



FEDERAL ELECTION COMMISSION
Washington, DC 20463

Office of Commissioner Steven T. Walther

Statement of Steven T. Walther, Federal Election Commission

Committee on House Administration “Oversight of the Federal Election Commission” September 25, 2019

Good morning, Chairman Lofgren, Ranking Member Davis, and members of the Committee on House Administration. Thank you for the invitation to appear here and the opportunity to say a few words about the Federal Election Commission. As you know, the Commission has provided a wealth of information, policies and procedures to this Committee in advance of this hearing. I have attached to this statement my comments submitted to the Committee on May 1 of this year, which was my response to Question 46 of the April 1, 2019 Letter to the Commission from the Committee. These comments, and documents attached therein, are also publicly available on the Commission’s website, and I incorporate them herein by reference.

Before coming to the Commission in 2006, I practiced law in Nevada for over 30 years, starting with the two-person law firm of Walther & Key in Reno, Nevada, which evolved into the successful law firm of Walther, Key, Maupin, Oats, Cox & LeGoy, consisting of 28 lawyers. It was a difficult decision to uproot my family and leave my colleagues and friends in Nevada to accept a position as a Commissioner in Washington, DC. However, we looked at the opportunity as an adventure and a chance to serve my country. Although I never expected to be here for thirteen years, it has been an immensely rewarding job and I have hopefully made a positive contribution to the Commission’s mission and goals.

As stated in my biography, I was first sworn in as a Commissioner on January 10, 2006 as a recess appointee. When my recess term expired on December 31, 2007, before the Senate acted, the Commission was left without a quorum, as we find ourselves today. Six months later, on June 24, 2008, I was confirmed by the Senate and resumed my term. The Commission was then reconstituted and it resumed normal business operations in July 2008.

The Commission has achieved many accomplishments since I first joined, and in my opinion, it is one of the most important agencies in our government. Our agency was born out of the hard lessons of the Watergate scandal, with the common understanding that a key component of maintaining a vibrant and healthy democracy involves informing the citizenry as to the financial aspects of the election process. The Commission helps instill public confidence

by ensuring complete, accurate, and timely disclosure of receipts and disbursements of money in federal campaigns. It has performed this function in a remarkably consistent and effective fashion for over four decades. American citizens should take great pride in the Commission's contribution to the democratic process.

In these turbulent times, I hope that our elected representatives recognize the value of the work of the Commission. As noted in the joint statement provided to you in connection with today's hearing, the total receipts, disbursements and transactions reported to the Commission have increased dramatically over the past several election cycles. New fundraising techniques have resulted in voluminous reports that are processed by our able staff on a daily basis, with nearly instantaneous availability to the public. These and other statistics in our joint statement demonstrate the kind of transparency that was envisioned by Congress when it passed the Federal Election Campaign Act in the aftermath of Watergate.

Concerning the various challenges before Congress, there seems to be particular interest regarding whether or not there should be a restructuring of the Commission, especially with regard to its composition based on the political status of the Commissioners. As you know, no more than three of the six Commissioners may be from the same political party, and historically that has meant three Republican Commissioners and three Democratic Commissioners. Most formal actions require the approval of four Commissioners, which must include at least one vote from a Commissioner not of the same party as the other three, so split votes may occur from time to time.

Although I recognize the concerns of many regarding the political composition of the Commission, I still believe it is the best structure to have, among the alternatives being proposed; however, one of the problems endemic to the current system is the possibility for deadlocks to negatively impact the Commission's basic functions and the public's perception of our objectivity. I believe it would be more harmful if we had a situation where one bloc was able to assert dominance over the other as it relates to the interpretation, adoption and enforcement of campaign finance laws, regulations and policies. Even if a "tie-breaking" commissioner were to be added, as proposed in some of the current bills before Congress, there could be increased concern over, and accusations regarding, partisan motives, whether or not justified, based upon one's view of the political leanings of the "tie-breaking" Commissioner. As I have previously stated, Commission deadlocks can actually be instructive, in the sense that persons or counsel that come before the Commission, and others who are interested, can learn from the arguments presented and then determine how to conduct themselves in the absence of formal guidance, and advise their clients accordingly.

Regardless of my concerns about altering the structure of the Commission, there are other aspects of some bills before Congress that I believe are worthy of consideration, such as legislation aimed at protecting our election system against foreign actors and malicious cyber attacks, legislation restricting domestic corporations with significant foreign control, ownership or direction from spending money in our elections, and legislation requiring companies spending money on campaigns to disclose their true owners. While we do have certain tools at our disposal, such as issuing advisory opinions concerning the provision of low-cost cybersecurity services to candidates and political committees (as discussed in our joint statement), the

challenges we face in this age of electronic communication and rapid increases in technological advancement could benefit from more involvement by Congress.

One particularly intractable issue that has left the Commission with a clear lack of jurisdiction is the massive amount of money that has been injected into the electoral process resulting from the *Citizens United* decision. There is no question that the impact of *Citizens United* has caused an indelible altering of the source and amount of money and things of value that affect our political system. The Commission is confronted with regulatory issues involving unlimited amounts of corporate and union funds spent independently, including how these sources should be disclosed and the extent to which they should be disclosed. I believe that Congress should consider legislation to address these issues.

As I stated in my attached submission, one of my main interests as a Commissioner has been to improve the processing of enforcement matters that come before the Commission, while promoting fairness, efficiency and transparency. To address these concerns and take action on a considerable backlog of enforcement matters, I have made several motions over the past few years to tackle pending matters in a timely and orderly fashion. These memoranda and accompanying motions included detailed charts and deadlines for appropriate action to be taken by the Commission.

Although my “priority” motions were not initially adopted by the Commission, the charts and method of disclosure used in those motions were adopted in the amendments to an existing Commission directive. The amended directive, which can be found in the attached document, was unanimously approved by the Commission in December 2017 and greatly improved transparency and accountability regarding the Commission’s performance on enforcement matters. I still believe the Commission could do more by approving procedures to speed up the enforcement process, as proposed in the attached priority motions. For example, as indicated in the tables attached to these motions, enforcement matters may be delayed for several months or even years due to the numerous holdover requests by Commissioners. Accordingly, there should be strict limits regarding the terms of holdover requests and other procedures to establish deadlines for the timely processing of enforcement matters before the Commission.

Another longstanding issue that I would hope Congress will finally address is the need to modify the Commission’s compensation structure for key personnel in order to bring it in line with that of other comparable federal agencies. This would mean adopting the Senior Executive Service pay structure, which the Commission is currently prohibited from doing. Such legislation would permit the Commission more effectively compete with other agencies in recruiting and retaining key management personnel.

Finally, the Commission has been plagued with low morale issues among its staff for several years. A few years ago, the Commission’s Inspector General hired professional consultants to interview staff and provide recommendations to address these issues. In July 2016, the Inspector General released a document entitled “Root Causes of Low Employee Morale Study,” which is available on the Commission’s website. We need to continue to utilize the information we received from this comprehensive report. Over the past couple of years, due in some measure to our move to a brand new building, there has been a modest improvement in

staff morale, as indicated in recent public surveys. However, I believe the Commission should reinvigorate its efforts in order to continue this positive trend.

I would like to acknowledge and thank the Commission's dedicated and talented staff members, who quietly and professionally carry out their duties to further the agency's mission, in sometimes challenging circumstances. There are many employees who have served at the Commission for decades and devoted their careers to our mission; their collective efforts serve to strengthen our democracy.

