, excluding time delays beyond the Commission's control, such as subpoenas and extension requests.	100%	TBD

### **Education**

The Commission continues to receive numerous requests from the regulated community and the public for additional information, data, and assistance in filing financial disclosure reports. Helping the regulated community understand the requirements of the Act, and the Commission's regulations, is an essential component for improving compliance. The Commission promotes voluntary compliance with campaign finance laws. This is achieved by educating candidates, political committees, and the public through the FEC website, information hotline, publications, and conferences.

Copies of the Commission's regulations, advisory opinions, and documents related to litigation are available at [www.fec.gov](http://www.fec.gov). Documents related to enforcement matters, including audit reports, are also available on the website. The website includes separate dedicated query functions for accessing documents related to closed enforcement actions<sup>4</sup> and issued advisory opinions (including links to all related materials such as the original request, Commission draft opinions and third-party comments).<sup>5</sup> The Commission also publishes (electronically and in hard copy) a monthly newsletter, The Record, as well as a wide variety of informational brochures on specific campaign finance topics. Additionally, the FEC operates a press office and

<sup>4</sup> Closed enforcement actions can be accessed online through the Commission's Enforcement Query System available at <http://eqs.sdrdc.com/eqs/searcheqs>.

<sup>5</sup> Issued advisory opinions and related documents can be accessed online at <http://saos.nictusa.com/saos/searchao>.

maintains a toll-free information line to respond to inquiries from the press, the regulated community, and the public regarding the campaign finance laws.

The Commission has begun to expand its information outreach to include online presentations, hypertext versions of the Explanations & Justifications for all FEC regulations, and a “Tips for Treasurers” page that allows political committee treasurers and other interested individuals to receive automatic e-mail updates from the Commission. The Commission has also implemented an e-mail distribution program for financial disclosure forms and other publications to improve customer service, while saving on printing and postage costs. This program allows the Commission to distribute time-sensitive information to the regulated community more quickly and efficiently than ever before.

Another way the Commission encourages voluntary compliance is by hosting conferences across the country where Commissioners and agency staff explain how the Act applies to candidates, parties and political committees. These conferences address recent changes in campaign finance laws and focus on fundraising and reporting regulations. The FEC held five conferences in FY 2008, three in the District of Columbia, one in St. Louis, Missouri, and one in Orlando, Florida. The FEC also held a roundtable workshop on pre-election communications and a seminar for nonconnected committees during FY 2008. The success of these efforts is evidenced by the evaluation scores and comments received. The overall rating for each event exceeded a 4.0 out of a possible 5.0.

### **Enforcement**

The FEC has exclusive jurisdiction over the civil enforcement of Federal campaign finance laws. In exercising that authority, the Commission uses a variety of methods to pursue possible violations of the Act. Instances of potential non-compliance may lead to a traditional FEC enforcement case, known as a Matter Under Review (MUR). In some cases, respondents may be given the option to participate in the Commission’s Alternative Dispute Resolution (ADR) program, which aims to expedite resolution of certain less complex enforcement matters and to reduce the cost of processing complaints through streamlined procedures. Violations involving the late submission of financial disclosure reports, or failure to file reports entirely, are subject to the statute’s Administrative Fines program.

The Commission learns of possible election law violations primarily through:

- The complaint process, whereby any person may file a sworn complaint alleging violations of the Act;
- Voluntary self-reporting, *sua sponte*, by a candidate or political committee representative who believes that a violation of the Act may have occurred;
- The Commission’s review of a committee’s filed reports or through a field audit of a committee’s activities and records; and
- The referral process, whereby other government agencies may refer possible violations of the Act to the FEC.

