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FEDERAL ELECTION COMMISSION  
1050 FIRST STREET, N.E.  
WASHINGTON, D.C. 20463

AGENDA DOCUMENT NO. 24-55-A  
AGENDA ITEM  
For meeting of December 12, 2024

**SUBMITTED LATE**

To: The Commission  
The Office of the Commission Secretary

From: Allen J. Dickerson *AD*  
Commissioner

Dara Lindenbaum *DL*  
Commissioner

Date: December 9, 2024

Subj: Statement of Policy Regarding the Notification of Respondents in Matters  
Under Review Remanded From a Challenge Pursuant to 52 U.S.C. §  
30109(a)(8)

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We attach a Policy Statement concerning the treatment of respondents in cases remanded to the Commission pursuant to 52 U.S.C. § 30109(a)(8).

We ask that this matter be placed on the agenda for the Commission's Open Meeting of December 12, 2024.

**FEDERAL ELECTION COMMISSION**

**11 CFR Part 111**

**[Notice 2024-XX]**

**Statement of Policy Regarding the Notification of Respondents in Matters Under Review Remanded From a Challenge Pursuant to 52 U.S.C. § 30109(a)(8)**

**AGENCY:** Federal Election Commission.

**ACTION:** Statement of Policy.

**SUMMARY:** The Federal Election Commission (“Commission” or “FEC”) is issuing a Policy Statement to explain that, if the Commission receives a remand in litigation instituted pursuant to 52 U.S.C. § 30109(a)(8), it will notify the respondents in the Matter Under Review (“MUR”) of the relevant court decision(s) and provide an opportunity to file supplemental responses.

**DATES:** The effective date of this Statement of Policy is [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*].

**FOR FURTHER INFORMATION CONTACT:** [Relevant Attorney], Assistant General Counsel, Enforcement Division, 1050 First Street, N.E., Washington, D.C. 20463, 202-694-[5555].

**SUPPLEMENTARY INFORMATION:** The Federal Election Campaign Act of 1971, as amended, (“Act”) 52 U.S.C. §§ 30101-30145, provides for enforcement based upon complaints filed by the public. Such complaints are filed with the FEC, which notifies each individual or organization accused of wrongdoing (“Respondents”) and provides an opportunity to respond to the allegations of the complaint.

“Any party aggrieved by an order of the Commission dismissing a complaint filed by such party...or by a failure of the Commission to act on such complaint during the 120-day period beginning on the date the complaint is filed, may file a petition with the United States District Court for the District of Columbia.” 52 U.S.C. § 30109(a)(8)(A). “[I]n any proceeding” brought under 52 U.S.C. § 30109(a)(8) “the court may declare that the dismissal of the complaint or the failure to act is contrary to law and may direct the Commission to conform with such declaration within 30 days, failing which the complainant may bring, in the name of such complainant, a civil action to remedy the violation involved in the original complaint.” 52 U.S.C. § 30108(a)(8)(C).

Because lawsuits filed under 52 U.S.C. § 30108(a)(8) are brought by Complainants against the Commission, Respondents may not be aware of actions taken in these cases. Respondents’ interests are implicated, however, where a MUR is remanded to the Commission for further action. In particular, because the Commission will generally be ordered to conform to a particular judicial opinion, and because the facts and circumstances of a MUR may have changed with the passage of time, any response previously provided by a Respondent may be stale. *See* 52 U.S.C. § 30109(a)(1) (“Before the Commission conducts any vote on the complaint, other than a vote to dismiss, any person so notified shall have the opportunity to demonstrate, in writing, to the Commission within 15 days after notification that no action should be taken against such person on the basis of the complaint”).

Accordingly, the Commission is issuing this Policy Statement to announce that whenever a remand is ordered by final judgment or appellate decision in a case brought pursuant to 52 U.S.C. § 30109(a)(8)(C), the FEC will provide notice of that decision by letter within 48 hours to both the email and physical address on file. This letter will be drafted by the Office of General Counsel's Litigation Division, in consultation with the Enforcement Division, and will enclose the relevant opinion and order. Further, the letter will note any deadline for Commission action and advise that the Commission will consider any supplemental response or material the Respondent may wish to provide for the purpose of the remand.

This policy describes how the Commission will provide notice to Respondents of opinions and orders that result in a remand in cases brought pursuant to 52 U.S.C. § 30109(a)(8). The policy does not confer any rights on any person and does not in any way limit the right of the Commission to evaluate every MUR based upon its particular facts and circumstances.

This notice represents a general statement of policy announcing the general course of action that the Commission intends to follow. This policy statement does not constitute an agency regulation requiring notice of proposed rulemaking, opportunities for public participation, prior publication, and delay effective under 5 U.S.C. § 553 of the Administrative Procedure Act ("APA"). As such, it does not bind the Commission or any member of the general public. The provisions of the Regulatory Flexibility Act, 5 U.S.C. § 605(b), which apply when notice and comment are required by the APA or other relevant statute, are not applicable.

Dated: \_\_\_\_\_

On behalf of the Commission,

**Sean J. Cooksey,**

*Chairman*

*Federal Election Commission*