I am happy to answer any questions you might have. Thank you very much once again for convening this hearing and the opportunity to appear before you.

Attachment



FEDERAL ELECTION COMMISSION
Washington, DC 20463

Office of Commissioner Steven T. Walther

May 1, 2019

Re: Response of Commissioner Steven T. Walther to Question 46 of
April 1, 2019 Letter to Federal Election Commission from Committee
on House Administration, Zoe Lofgren, Chairperson

Dear Chairperson Lofgren and Members of the Committee on House Administration:

Thank you very much for your ongoing interest in the Federal Election Commission and your desire to hear from the Commission regarding its concerns and challenges and to be apprised of our plans for the current election cycle.

Much of the credit in researching and compiling the information for our responses goes to the FEC team assembled by Duane Pugh, the Commission's Director of Congressional, Legislative and Intergovernmental Affairs. The FEC team toiled for many hours over this past month to provide detailed and accurate responses to the Committee's inquiries in a timely manner.

Thank you also for offering an opportunity for each of the Commissioners to provide comments individually in addition to providing collective responses to your questions. While I concur with the Commission's collective responses, there are some minor issues on which I would like to elaborate; I welcome this opportunity to offer my views concerning these issues.

Priority and Timing of Enforcement Matters

A major focus of my efforts as a Commissioner has been to improve the processing of enforcement matters that come before the Commission, while promoting fairness, efficiency and transparency. Unfortunately, all too often significant amounts of monetary activity in violation (or potential violation) of the FECA in enforcement matters before the Commission are lost due to the expiration of the applicable statute of limitations. These situations might have been avoided or ameliorated if the Commission had policies in place to handle cases more efficiently. To address these ongoing concerns, I have made four separate motions (dated July 16, 2015, September 15, 2015, November 10, 2015, and August 16, 2016), culminating in a November 15, 2017 memorandum entitled "Assessment of Commission Action in Enforcement Matters

Awaiting Reason to Believe Consideration.” *See* Document A.¹ These memoranda and accompanying motions included detailed charts and deadlines for appropriate action to be taken by the Commission.

Although the priority motions were not approved by the Commission, the charts and method of disclosure used in those motions were adopted in the amendments to Directive 68 on December 14, 2017.² The amended directive, which was unanimously approved by the Commission, greatly improved transparency and accountability regarding the Commission’s performance on enforcement matters. Each Status of Enforcement report is now placed on the Commission’s website and available to the public in redacted form within 15 days of circulation of the report to the Commission. In fact, the Committee included a chart from a recent Status of Enforcement document in Question 20.

The Commission still has not, however, approved procedures to speed up the enforcement process as proposed in the priority motions. For example, as indicated in the charts in the Status of Enforcement reports, enforcement matters are often delayed for several months or even years due to the numerous holdover requests by Commissioners. I believe there should be strict limits regarding the terms of holdover requests, and I will be asking the Commission to adopt further amendments to Directive 68 to establish deadlines for the timely processing of enforcement matters before the Commission. *See* Document B.

The Commission’s Audit Process

To improve the efficiency of processing audits and avoid losing potential violations to the statute of limitations, I believe that Directive 70 should be amended to require that no audit may be commenced unless, at the outset, Audit staff submits to the Commission a comprehensive plan of how it intends to complete the audit in a sufficient amount of time. Such a plan would include (a) an analysis of the need for the audit, (b) a projection of the time and effort to complete the audit, and (c) a conclusion as to whether the audit can be completed – including transfer to OGC for further enforcement proceedings as appropriate – prior to 18 months before the statute of limitations starts to run.

Legislative Cures

The massive amount of money that has been injected into the electoral process resulting from *Citizens United* and its judicial progeny has left the Commission with a lack of clear jurisdiction to regulate in this new area. The Commission is currently confronted with regulatory issues involving unlimited amounts of corporate and union funds spent independently (including money from foreign sources), including how these sources should be disclosed and the extent to which they should be disclosed; I believe that Congress should pass legislation to address these issues. Some aspects of current bills before Congress are laudable to the extent they directly

¹ The document is also available on the Commission’s website at https://www.fec.gov/resources/cms-content/documents/mtgdoc_17-53-a.pdf.

² The amended directive is available on the Commission’s website at https://www.fec.gov/resources/cms-content/documents/directive_68.pdf.

target the current problems associated with so-called “Super PACs,” “dark money” and the influx of foreign spending on American elections.

FEC Composition

Other aspects of pending legislation address concerns about Commission indecision, as manifested in frequent deadlocks on enforcement and policy matters. For example, one proposal would modify the structure of the Commission through the FECA so that the Commission would be comprised of an odd number of Commissioners with no single party holding a majority of seats. The idea is that deadlocked votes might be avoided if there were, say, five Commissioners with a majority of three required for approving most decisions. I believe there is greater wisdom in retaining the structure that exists now; *i.e.*, that most formal actions require the approval of four Commissioners, which must include at least one vote from a Commissioner not of the same party as the other three. If this were not the case, there could very well be accusations of partisan motives, whether or not justified, based upon one’s view of the political leanings of the “tie-breaking” Commissioner. In many instances, Commission deadlocks can be instructive in the sense that persons or parties that come before the Commission, and others who are interested, can learn from the arguments presented and then determine how to conduct themselves in the absence of formal guidance.

In closing, even though exercises such as these frequently raise discomfoting views and negative comments, we should not lose sight of the fact that the FEC, with all its flaws, still remains the finest disclosure agency worldwide regarding campaign finance information. No other agency in the United States or any other country provides the scope of disclosure that the FEC ensures on a timely and accurate basis.

Thank you once again for this opportunity to submit this response; I am happy to supplement my answers or to provide further information as needed.

Sincerely,



Steven T. Walther
Commissioner

Attached documents (2)

RECEIVED

By Office of the Commission Secretary at 4:27 pm, Nov 15, 2017



FEDERAL ELECTION COMMISSION
Washington, DC 20463

AGENDA DOCUMENT NO. 17-53-A

AGENDA ITEM

For meeting of November 16, 2017

SUBMITTED LATE

MEMORANDUM

TO: The Commission

FROM: Steven T. Walther ^{STW}
Chairman

RE: Assessment of Commission Action on Enforcement Matters Awaiting
Reason-to-Believe Consideration

DATE: November 15, 2017

Attached is a memorandum regarding Commission action on enforcement matters awaiting reason-to-believe consideration. It is intended to follow up on motions I made most recently at the Open Meeting of August 16, 2016, and previously at the Open Meetings of July 16, September 17, and November 10, 2015.

I have asked to place this document on the agenda for the Open Meeting scheduled for November 16, 2017.

Attachment



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: The Commission

FROM: Steven T. Walther
Chairman

RE: Assessment of Commission Action on Enforcement Matters Awaiting
Reason-to-Believe Consideration

DATE: November 15, 2017

I. Introduction

This memorandum provides an update on the status of enforcement matters awaiting reason-to-believe consideration by the Commission, as well as an assessment of recent efforts by the agency to address the backlog of matters.

II. Background

On July 14, 2015, I filed my first motion (“Priorities Motion I,” see attached) to prioritize the formal enforcement actions that come before the Commission following a recommendation by the Office of General Counsel (“OGC”). At the time the first motion was filed, my concern was aimed at reducing the aging matters by setting a priority and schedule for taking immediate substantive action¹ on initial enforcement recommendations by OGC.