**Enforcement Division of the OGC.** Enforcement matters that are managed by OGC pursuant to the procedures set forth in the Act tend to be the most complex and legally significant matters. For each enforcement matter:

- OGC recommends to the Commission whether to find Reason-to-Believe (RTB) the FECA has been violated, a finding which formally initiates an investigation or recommends to dismiss a complaint;
- Where at least four Commissioners have found reason to believe a violation occurred, OGC investigates potential violations of the FECA by requesting, subpoenaing and reviewing documents and interviewing or deposing witnesses;
- Where at least four Commissioners have found reason to believe a violation occurred, OGC conducts settlement negotiations on behalf of the Commission, culminating in conciliation agreements with respondents;
- After an RTB finding and, if necessary, an investigation, OGC recommends to the Commission whether it should find “probable cause” to believe the Act has been violated; and
- OGC recommends to the Commission whether to file suit on behalf of the Commission in Federal district court when voluntary conciliation cannot be reached through negotiation.

Over the past several years, the General Counsel has initiated a number of management and organizational changes to increase the quality and efficiency of the FEC’s enforcement work, and has implemented policy initiatives to facilitate the processing of MURs. The result has been a more objective and expeditious process, with meaningful civil penalties and other remedies proportionate to the violation.<sup>6</sup>

In recent years, the FEC has steered resources to the most significant violations. The agency’s goal is to process enforcement cases within 15 months. The Commission closed 71 enforcement cases during FY 2008. The cases were processed on average within 16.9 months. The 15-month goal was not met due in large part to the Commission’s six-month lack of a quorum in 2008. Now that we are at full strength, the Commission expects to improve the processing time in FY 2009.

**Alternative Dispute Resolution.** The Commission initiated its Alternative Dispute Resolution (ADR) program in 2000 to facilitate settlements outside of the traditional enforcement or litigation processes. The ADR program’s primary objective is to enhance the agency’s overall effectiveness through more expeditious resolution of certain enforcement matters with the use of fewer resources. This program also promotes future compliance through settlements reflecting primarily remedial measures for respondents, such as training, audits and the hiring of compliance staff.

The ADR program processed 57 cases in FY 2008. Of these cases, ADR was able to forward a recommendation to the Commission for vote in 36, or 64, within the 155-day benchmark. The

---

<sup>6</sup> All fines or civil penalties received are deposited with the U.S. Treasury and are not available for the Commission’s use.

number of cases processed was much lower than usual in FY 2008, which was attributable to the lack of a quorum for six months.

**Administrative Fine Program.** In response to a legislative mandate, the Commission implemented its Administrative Fine program in 2000 to more efficiently and effectively address failures by candidates and political committees to timely file disclosure reports.

The lack of a Commission quorum for the first six months of calendar year 2008 had an impact on the number of cases opened and closed, as well as the number of appeals (“challenges”) received. Through the first three quarters of FY 2008, only five cases were opened, seven challenges were received, and 16 cases were closed. However, by the close of the fiscal year, an additional 112 cases were opened and 12 were closed. Seventy nine percent of the RTB recommendations were processed within 60 days of the reports’ due dates, while only 14 percent of challenges were processed within 60 days of the challenges’ receipt dates.

Extensive legal analysis required for earlier challenges meant these cases were processed outside the 60-day target. The more recently received challenges were processed within the target, an indication that, had a full Commission been in place for the entire fiscal year, the challenge review performance measure would have been achieved.

### *Audits*

The Commission conducts “for cause” audits of candidates and political committees when the Commission’s review of a committee’s filed disclosure reports reveals that the committee has failed to substantially comply with the requirements of the Act. The Audit staff is also responsible for conducting “mandatory” audits of all Presidential candidates who receive public funds pursuant to either the Presidential Election Campaign Fund Act (26 U.S.C. 9001 - 13) or the Presidential Primary Matching Payment Account Act (26 U.S.C. 9031 - 42).

Generally, each audit concludes with the public issuance of an audit report following the Commission’s approval. However, due to the lack of a quorum during the first six months of the calendar year, some audit reports were not approved. Additionally, during that time no new audits were conducted beyond those previously approved before the Commission lost its quorum. For the purpose of measuring performance, once an audit report was forwarded to the Commission for approval, the audit was considered to have been “concluded.”

