

FEDERAL ELECTION COMMISSION

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[NOTICE 2010-XX]

2010 JUL -1 P 2: 57

**Policy Statement Establishing a Pilot Program for Requesting Consideration of
Legal Questions by the Commission**

AGENDA ITEM

For Meeting of 07-01-10

SUBMITTED LATE

AGENCY: Federal Election Commission

ACTION: Agency Policy Statement

SUMMARY: The Federal Election Commission (“Commission”) is adopting a new pilot program for a procedure to provide a means for persons and entities to have a legal question considered by the Commission earlier in both the report review process and the audit process.

DATES: Effective [upon publication in the Federal Register].

**FOR FURTHER
INFORMATION**

CONTACT: _____, Assistant General Counsel, or _____,
Attorney, 999 E Street, NW, Washington, DC 20463, (202) 694-
1650 or (800) 424-9530.

**SUPPLEMENTARY
INFORMATION:**

The Commission is adopting a new procedure to provide a means for persons and entities to have a legal question considered by the Commission earlier in both the report review process and the audit process. Specifically, when the Office of Compliance (“OC”) (which includes the Reports Analysis Division and the Audit Division) requests that a person or entity take corrective action during the report review or audit process, if the person or entity disagrees with the request based upon a material dispute on a question of law, the person or entity may seek Commission consideration of the issue pursuant to this procedure.

I. Procedures

Within 15 days of a determination by the Reports Analysis Division or Audit Division that a person or entity remains obligated to take corrective action to resolve an issue that has arisen during the report review or audit

process, the person or entity may seek Commission consideration if a material dispute on a question of law exists with respect to the recommended corrective action.¹

Any request for consideration by a committee during the report review process or the audit process shall be limited to questions of law on material issues, when: (1) the legal issue is novel, complex, or pertains to an unsettled question of law, (2) there has been intervening legislation, rulemaking, or litigation since the Commission last considered the issue, or (3) the request is contrary to or otherwise inconsistent with prior Commission matters dealing with the same issue. The request must specify the question of law at issue and why it is subject to Commission consideration. It should discuss, when appropriate, prior Commission matters raising the same issue, relevant court decisions, and any other analysis of the issue that may assist the Commission in its decision-making. The Commission will not consider factual disputes under this procedure, and any requests for consideration other than on questions of law on material issues will not be granted.

All requests should be directed to the Commission Secretary, Federal Election Commission, 999 E Street, NW, Washington, DC 20463. Upon receipt of such a request, the Commission Secretary shall forward a copy to each Commissioner, the General Counsel, and the Staff Director. Within five business days of notification to the Commissioners, if two or more Commissioners agree that the Commission should consider the issue, the Office of General Counsel (“OGC”) will prepare a recommendation and, within 15 business days thereafter, circulate the recommendation in accordance with all applicable Commission directives. After the recommendation is circulated for a Commission vote, in the event of an objection, the matter shall be automatically placed on the next meeting agenda consistent with the Sunshine Act, 5 U.S.C. § 552b(g), and applicable Commission regulations, 11 C.F.R. part 2. However, if within 60 business days of the filing of a request for consideration, the Commission has not resolved the issue or provided guidance on how to proceed with the matter by the affirmative vote of four or more Commissioners, the OC may proceed with the matter.

This procedure is not intended to circumvent or supplant the Advisory Opinion process provided under 2 U.S.C. § 437f and 11 C.F.R. part 112. Accordingly, any legal issues that qualify for consideration under the Advisory Opinion process are not appropriate for consideration under this new procedure. Additionally, this policy statement does not supersede the procedures regarding eligibility and entitlement to public funds set forth in

¹ Many disputes involving corrective action requests hinge on questions of fact rather than questions of law, and thus are not appropriate for this procedure.

Commission Directive 24 and 11 C.F.R. 9005.1, 9033.4, 9033.6 or 9033.10.

II. Pilot Program

This agency procedure is being established as a pilot program. The pilot program will last one year from the time that this policy is approved. After one year, a vote will be scheduled on whether the program should continue. Four affirmative votes will be required to extend or make permanent the program. The program will be terminated after that vote if there are not four affirmative votes to make the program permanent or to extend it for some time period. The Commission may terminate or modify this pilot program through additional policy statements prior to the twelfth month of the pilot program by an affirmative vote of four of its members.

Matthew S. Petersen
Chairman
Federal Election Commission

DATED _____
BILLING CODE: 6715-01-P