On July 16, 2015, the Commission considered Priorities Motion I, which addressed enforcement matters that had been pending before the Commissioners for one

¹ “Substantive action” means a vote by the Commission that results in a finding of reason to believe, no reason to believe, dismissal or other formal action with respect to enforcement matters pending before the Commission alleging violations of the Federal Election Campaign Act.

year or more (as of June 30, 2015) from the date of receipt by the Commissioners, as well as on matters for which no substantive action had been taken for one year or more since the date of receipt of the complaint or referral. Priorities Motion I was defeated by a 2-4 vote.

Two months later, on September 17, 2015, the Commission considered a motion dated September 15, 2015 (“Priorities Motion II,” available on the Commission’s website²), again seeking adoption by the Commission of a similar policy as described above. Priorities Motion II related to matters that were pending as of August 31, 2015, adding to the list all matters with substantive recommendations submitted to the Commissioners by OGC between July 1 and August 31, 2015. Priorities Motion II deadlocked with a 3-3 vote.

Two months later, on November 10, 2015, the Commission considered a motion dated November 9, 2015 (“Priorities Motion III,” available on the Commission’s website³), again seeking adoption by the Commission of a similar policy as described above. Priorities Motion III related to matters that were pending as of October 31, 2015, adding to the list all matters with substantive recommendations submitted to the Commissioners by OGC between September 1 and October 31, 2015. Priorities Motion III deadlocked with a 3-3 vote.

Nine months later, on August 16, 2016, the Commission considered a motion dated August 12, 2015 (“Priorities Motion IV,” available on the Commission’s website⁴), again seeking adoption by the Commission of a similar policy as described above. Priorities Motion IV related to matters that were pending as of July 31, 2016, adding to the list all matters with substantive pending recommendations submitted to the Commissioners by OGC between November 1, 2015 and July 31, 2016. Priorities Motion IV deadlocked with a 3-3 vote.⁵

² See Second Motion to Set Priorities and Scheduling on Pending Enforcement Matters Awaiting Reason-to-Believe Consideration, *available at* http://www.fec.gov/agenda/2015/documents/mtgdoc_15-48-a.pdf.

³ See Motion to Set Priorities and Scheduling on Pending Enforcement Matters Awaiting Reason-to-Believe Consideration, *available at* http://www.fec.gov/agenda/2015/documents/mtgdoc_15-63-a.pdf.

⁴ See Motion to Set Priorities and Scheduling on Pending Enforcement Matters Awaiting Reason-to-Believe Consideration, *available at* <http://www.fec.gov/agenda/2016/agenda20160816.shtml>.

⁵ The focus in these motions was solely on enforcement matters handled by OGC; they did not contain statistics with respect to other matters that came before the Commission during the relevant periods. These matters would include certain audits, alternate dispute resolution recommendations for which the Commission has little discretion, and administrative fine recommendations for which the Commission has even less discretion.

Priorities Motions I, II, III and IV sought adoption of a policy to act on enforcement matters that go to the heart of the Commission's enforcement process. These matters often involve complex factual and legal judgments that inform the public and those involved in the political process of the Commission's view of the law. These are the matters for which the Commission has exclusive authority to immediately act upon – with no extrinsic issues or events to inhibit the ability of the Commissioners to take immediate action on each of them.

III. Assessment of the Commission's Progress

At the outset, I want to stress that the Commission is entirely responsible for any enforcement delays that are reflected in the information contained in this memorandum and in the attachments. Any negative inferences or admonitions are directed only at the Commissioners. In my view, we have a very conscientious and professional staff members who are doing a fine job under challenging circumstances. I believe the work product from OGC is of the highest caliber, particularly in terms of submitting thorough factual and legal analyses that support OGC's substantive recommendations regarding complaints and referrals.

In addressing the backlog of enforcement matters as evidenced by the information presented herein, the Commissioners needs to focus primarily on budget issues, providing sufficient personnel, and, of course, on how best to administer the enforcement docket and prioritize older matters; I think all of these issues deserve far greater attention by the Commissioners.

As Priorities Motion I shows, there were a number of cases that deserved – at least in my opinion – greater attention due to the passage of time without any substantive Commission action. At the time of the filing of Priorities Motion I in mid-2015, there was a total of 78 pending matters, five of which had been awaiting Commission action for over three years; there were three that had been pending two years or more but less than three years, and 15 that had been pending one year or more but less than two years from the date of receipt by the Commission of a recommendation from OGC. The remaining 55 matters had been pending for less than one year.

In comparison to the chart of pending matters in Priorities Motion I, as of September 30, 2017, there is a total of 91 matters pending before the Commission without a substantive vote, an increase of 17% since mid-2015. However, there is now only one case that has been pending before the Commission for more than three years, representing a substantial reduction of 80%. In addition, five matters have been pending for two years or more but less than three years (67% increase), four matters have been pending one year or more but less than two years (73% reduction), and 81 matters have been pending before the Commission for less than one year (47% increase).

As can be seen from these statistics and the information in the attachments, there has been improvement in certain areas since Priorities Motion I, thanks to the attention given these matters by the Commissioners, who deserve credit for the effort taken to at least bring our inventory more current.

Regardless of whether or not I am Chairman, I will endeavor to bring these figures further within the constraints of reasonableness by reducing the number of matters pending over two years to zero, and by reducing the matters which have been before the Commission for more than 18 months to zero. I also hope that the Commission can eliminate entirely any matter which has been filed and has awaited the preparation and submission of an OGC report for more than 12 months, with the understanding that the Commission has the authority in unusual but nevertheless aggravated cases to move to dismiss the matter even without a pending recommendation from OGC. This is a balancing act whereby the speed of decisionmaking is important to the extent that the respondent is prejudiced by excessive delay.

IV. Current Data for the Period from Receipt of Complaint or Referral to the Date of Submission of OGC's Recommendation

The Commission usually receives 100 to 250 complaints and referrals per year; the number often fluctuates depending on whether or not there is an election year. Not surprisingly, the Commission generally receives the most complaints in years in which there is a presidential election.

During the last five years the number of complaints and referrals received by the Commission is as follows:

2017: 88 (as of September 30)
2016: 181
2015: 121
2014: 140
2013: 133
2012: 235

The attached charts address with particularity the amount of time pending *since the receipt of a recommendation by the Commission*; however, equally important in assessing the efficacy of our enforcement system is the amount of time between the date of receipt of a complaint or referral and the date a matter is submitted to the

Commissioners with a recommendation for action.⁶

Although this information has been redacted from the attached charts in order to prevent identification of the actual cases, the following tables are provided to allow an assessment of relevant sets of periods:

A. Chart Comparing Time Period Between Receipt of Complaint/Referral by Commission and Date of Chart

	June 30, 2015	September 30, 2017	Percent change (rounded)
4 years or more	1	1	0%
3 to 4 years	8	8	-0%
2 to 3 years	17	11	-35%
1 to 2 years	36	40	+11%
Less than one year	16	31	+94%
Total	78	91	

B. Chart Comparing Time Period Between Receipt of Complaint/Referral by Commission and Submission of OGC's Recommendation to the Commission

	June 30, 2015	September 30, 2017	Percent change (rounded)
3 to 4 years	0	3	N/A
2 to 3 years	7	3	-57%
1 to 2 years	16	10	-38%
Less than one year	55	75	+36%
Total	78	91	

⁶ There may be various reasons for delay during this pre-submission period that are outside of the control of the Commission and Office of General Counsel, but this time period, in my view, should rarely extend beyond 9 months (approx. 270 days). By statute, a respondent is entitled to notice of a complaint and opportunity to respond, and the Commission has further afforded that right to respondents with respect to supplements to complaints, and substantive action on a complaint is generally deferred during the response period. Delays can occur, for example, when a complainant submits periodic supplements to the initial complaint after filing the complaint; the respondent(s) is then sent a copy of each supplement and provided with an opportunity to respond.