In FY 2008, the Audit Division issued to the public, or forwarded to the Commission for approval, 31 audit reports resulting from “for cause” audits. Findings of violations of the Act were reported in 23 out of the 31 audits. The average time to conclude 95 percent of these audits was 10 months. The remaining eight audits resulted in no findings of violation, and were concluded in an average of 2.94 months.

“Mandatory” Presidential committee audits demand more time and resources than “for cause” audits because of their complexity. The number of audits is dependent on the number of Presidential candidates who participate in the public funding program. In FY 2008, the Commission approved the eligibility of seven candidates to receive Presidential Primary Matching funds. This is in addition to one candidate that was approved as eligible in FY 2007

for a total of eight candidates for the 2008 election cycle. One candidate subsequently withdrew from the program. Audits of the remaining seven candidates began in FY 2008, as Commission approval was not necessary to conduct “mandatory” audits of the Presidential candidates who received public funds. The Commission is on track to accomplish its goal of completing these Presidential audits within 24 months after the 2008 Presidential election. Since the 2008 general election, the FEC has begun audits of the publicly funded national convention committees, their host committees and one recipient of general election public funding.

**Objective C: Development of the Law**

**Interpreting and Administering the Act**

The FEC furthers the development of the law by:

- Conducting rulemaking proceedings to promulgate Commission regulations consistent with revisions to the Act and judicial decisions;
- Issuing advisory opinions to provide specific guidance to the regulated community;
- Defending challenges to the Act, Commission regulations or actions; and
- Certifying all Presidential public funding payments in a timely and efficient manner.

The FEC gauges its effectiveness in these areas through the following performance measures:

<b>Performance Measure</b>	<b>FY 08 Goal</b>	<b>FY 08 Actual</b>
Complete rulemakings within specific time frames that reflect the importance of the topics addressed, proximity to upcoming elections, and externally established deadlines.	100%	50%
Issue all advisory opinions within 60- and 20-day statutory deadlines.	100%	97%
Issue expedited advisory opinions for time-sensitive, highly significant requests within 30 days of receiving a complete request, or a shorter time when warranted.	100%	60%
Ensure that court filings meet all deadlines and rules imposed by the courts.	100%	100%
Process public funding payments in the correct amounts and within established time frames.	100%	100%

## Interpreting the Act

The FEC provides formal interpretations of the Act through rulemakings in which the Commission promulgates regulations and through the issuance of advisory opinions (AOs). The Commission is also responsible for defending legal challenges to the Act and to Commission regulations or actions.

### *Rulemakings*

The Commission updates or adopts new regulations in response to Congressional action, judicial decisions, petitions for rulemaking or other changes in campaign finance laws.

When the FEC undertakes rulemakings to either write new Commission regulations or revise existing regulations, the Office of General Counsel drafts Notices of Proposed Rulemaking (NPRMs) which, once adopted by the Commission, are published in the Federal Register.<sup>7</sup> NPRMs provide an opportunity for members of the public and the regulated community to review the Commission's proposed regulations and submit written comments, as well as to testify at public hearings, which are conducted at the FEC when appropriate. The Commission considers all filed comments and testimony and deliberates publicly regarding the adoption of the final regulations. The text of final regulations and the corresponding Explanations and Justifications are published in the Federal Register. The regulations are then codified in Title 11 of the Code of Federal Regulations (CFR).

The Commission completed one rulemaking project during FY 2008. This rulemaking implemented the Supreme Court's decision in *FEC v. Wisconsin Right to Life (WRTL)*, 127 S. Ct. 2652 (2007), regarding electioneering communications. The WRTL rulemaking affected five existing regulations, and was completed in 121 days. The Commission also undertook a rulemaking pursuant to new statutory provisions in the Honest Leadership and Open Government Act (HLOGA), Pub. L. 110-81, 121 Stat. 735 (2007), which changed the Commission's existing candidate travel rules and created new reporting requirements for candidates who credit lobbying entities that bundle contributions. Because of the lack of a quorum, the Commission did not meet the statutory deadline for implementing the bundling rules. The Commission completed the bundling rules on February 17, 2009.

