



Federal Election Commission
Office *of the* Inspector General

INVESTIGATIVE SUMMARY I21INV00037

Allegations of Bias Against Federal Election Commission Personnel Reviewing 58th Presidential Inaugural Committee Reports

The Federal Election Commission (FEC) Office of Inspector General (OIG) initiated an investigation based on allegations reported in the media in October 2020 concerning the FEC's Reports Analysis Division (RAD). The media report alleged that RAD may have failed to exercise adequate oversight of the 58th Presidential Inaugural Committee (the Inaugural Committee) due to an alleged personal relationship between a RAD senior manager and a former FEC Commissioner who was associated with the 2016 Trump campaign and related entities.

The same report further questioned expenditures by the Inaugural Committee, including alleged fraudulent and excessive spending at Trump properties. In addition, it questioned the Commission's decision to dismiss a May 2, 2017 complaint that alleged the Inaugural Committee violated federal law and agency regulations by filing a disclosure report that did not include required information and that contained erroneous donor addresses.

The OIG investigation sought answers to the following questions:

- **Did personal or political biases on the part of senior RAD personnel undermine the impartiality of its oversight of the 58th Inaugural Committee's FEC filings or the Commission's dismissal of the 2017 complaint against the Inaugural Committee?**
- **What criteria did RAD use to determine that there were no apparent serious violations on the Inaugural Committee's report in light of allegations to the contrary filed in the 2017 complaint and raised in media reports?**

In order to answer the foregoing questions, the OIG reviewed relevant statutes, regulations, and FEC policies; obtained and reviewed relevant agency records; and interviewed FEC personnel that included attorneys from the Office of General Counsel and RAD staff. The OIG issued a Report of Investigation to the Commission on July 29, 2021 that detailed the following findings.

First, the relevant legal standards provide for limited FEC oversight of presidential inaugural committees. Specifically, 36 U.S.C. § 510 provides for virtually no oversight of inaugural committee expenditures and places essentially no restrictions on expenditures. Accordingly, the OIG found there were no opportunities for the RAD senior manager or other RAD staff to improperly influence agency reviews or outcomes concerning Inaugural Committee expenditures.

The OIG considered developing recommendations to address the risks posed by the lack of FEC oversight of presidential inaugural committee expenditures given the allegations of fraud and conflicts of interest reported in multiple media outlets. However, the lack of statutory authority for FEC review of inaugural committee expenditures prevents the OIG from recommending additional oversight absent Congressional action to amend 36 U.S.C. § 510 and related standards.

Second, the investigation found that the RAD senior manager and other RAD personnel acted consistent with relevant law and policy concerning review of the Inaugural Committee's reports. The evidence obtained by the OIG established that RAD personnel adhered to the FEC practice that delegates review of filings to staff-level career analysts. Senior RAD personnel were not directly involved in the review or analysis of the Inaugural Committee's reports. As such, there were no opportunities for senior RAD personnel to act improperly without personally intervening in the review and analysis of the relevant reports, which by all accounts did not occur here.

Although this investigation found no instances in which RAD officials acted improperly, it is important to address the ethical principle that federal employees should avoid even the appearance of impropriety. Ethical principles promulgated by the Office of Government Ethics encourage (and in some cases require) federal employees to seek guidance and potentially recuse themselves to avoid unethical situations, in fact or appearance. Although the facts of this case did not trigger any such requirements, the FEC's unique mission raises heightened concerns when allegations of personal or political bias are raised against FEC senior personnel that could undermine the public's confidence in the agency. Accordingly, the OIG developed a recommendation that the Commission evaluate the current agency policies on ethical behavior and update them, as may be appropriate.

Third, this investigation found that FEC policy regarding the oversight of presidential inaugural committees provides insufficient guidance concerning the identification of potential violations. The standard applicable to inaugural committees is inconsistent with standards that govern political committees and confers broad, subjective discretion to the RAD senior manager to determine what potential violations of law warrant further inquiry. That ill-defined and subjective standard creates a reasonable likelihood of inconsistent results and arbitrary or capricious application (in fact or appearance). Accordingly, the OIG recommends that the Commission update the relevant standards to clarify the criteria used to identify potential violations and provide measurable standards concerning the review of inaugural committee reports.

Fourth, this investigation found that RAD's existing process for review of inaugural committee reports is antiquated and lacks adequate internal controls. Unlike reviews of political committee reports (which are submitted and reviewed electronically), inaugural committee reports are completed on paper and manually reviewed by a RAD analyst and are subject to less scrutiny than political committee reports. Those manual submission and review processes are inefficient and creates substantial risk of human error, given the voluminous data involved. As such, the OIG recommends that the Commission update the inaugural committee review process.

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Lastly, the OIG found that the FEC's current practice concerning donors to all committees (inauguration and political) with foreign addresses poses significant national security risks, particularly in light of recent high-profile reports of foreign influence in U.S. elections. Federal law prohibits inaugural committees (as well as other political committees) from accepting donations from foreign nationals. RAD identifies potential foreign national donations based on the reported addresses of donors. However, RAD personnel testified that the division generally defers to a committee's self-certification that it verified the U.S. citizenship of donors with foreign addresses.

This investigation found the current practice of relying on a committee's conclusory verification is not memorialized in any RAD policy. In addition, committees may not be familiar with regulations concerning citizenship verification and the relevant FEC forms provide neither instructions nor direct reference to the regulations concerning foreign donations. Accordingly, the OIG recommends that RAD memorialize a policy concerning the identification of potential foreign donations and that the Commission consider updating relevant forms and instructions to ensure filers are aware of verification requirements imposed by federal regulation.

The OIG further recommends that RAD's policy include specific thresholds that will trigger the issuance of requests for additional information (RFAs) for donations with foreign addresses, notwithstanding purported verification by the relevant committees (political and inaugural). We recommend that RFAs should require the relevant committees to produce the bases for their citizenship verifications (e.g., copies of current and valid U.S. passport papers for U.S. citizens, as provided in 11 C.F.R. § 110.20) when donations associated with foreign addresses exceed a specific threshold. We also recommend that RAD's policy include appropriate referrals when U.S. citizenship cannot be verified.