C. Chart Comparing Time Period Between Submission of OGC's
Recommendation to the Commission and Date of Chart

	June 30, 2015	September 30, 2017	Percent change (rounded)
3 to 4 years	5	1	-80%
2 to 3 years	3	5	+67%
1 to 2 years	15	4	-73%
Less than one year	55	81	+47%
Total	78	91	

Attachments

Chart of Enforcement Matters (current as of September 30, 2017)
Priorities Motion I, dated July 14, 2015

Relevant Dates of Initial Substantive Recommendations
Submitted by OGC to the Commissioners as of September 30, 2017¹
(sorted by days between OGC's recommendations and Commission inaction)

1	2	3	4	5	6	7	8	9	10	11
#			Date Assigned to OGC Attorney	Date of OGC's Recommendations to Comm'n		Days Between Assignment and OGC's Recommendations to Comm'n		Days Between Assignment and Comm'n Inaction as of 9/30/17	Days Between OGC's Recommendations and Comm'n Inaction as of 9/30/17	Holdovers and Other Relevant Information as of 9/30/17
1.	X	X	9/11/15	N/A	N/A	N/A	X	750	N/A	N/A (Matter still pending with OGC)
2.	X	X	6/24/16	N/A	N/A	N/A	X	463	N/A	N/A (Matter still pending with OGC)
3.	X	X	4/20/17	N/A	N/A	N/A	X	163	N/A	N/A (Matter still pending with OGC)
4.	X	X	9/22/16	N/A	N/A	N/A	X	374	N/A	N/A (Matter still pending with OGC)
5.	X	X	7/28/16	N/A	N/A	N/A	X	429	N/A	N/A (Matter still pending with OGC)
6.	X	X	6/16/16	N/A	N/A	N/A	X	471	N/A	N/A (Matter still pending with OGC)
7.	X	X	5/10/16	N/A	N/A	N/A	X	508	N/A	N/A (Matter still pending with OGC)
8.	X	X	6/16/16	N/A	N/A	N/A	X	471	N/A	N/A (Matter still pending with OGC)
9.	X	X	12/23/16	N/A	N/A	N/A	X	280	N/A	N/A (Matter still pending with OGC)
10.	X	X	5/5/16	N/A	N/A	N/A	X	503	N/A	N/A (Matter still pending with OGC)
11.	X	X	10/9/12	3/10/14	X	517	X	1817	1300	*Held over meetings of Feb. 10, 12, Mar. 3, 10, 17, 19, Apr. 21, 22, May 19, 21, June 16, 18, July 14, 16, Aug. 10, 11, 13, Sept. 15, 17, 29, Oct. 1, 27, 29, Nov. 17, 19, Dec. 10, 15, 17, 2015. Aug. 15, 17, Sept. 12, 14, and 19, 2017
12.	X	X	7/02/14	10/29/14	X	119	X	1186	1067	*Held over meetings of Apr. 12, 26, 2016, Jan. 24, 25, 2017.
13.	X	X	7/02/14	10/29/14	X	119	X	1186	1067	*Held over meetings of Apr. 12, 26, 2016, Jan. 24, 25, 2017.
14.	X	X	7/02/14	10/29/14	X	119	X	1186	1067	*Held over meetings of Apr. 12, 26, 2016, Jan. 24, 25, 2017.
15.	X	X	10/07/14	2/05/15	X	121	X	1089	967	*Held over meetings of June 28, 2016, Jan. 24, 25, 2017.
16.	X	X	2/03/15	5/27/15	X	113	X	970	857	*Held over meetings of Dec. 10, 15, 17, 2015, Jan. 24, 25, Aug. 15 and 17, Sept. 12, 14, 19, 20, 2017.
17.	X	X	6/04/15	11/13/15	X	162	X	849	687	*Held over meetings of Nov. 15 and Dec. 6, 2016, Jan. 24, 25, 2017.

¹ This chart was prepared by the office of Chairman Walther. Chairman Walther is responsible for the accuracy of its contents. For purposes of public disclosure, in Column 2, the case number has been redacted; in Column 3, the date of receipt of complaint or referral has been redacted; in Column 6, the number of days between receipt and OGC's recommendations to the Commission has been redacted; and in Column 8, the number of days between receipt and Commission inaction has been redacted.

Items 1-10 are enforcement matters for which there had been no recommendation from OGC as of Sept. 30, 2017; they represent the ten oldest such matters before the Commission based on date of the complaint or referral. Six of the complaints or referrals associated with these matters were filed over two years prior to Sept. 30, 2017, and four of the complaints or referrals were filed between one and two years prior to Sept. 30, 2017. The only unredacted information provided for these particular matters is the date of assignment to an attorney, as shown in column 4, and the numbers of days between assignment to an attorney and Commission inaction, as shown in column 9. Not shown in this chart are 21 other such matters (approx.) with complaints or referrals received between one and two years prior to Sept. 30, 2017, for which there had been no recommendation as of that date, and 82 matters (approx.) received less than one year prior to that date for which there had been no recommendation as of that date.

*Currently subject to an informal hold request by one or more Commissioners.

1	2	3	4	5	6	7	8	9	10	11
#			Date Assigned to OGC Attorney	Date of OGC's Recommendations to Comm'n		Days Between Assignment and OGC's Recommendations to Comm'n		Days Between Assignment and Comm'n Inaction as of 9/30/17	Days Between OGC's Recommendations and Comm'n Inaction as of 9/30/17	Holdovers and Other Relevant Information as of 9/30/17