In early FY 2009 the Commission completed a rulemaking to repeal the regulations that had previously implemented BCRA's Millionaires' Amendment, which increased certain contribution limits and coordinated party expenditure limits for Senate and House of Representatives candidates facing opponents who spent significant amounts of personal funds. When a self-financed opponent spent personal funds above a certain threshold amount, the Millionaires' Amendment permitted the opposition candidate to accept individual contributions under increased contribution limits. See 2 U.S.C. 441a (i) and 441a-1(a). This was found unconstitutional by the Supreme Court in *Davis v. FEC*, 128 S. Ct. 2759 (2008). All phases of this rulemaking were completed in the first quarter of FY 2009.

Finally, the Commission continues to work on a rulemaking to implement HLOGA's travel rules.

---

<sup>7</sup> NPRMs are also available on the FEC's website at [http://www.fec.gov/law/law\\_rulemakings.shtml](http://www.fec.gov/law/law_rulemakings.shtml).

## ***Advisory Opinions***

Advisory Opinions (AOs) are official Commission responses to inquiries regarding the application of Federal campaign finance law to specific prospective transactions or activities the requestor intends to undertake.

When the Commission receives a request for an AO, the Act generally provides the Commission with 60 days to provide a response. However, for AO requests from candidates in the two months leading up to an election, the time for the Commission to respond to the request is reduced to 20 days. Although the Act allows the agency 60 days to respond to most requests, the Commission instituted an expedited process last year for handling certain time-sensitive requests in even shorter timeframes, and the Commission issued some of its opinions in the last year within as little as two weeks.

The volume of AO requests that the Commission receives each year is subject to cycles and is typically somewhat higher during election years. During FY 2008, the Commission issued 97 percent of AOs within the 60-day statutory deadline.<sup>8</sup> The Commission did not receive any 20-day requests. Furthermore, the Commission issued five expedited advisory opinions during FY 2008, three of which were issued within 30 days of receiving a complete request. The average number of days from receipt of a complete AO request to issuance of the AO was 31 days.

## ***Litigation***

The Commission has primary responsibility for defending the Act and Commission regulations against court challenges. The Commission's court filings in FY 2008 met all deadlines and rules imposed by the courts 100 percent of the time.

In a matter currently pending before the Supreme Court, *Citizens United v. FEC*, the Commission is defending its regulation implementing the Supreme Court's 2007 decision in *FEC v. Wisconsin Right to Life* as well as a related challenge to disclosure provisions as applied to certain electioneering communications.<sup>9</sup> The Commission prevailed before a three-judge district court in *Citizens United*, and the plaintiff has appealed to the Supreme Court, which is expected to rule on the case by June 2009.

In other ongoing litigation, the Commission is defending a lawsuit brought by SpeechNow.org, which alleges that the Act's limits on contributions to political committees is unconstitutional as applied to groups that receive contributions only from individuals and who make only independent expenditures with their funds. In the late fall of 2008, two new lawsuits were filed by the Republican National Committee and other plaintiffs challenging provisions enacted in BCRA. One of these cases is an "as-applied" challenge to BCRA's "soft money" restrictions, and the other is an "as-applied" challenge to the limits on coordinated expenditures that political parties can make on behalf of their own candidates. The Commission is also defending against claims that some of its regulations are unconstitutional and that it has unlawfully delayed its consideration of certain administrative complaints.

---

<sup>8</sup> The Commission received an extension beyond the 60-day deadline from one AO requestor.

<sup>9</sup> In *FEC v. Wisconsin Right to Life*, the Commission defended against an "as applied" challenge to the electioneering communication provision of BCRA.