18.	X	X	12/08/15	4/13/16	X	127	X	662	535	*Held over meetings of Mar. 7 and 9, Aug. 15, 17, Sept. 12, 14, 19, 20, 2017.
19.	X	X	4/08/16	8/04/16	X	118	X	540	422	*Held over meetings of Mar. 7 and 9, Aug. 15, 17, Sept. 12, 14, 19, 20, 2017.
20.	X	X	4/22/16	8/05/16	X	105	X	526	421	*Held over meetings of Mar. 7, 9, Aug. 15, 17, Sept. 12, 14, 19, 20, 2017.
21.	X	X	7/13/16	10/11/16	X	90	X	444	354	*Held over meetings of Mar. 7, 9, Aug. 15, 17, Sept. 12, 14, 19, 20, 2017.
22.	X	X	7/13/16	10/11/16	X	90	X	444	354	*Held over meetings of Mar. 7 and 9, Aug. 15, 17, Sept. 12, 14, 19, 20, 2017.
23.	X	X	6/06/16	12/06/16	X	183	X	481	298	Held over meetings of May 23 and 25, June 6, and 8, 2017.
24.	X	X	9/16/16	12/16/16	X	91	X	379	288	Held over meetings of Apr. 25 and 27, May 23 and 25, June 6, and 8, 21, 22, Aug. 15, 17, Sept. 12, 14, 19, and 20, 2017.
25.	X	X	9/01/16	1/10/17	X	131	X	394	263	Held over meetings of June 21, 22, July 11, and 13 2017.
26.	X	X	9/29/16	1/23/17	X	116	X	366	250	Held over meetings of June 6, 8, 21, 22, Aug. 15, 17, Sept. 12, 14, 19, 20, 2017.
27.	X	X	11/25/16	1/24/17	X	60	X	309	249	Held over meetings of Sept. 12, 14, 19, 20, 2017.
28.	X	X	11/25/16	1/25/17	X	60	X	308	247	Held over meetings of Sept. 12, 14, 19, 20, 2017.
29.	X	X	9/29/16	1/31/17	X	124	X	364	242	Not yet scheduled for an executive session.
30.	X	X	9/30/16	1/31/17	X	123	X	364	242	Not yet scheduled for an executive session.
31.	X	X	9/29/16	2/03/17	X	127	X	365	239	Held over meetings of July 11, 13, Aug. 15, 17, Sept. 12, 14, 19, 20, 2017.
32.	X	X	9/29/16	2/03/17	X	127	X	365	239	Held over meetings of July 11, 13, Aug. 15, 17, Sept. 12, 14, 19, 20, 2017.
33.	X	X	9/29/16	2/03/17	X	127	X	365	239	Held over meetings of July 11, 13, Aug. 15, 17, Sept. 12, 14, 19, 20, 2017.
34.	X	X	10/11/16	2/08/17	X	120	X	354	234	*Held over meetings of Aug. 15 17, Sept. 12, 14, 19, 20, 2017.
35.	X	X	10/11/16	2/08/17	X	120	X	354	234	*Held over meetings of Aug. 15, 17, Sept. 12, 14, 19, 20, 2017.
36.	X	X	12/08/15	2/08/17	X	428	X	662	234	Not yet scheduled for an executive session.
37.	X	X	12/08/15	2/08/17	X	428	X	662	234	Not yet scheduled for an executive session.
38.	X	X	10/14/16	2/10/17	X	119	X	351	232	Held over meetings of Aug. 15 17, Sept. 12, 14, 19, 20, 2017.
39.	X	X	10/14/16	2/10/17	X	119	X	351	232	Held over meetings of Aug. 15 17, Sept. 12, 14, 19, 20, 2017.
40.	X	X	10/14/16	2/10/17	X	119	X	351	232	Held over meetings of Aug. 15 17, Sept. 12, 14, 19, 20, 2017.
41.	X	X	10/14/16	2/10/17	X	119	X	351	232	Held over meetings of Aug. 15 17, Sept. 12, 14, 19, 20, 2017.
42.	X	X	11/29/16	2/21/17	X	85	X	305	221	Not yet scheduled for an executive session.
43.	X	X	6/24/15	3/06/17	X	622	X	829	208	Not yet scheduled for an executive session.
44.	X	X	6/24/15	3/06/17	X	622	X	829	208	Not yet scheduled for an executive session.
45.	X	X	9/22/15	3/21/17	X	546	X	739	193	Not yet scheduled for an executive session.

1	2	3	4	5	6	7	8	9	10	11
#			Date Assigned to OGC Attorney	Date of OGC's Recommendations to Comm'n		Days Between Assignment and OGC's Recommendations to Comm'n		Days Between Assignment and Comm'n Inaction as of 9/30/17	Days Between OGC's Recommendations and Comm'n Inaction as of 9/30/17	Holdovers and Other Relevant Information as of 9/30/17

46.	X	X	9/22/15	3/21/17	X	546	X	739	193	Not yet scheduled for an executive session.
47.	X	X	1/10/17	4/11/17	X	91	X	163	172	Not yet scheduled for an executive session.
48.	X	X	1/11/17	4/13/17	X	92	X	262	170	Held over meetings of May 23, 25, June 6, 8, 21, 22, July 11, 13, Aug. 15 17, Sept. 12, 14, 19, 20, 2017.
49.	X	X	11/29/16	4/13/17	X	135	X	305	170	Held over meetings of June 6, 8, 21, 22, and July 11, 13, Aug. 15, 17, Sept. 12, 14, 19, 20, 2017.
50.	X	X	1/24/17	4/17/17	X	83	X	249	166	Held over meetings of Sept. 12, 14, 19, 20, 2017.
51.	X	X	1/19/17	4/21/17	X	92	X	254	162	Held over meetings of June 6, 8, 2017.
52.	X	X	2/9/17	5/11/17	X	91	X	233	142	Not yet scheduled for an executive session.
53.	X	X	2/15/17	5/15/17	X	89	X	227	138	Held over meetings of July 11, 13, Aug. 15, 17, Sept. 12, 14, 19, 20, 2017.
54.	X	X	6/29/15	5/15/17	X	686	X	824	138	Not yet scheduled for an executive session.
55.	X	X	1/25/17	5/19/17	X	114	X	248	134	Not yet scheduled for an executive session.
56.	X	X	9/21/15	5/19/17	X	606	X	740	134	Not yet scheduled for an executive session.
57.	X	X	2/22/17	5/22/17	X	89	X	220	131	Held over meeting of Sept. 12, 14, 19, 20, 2017.
58.	X	X	1/13/17	5/26/17	X	133	X	260	127	Not yet scheduled for an executive session.
59.	X	X	1/27/17	5/30/17	X	123	X	246	123	Not yet scheduled for an executive session.
60.	X	X	3/03/17	6/02/17	X	90	X	210	120	Not yet scheduled for an executive session.
61.	X	X	1/13/17	6/5/17	X	142	X	259	117	Held over meeting of Sept. 12, 14, 19, 20, 2017.
62.	X	X	3/06/17	6/06/17	X	91	X	207	116	Not yet scheduled for an executive session.
63.	X	X	2/09/17	6/12/17	X	122	X	232	110	Not yet scheduled for an executive session.
64.	X	X	3/16/17	6/15/17	X	91	X	198	107	Held over meetings of Sept. 12, 14, 19, 20, 2017.
65.	X	X	3/16/17	6/15/17	X	91	X	198	107	Held over meetings of Sept. 12, 14, 19, 20, 2017.
66.	X	X	3/16/17	6/15/17	X	91	X	198	107	Held over meetings of Sept. 12, 14, 19, 20, 2017.
67.	X	X	2/15/17	6/16/17	X	120	X	226	106	Not yet scheduled for an executive session.
68.	X	X	2/15/17	6/16/17	X	120	X	226	106	Not yet scheduled for an executive session.
69.	X	X	2/15/17	6/16/17	X	120	X	226	106	Held over meetings of Sept. 12, 14, 19, 20, 2017.
70.	X	X	2/16/17	6/19/17	X	123	X	225	103	Not yet scheduled for an executive session.
71.	X	X	2/16/17	6/19/17	X	123	X	225	103	Not yet scheduled for an executive session.
72.	X	X	2/16/17	6/19/17	X	123	X	225	103	Not yet scheduled for an executive session.
73.	X	X	2/16/17	6/19/17	X	123	X	225	103	Not yet scheduled for an executive session.
74.	X	X	2/16/17	6/19/17	X	123	X	225	103	Not yet scheduled for an executive session.
75.	X	X	2/16/17	6/19/17	X	123	X	225	103	Not yet scheduled for an executive session.
76.	X	X	2/16/17	6/19/17	X	123	X	225	103	Not yet scheduled for an executive session.
77.	X	X	2/16/17	6/19/17	X	123	X	225	103	Not yet scheduled for an executive session.
78.	X	X	2/16/17	6/19/17	X	123	X	225	103	Not yet scheduled for an executive session.
79.	X	X	2/16/17	6/19/17	X	123	X	225	103	Not yet scheduled for an executive session.
80.	X	X	2/16/17	6/19/17	X	123	X	225	103	Not yet scheduled for an executive session.
81.	X	X	2/16/17	6/19/17	X	123	X	225	103	Not yet scheduled for an executive session.
82.	X	X	2/16/17	6/19/17	X	123	X	225	103	Not yet scheduled for an executive session.
83.	X	X	2/16/17	6/19/17	X	123	X	225	103	Not yet scheduled for an executive session.
84.	X	X	2/21/17	6/21/17	X	119	X	220	101	Held over meetings of Sept. 12, 14, 19, 20, 2017.
85.	X	X	2/21/17	6/21/17	X	119	X	220	101	Held over meetings of Sept. 12, 14, 19, 20, 2017.
86.	X	X	5/03/17	8/02/17	X	91	X	150	59	Not yet scheduled for an executive session.
87.	X	X	5/11/17	8/11/17	X	92	X	142	50	Not yet scheduled for an executive session.
88.	X	X	5/15/17	8/15/17	X	92	X	138	46	Not yet scheduled for an executive session.
89.	X	X	5/15/17	8/15/17	X	92	X	138	46	Not yet scheduled for an executive session.
90.	X	X	5/18/17	8/16/17	X	92	X	135	45	Not yet scheduled for an executive session.

1	2	3	4	5	6	7	8	9	10	11
#			Date Assigned to OGC Attorney	Date of OGC's Recommendations to Comm'n		Days Between Assignment and OGC's Recommendations to Comm'n		Days Between Assignment and Comm'n Inaction as of 9/30/17	Days Between OGC's Recommendations and Comm'n Inaction as of 9/30/17	Holdovers and Other Relevant Information as of 9/30/17

91.	X	X	5/19/17	8/18/17	X	91	X	133	43	Not yet scheduled for an executive session.
92.	X	X	6/22/17	8/22/17	X	61	X	100	39	Not yet scheduled for an executive session.
93.	X	X	9/10/14	9/08/17	X	1094	X	1116	22	Not yet scheduled for an executive session.
94.	X	X	6/09/17	9/08/17	X	92	X	113	22	Not yet scheduled for an executive session.
95.	X	X	9/29/14	9/13/17	X	1080	X	1102	17	Not yet scheduled for an executive session.
96.	X	X	9/29/14	9/13/17	X	1080	X	1102	17	Not yet scheduled for an executive session.
97.	X	X	3/28/17	9/14/17	X	170	X	186	16	Not yet scheduled for an executive session.
98.	X	X	8/2/17	9/19/17	X	48	X	59	11	Not yet scheduled for an executive session.
99.	X	X	8/18/17	9/21/17	X	34	X	43	9	Not yet scheduled for an executive session.
100.	X	X	7/24/17	9/22/17	X	60	X	68	8	Not yet scheduled for an executive session.
101.	X	X	5/23/17	9/22/17	X	122	X	130	8	Not yet scheduled for an executive session.

FEDERAL ELECTION
COMMISSION
SECRETARIAT



FEDERAL ELECTION COMMISSION
Washington, DC 20463

2015 JUL 14 P 3:20

AGENDA ITEM

MEMORANDUM

For Meeting of 7-16-15

TO: The Commission

FROM: Steven T. Walther
Commissioner *STW*

SUBMITTED LATE

DATE: July 14, 2015

RE: Motion to Set Priorities and Scheduling on Pending Enforcement Matters
Awaiting Reason-to-Believe Consideration

Attached is a memorandum containing a motion to establish a priority and a timetable for the Commissioners to take immediate substantive action on initial enforcement recommendations by the Office of General Counsel that have been pending for one year or more from the date of receipt by the Commissioners.

I have asked to place this document on the agenda for the Open Meeting scheduled for July 16, 2015.

Attachment



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: The Commission

FROM: Steven T. Walther
Commissioner

RE: Motion to Set Priorities and Scheduling on Pending Enforcement Matters
Awaiting Reason-to-Believe Consideration

DATE: July 14, 2015

Motion Objective

The purpose of this motion is to establish a priority and a timetable for the Commissioners to take immediate substantive action on Office of General Counsel (OGC) “reason to believe” (RTB) or other recommendations pending for one year or more from the date of receipt by the Commissioners.

Background

Once a complaint is filed, or once a matter is referred to OGC for possible enforcement action, OGC submits a recommendation to the Commissioners as to whether or not there is RTB that a violation of the Federal Election Campaign Act (FECA) may have occurred, or to take other action.¹

Once a recommendation is submitted to the Commissioners for the first time — generally in a First General Counsel’s Report (FGCR) — it must be reviewed and substantively acted upon by the Commissioners. Because all of the information that the Commissioners may consider to take substantive action on OGC’s recommendation is contained in documents made available to them by OGC, with rare exceptions, *there is nothing left to be done by the Commissioners* other than to promptly vote on whether or not there is RTB that a violation of the FECA may have occurred, or to vote on other action recommended by OGC. As mentioned below, *the language of the FECA itself suggests that this substantive action can be accomplished in 120 days.*

¹ This memorandum, motion, and attached chart are limited to OGC recommendations and do not address non-OGC enforcement matters such as Administrative Fines, Alternative Dispute Resolution, and Debt Settlement Plan matters.

At present there are, and for an undue time there have been, numerous matters before the Commissioners that have been held for more than a reasonable period of time. Attached is a chart that sets forth all enforcement matters (except those recently circulated for tally vote) that are pending before the Commission, as of June 30, 2015, to consider whether to find RTB or take other recommended action.

Data on Delays

The chart, which has been redacted as appropriate, identifies each matter pending before the Commissioners for substantive initial action as of June 30, 2015, and the amount of time between various stages, to June 30, 2015. The chart sets forth the number of days that have elapsed between the date a complaint was activated or between the date a referral was received by the Commission and June 30, 2015. A principal focus for this motion, however, is the number of days that have elapsed between the date OGC's recommendation was submitted to the Commission and June 30, 2015, which is also provided in the chart. During this latter period, the fate of each matter is within the province of, and the responsibility of, the six Commissioners.

For various reasons, mostly unpersuasive, as discussed below, the Commissioners have delayed voting on many of these pending matters for an excessive period of time. Consider, for example, the first five matters mentioned in the chart:

- With respect items one (1) to three (3), there has been a delay of over three-and-a-half years from the time these recommendations were first submitted to the Commissioners for consideration. The FGCR containing these recommendations was withdrawn by OGC after approximately two months pending before the Commission, and then resubmitted over two years later. The resubmitted report has now been pending before the Commission for over a year; it was scheduled for discussion at the executive sessions of July 14 and 16, 2015, but was held over to the next meeting.
- With respect to items four (4) and five (5), these two matters first came before the Commission on June 6, 2012, over three years ago. The FGCR discussing these matters first appeared on the executive session agenda of October 16, 2012, but has been held over numerous executive sessions without action, including the meetings of October 16, 2012, January 8, 10, and December 3, 2013, January 13, 15, February 10, 12, March 3, 10, 17, 19, April 21, 22, May 19, 21, June 16, 18, 2015, and July 14 and 16, 2015.