## **Administering the Public Funding Program**

In addition to administering the FECA, the Commission is responsible for administering the public funding programs for Presidential elections, the Presidential Election Campaign Fund (26 U.S.C. 9001 - 13) and the Presidential Primary Matching Payment Account (26 U.S.C. 9031 - 42). Public funding of Presidential elections has been an important part of the Nation's Presidential election system since 1976. The program is funded by the \$3 Federal income tax check-off and is administered by the FEC. Through the public funding programs, the Federal government provides (1) matching funds to candidates seeking their party's Presidential nomination, (2) financing for Presidential nominating conventions, and (3) funds to Presidential nominees for the general election campaigns.

Under the Presidential public funding programs, the Commission certifies a candidate's eligibility to participate in the programs, establishes eligibility for payments, and conducts a thorough examination and audit of every candidate and convention committee that receives payments under the program.

To be eligible for public funds, a Presidential candidate or a party convention committee must first submit an application consisting of a letter of agreement and a written certification in which the candidate or committee agrees to:

- Spend public funds only for campaign-related expenses or, in the case of a party convention, for convention-related expenses;
- Keep records and, if requested, supply evidence of qualified expenses;
- Cooperate with an audit of campaign or convention expenses;
- Repay public funds, if necessary;
- Pay any civil penalties assessed by the FEC; and
- Document that primary candidates have met the "threshold requirement" for eligibility by raising in excess of \$5,000 in each of 20 states.

During FY 2008, the Commission processed seven threshold submissions and 30 submissions for additional matching funds. These submissions were processed in the correct amounts and within established time frames 100 percent of the time. The Commission certified a total of \$27.2 million in Federal primary matching funds in the 2008 campaign.

The Commission also approved payment of \$84.1 million in Federal funds for the 2008 general election campaign of Senator John McCain. Presidential candidates accepting the general election Federal payment were subject to a spending limit of \$84.1 million, the amount of the payment, plus a combined personal spending limit of \$50,000 from their personal funds. Finally, \$33.6 million was certified for convention committees.

## **Office of Inspector General's Fiscal Year 2010 Budget Request**

The Inspector General Reform Act (Pub. L. 110-409) was signed by the President on October 14, 2008. Section 6(f)(1) of the Inspector General Act of 1978, 5 U.S.C. app. 3, was amended to require certain specifications concerning Office of Inspector General (OIG) budget submissions each fiscal year.

Each Inspector General (IG) is required to transmit a budget request to the head of the establishment or designated Federal entity to which the IG reports specifying:

- the aggregate amount of funds requested for the operations of the OIG,
- the portion of this amount requested for OIG training, including a certification from the IG that the amount requested satisfies all OIG training requirements for that fiscal year, and
- the portion of this amount necessary to support the Council of the Inspectors General on Integrity and Efficiency (CIGIE).

The head of each establishment or designated Federal entity, in transmitting a proposed budget to the President for approval, shall include:

- an aggregate request for the OIG,
- the portion of this aggregate request for OIG training,
- the portion of this aggregate request for support of the CIGIE, and
- any comments of the affected IG with respect to the proposal.

The President shall include in each budget of the U.S. Government submitted to Congress:

- a separate statement of the budget estimate submitted by each IG,
- the amount requested by the President for each OIG,
- the amount requested by the President for training of OIGs,
- the amount requested by the President for support of the CIGIE, and
- any comments of the affected IG with respect to the proposal if the IG concludes that the budget submitted by the President would substantially inhibit the IG from performing the duties of the OIG.

Following the requirements as specified above, the OIG of the Federal Election Commission submits the following information relating to the OIG's requested budget for fiscal year 2010:

- the aggregate budget request for the operations of the OIG is \$1,116,762, and
- the portion of this amount needed for OIG training is \$19,800.

I certify as the IG of the Federal Election Commission that the amount I have requested for training satisfies all OIG training needs for fiscal year 2010.