In summary, the chart serves as an informational guide to the ongoing status of initial substantive recommendations for enforcement matters prepared by OGC that are now awaiting consideration by the Commissioners. As of June 30, 2015, there were 78 total matters pending before the Commissioners awaiting a substantive vote from them. Of these 78 matters, 58 have not yet been scheduled for an executive session and therefore have not received formal consideration by the Commissioners. Of these 78 matters pending, five have been languishing for three years or more from the date the matter was submitted to the Commissioners for consideration; three have been lying dormant two years or more but less than three years; 15 have been pending for one

year or more but less than two years; and the remaining 55 matters have been pending for less than one year without Commission action.

Thus far during the 2015 calendar year, the Commissioners have met for seven executive session meetings, all of which were continued to a second day for additional Commissioner consideration, and three of those meetings were held over for a third day. All told, and based upon the available information, there have been 40 initial substantive votes (which includes tally votes) taken by the Commissioners on enforcement matters with recommendations by OGC this year.

If we are to bring the docket into a respectable condition before the end of the year, and if the decisional rate per meeting remains the same, there will be a need to hold between two or three times more meetings before the end of this year than the number held for the first six months of this year.

There are many reasons which have been given for the extended periods of time shown on the chart. Some have said that the staff should have acted with more speed (but, as discussed below, once the recommendations are submitted and are received by the Commissioners for action, there is little, and usually nothing, for OGC to do but wait on the Commissioners); some have argued that certain matters involve novel or complex issues that require more time to consider (and are therefore held over multiple times); some have argued certain matters should be delayed in order for them to be discussed along with other pending — or soon to be pending — matters involving similar issues. None of the reasons noted above, or any other reason, can be said to justify taking the excessive amount of time that has elapsed on many of these matters, as the chart reveals.

Those Directly Prejudiced by Commission Delays

The bottom line is that we, the Commissioners, have simply not been doing our work in as timely a fashion as we should, and need to do a better job of managing our duties and responsibilities in this area. When delays of the kind identified in the chart occur, there are four categories of persons that are adversely impacted, and in addition, of course, the Commission as an institution may suffer reputational damage resulting from our delays.

Respondents

Persons are designated as “respondents” as a result of being named in a complaint or referral as having potentially violated the FECA, and who therefore may file responses to such actions. They remain “respondents” until final action has been taken with respect to them; accordingly, delays by the Commission could very well place them under a cloud of suspicion much longer than warranted.

After respondents are served with notice of the allegations of a FECA violation (generally either a sworn complaint filed by a member of the public, or a notice from OGC to the respondent of a referral alerting the respondent of a potential violation), they are provided with an opportunity to respond with facts and/or legal arguments to defend against the allegations.

Once respondents receive notice of the complaint or referral, they may either hire counsel to respond on their behalf, or defend themselves at their own peril. Responding to a complaint or referral can be a complex, time-consuming and very expensive endeavor. Respondents must then wait to learn whether the Commission will actually determine whether or not there is RTB they may have violated the FECA, or take other action. As can be seen from the attached chart, respondents sometimes must wait over three years before their matters come before the Commission *for even the first stage* of Commissioner scrutiny.

Once a recommendation, generally contained in the FGCR, is submitted to the Commissioners, with rare exceptions there is virtually nothing left to be done by the Commissioners other than to act on the recommendation, which, as the chart reveals, sometimes takes years and is fully dependent upon the speed with which the Commissioners decide to take action or address the matter. During this pre-RTB enforcement stage the respondent is effectively held hostage to any dilatory conduct (when it occurs) of the Commissioners. The impact of such delay is even more acute for those respondents whose identities have been disclosed through a public announcement by the complainant that a complaint has been filed. Until the Commissioners take substantive action, the potential reputational injury of being publicly named a respondent alleged to have violated the FECA remains hanging over the head of the respondent. This reputational injury can be especially unfair where the Commission ultimately determines there has been no RTB or dismisses the matter, and even more so as to a candidate named as a respondent if the dismissal could have occurred before an election.

In 2009, the need to increase the efficiency of our enforcement procedures was recognized and partly addressed by the Commission's adoption of Directive 68, a copy of which accompanies this motion. Its principal focus at that time was to assure that pending matters would at least be given sufficiently prompt attention by the Commissioners, and to ensure that appropriate substantive action by the Commission could be taken before the expiration date of the statute of limitations. Unacceptable delays can occur, however, long before the statute of limitations issue becomes relevant to a matter, as indicated by the chart. Directive 68 also provided that the respondent would receive notice once a year of the status of the matter (if no substantive action had been taken), and that the Commissioners would also be provided the same notice on an informational basis. The notice includes a "reasonable estimate" of when the Commission is to vote on the matter.

While Directive 68 requires that respondents receive a status notice on an annual basis, there is no accurate way for OGC to accurately predict when the Commissioners will ultimately take substantive action. Accordingly, OGC can only provide very rough — and often inaccurate — estimates of when the Commission will take action. Despite the required annual notice that the matter is pending, there is no truly reliable way for a respondent to know if there will be a continual need to retain counsel — or whether to hire one — in the event the Commission finds RTB. The respondent may also be faced with having to continually alert prospective witnesses and keep them updated on the progress of the case. During this arbitrary waiting period, memories can grow old and witnesses or evidence that may assist the respondent's defense may become unavailable, and justice inevitably suffers.

Complainants

The second category of those impacted by delay are persons who file sworn complaints with the Commission (complainants). Unlike respondents, other than receiving an acknowledgement letter that OGC has received the complaint, the complainant receives no notice whatsoever as to the first substantive action taken by the Commissioners and may not receive any notice until the matter has been concluded and the entire file is closed. Until that time — from the conclusion of the pre-RTB period through any subsequent stages of the enforcement process — the complainant may have no idea as to the status of the case.

The matter may languish for years, and the delay of time can be frustrating, time-consuming and, sometimes, expensive for complainants; this is especially so if the complainant believes the only way to find out if the Commission has taken action is to file suit against the Commission alleging unreasonable delay, which a complainant has the right to do under the FECA at 52 U.S.C. § 30109(a)(8)(A).² As previously mentioned, the language in this provision seems to suggest a matter could generally be acted upon at the RTB stage within 120 days of the date of the filing of a complaint, a time period seldom reached by the Commission. The complainant in such a lawsuit, however, may not have any information from the Commission as to whether any action has been taken, thus in some instances making such effort spurious at best.

In a recent case an action was filed by a complainant in the U.S. District Court for D.C. after the 120-day period, alleging unreasonable delay by the Commission. The Commission responded in the court proceeding that the matter had been acted upon, *but only after the court action was filed*, and the court case was then dismissed. The cost of legal fees to file such an action should not be a complainant's first, and essentially only, resort.

In contrast, while respondents will have at least received annual status updates in writing that contain an OGC estimate of when the Commission will take action on their matters, there is currently no procedure for providing similar updates to complainants (other than resorting to litigation), who may often wait several years before learning of any action the Commission may have taken.

Commission Staff

The third category negatively impacted by Commissioner delay are the dedicated staff members who are responsible for preparing and presenting enforcement matters to the Commissioners. These presentations are primarily given at Commission meetings held in confidential executive session. These delays negatively impact the morale, and ultimately, in some instances, the performance, of the Commission's staff. Multiple delays result in staff needlessly and repeatedly expending time to prepare for matters that are often held over by the Commission on numerous occasions, often just before the matter is scheduled to be discussed. This results in delays for other matters, not to mention the disruption of work schedules and the personal plans of the

² Section 30109(a)(8)(A) provides that "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..." (emphasis added).

affected staff. This can be, and has been, dispiriting and demoralizing for the staff, who in my view are tremendously competent and professional in dealing with these obstacles.

During these prolonged periods, the composition of enforcement team and team leaders who prepared OGC's report may shift substantially; in those instances, those preparing for the executive session may be new to the matter. For those who remain assigned to the matter, in each instance of a delay or holdover, they must prepare anew, with that case necessarily taking precedence over other case assignments.

The Public

Finally, members of the public, including the press, may tend not to focus attention on enforcement matters that are several years old by the time the case files are publicly released. The public and press may show great interest when a complaint is first filed with the Commission, particularly if the allegations involve potentially serious misconduct, and/or high-profile individuals or entities are publicly disclosed as respondents. In instances when delay occurs, by the time action is taken by the Commission and the matter is closed, the public may lose interest, and may no longer view the matter as very important. Just as important, the results of the Commission action, when delayed, may not reach the voter in sufficient time to take in to consideration the Commission action before entering the voting booth. As a result, the transparency goals of the FECA and credibility of the Commission's overall enforcement process suffer — and cynicism increases.

Accordingly, at this juncture, we should take special steps to establish a workable priority and timetable for resolving these matters with reasonable dispatch.

The Need for Accelerated Scheduling and Prioritization

For the forgoing reasons, the scheduling of enforcement matters should be based, as to the First Tier of cases, solely on age according to amount of time pending for substantive action before the Commissioners over one year, and as to the Second Tier, based on the overall time the matter been pending since the date of the complaint or referral, with both tiers prioritized on the basis of age, as mentioned below. Under this proposal each matter would be set on the agenda and removed or modified only with the procedure contemplated by Directive 10, Section E.7(e),³ assuming if in any instance three is a majority, that the three may not be of the same political party.

To accomplish this proposal, the Chair (with the assent and cooperation of the Commissioners) would:

³ Directive 10, Section E.7(e) provides: "A motion to lay a matter over. Any such motion shall require a majority vote of at least three members of the Commission; at least three votes will be required for any subsequent motion to take any such matter from the table. Any such motion shall be undebatable. Any such matter which is laid on the table pursuant to these rules shall be taken from the table pursuant to these rules at the next subsequent meeting or the matter dies. . . ."

- a. Set all matters listed from numbers one (1) through twenty-three (23) — which were submitted to the Commissioners by OGC at least one year ago as of June 30, 2015 — on the agenda for priority consideration for the next executive session (the First Tier);
- b. schedule immediately a series of executive sessions during which those matters will be considered and voted upon by the Commissioners; and
- c. prioritize all matters following number twenty-three (23), and which were received by the Commission over one year ago based on the date of the complaint or referral (the Second Tier).

As to these matters, the Commission would not hold any matters over, but would vote on them when they come before the Commission on the priority basis envisioned here.

It has been unfortunately suggested that, on occasion, considerations of politics, party or ideology may have influenced the timing of when these and other matters are placed on the agenda, or once having been placed on the agenda, the timing of when they are voted on by the Commission. To eliminate any such contention or impression with regard to the handling of these matters going forward, it would be best to proceed *without any consideration other than the age* for determining the sequence to follow for considering the merits of OGC's recommendations. Any failure to do so would be inviting further unwanted and unneeded speculation of that kind.

As mentioned above, it is clear the Commissioners will need to meet — and act — much more often for the next several months than in the recent past. A good beginning would be to meet in executive session two full days each week for six to eight weeks, commencing immediately, and then finalize a plan. Deadlines are offered in the motion below. A meeting pace such as this has worked in the past.

This memorandum and the motion below are directed to Commissioner performance and responsibility only. The above comments and the motion below should not be construed in any way to reflect negatively on the performance of our dedicated and professional enforcement staff. Any issues regarding delays in the Commission's enforcement process, and any actions taken to improve the process going forward, are ultimately the responsibility of the Commissioners. The Commission is fortunate to have such highly qualified, competent, and motivated employees who consistently provide thoughtful recommendations to the Commission regardless of any failings of the Commissioners.

Attachments

MOTION

Based upon the forgoing, I move:

1. That all matters identified in the attached chart as numbers one (1) through twenty-three (23), which have been awaiting Commission action for one year or more *since the date OGC circulated its recommendations* as of June 30, 2015, be placed on the agenda for the next executive session and every consecutive session thereafter until substantive action has been taken on each one of them;
2. That the forty (40) matters following number twenty-three (23) in the attached chart that have been awaiting Commission action for one year or more *since the date of receipt of the complaint or referral* be placed before the Commission by having the same placed on the agenda for the next executive session (to trail immediately following the actions identified in Paragraph 1) and every consecutive session thereafter until substantive action has been taken on each of them. These matters are listed *based on age* as of June 30, 2015 (and grouped by number of years) as follows: matters pending three years or more since the date of receipt of the complaint or referral, identified in the attached chart as items 24 and 29; matters pending two years or more but less than three years, identified in the attached chart as items 28, 61, 32, 30, 25, and 31; and matters pending one year or more but less than two years, identified in the attached chart as items 27, 42, 35, 26, 40, 50, 43, 44, 45, 48, 33, 36, 53, 49, 38, 34, 39, 46, 41, 37, 51, 54, 56, 52, 57, 55, 47, 59, 60, 58, 65 and 72;
3. That the Chair call a sufficient number of meetings, beginning immediately, such that consideration of each of the matters identified in Paragraphs 1 and 2 of the attached chart shall be discussed and voted upon with substantive action taken by September 30, 2015, which is the end of the FEC's fiscal year;
4. That all matters identified in Paragraphs 1 and 2 in the attached chart, once placed on the agenda, shall remain without change in priority, unless and until, as to any such matter or matters, the procedure set forth in Directive 10, Section E.7(e) is followed; and
5. That all remaining matters identified in the attached chart be considered immediately after the Commission takes substantive action on each of the matters identified in Paragraphs 1 and 2, to be voted upon with substantive action taken as of November 30, 2015.

Relevant Dates for Initial Substantive Recommendations

Submitted by OGC to the Commissioners

(sorted by days between OGC's recommendations and Commission inaction)

Item #	A	B	Date Assigned to OGC Attorney	Date of OGC's Recommendations to Comm'n	C	Days Between Assignment and OGC's Recommendations to Comm'n	D	Days Between Assignment and Comm'n Inaction (as of 6/30/15)	Days Between OGC's Recommendations and Comm'n Inaction (as of 6/30/15)	Holdovers and Other Relevant Information
1.	X	X	8/30/11	11/29/11 resubmitted 4/29/14	X	91	X	1,400	1,309	FGCR submitted to Comm'rs Nov. 29, 2011, and withdrawn Jan. 31, 2012. Resubmitted Apr. 29, 2014. Held over meetings of July 14, 16, 2015.
2.	X	X	8/30/11	11/29/11 resubmitted 4/29/14	X	91	X	1,400	1,309	FGCR submitted to Comm'rs Nov. 29, 2011, and withdrawn Jan. 31, 2012. Resubmitted Apr. 29, 2014. Held over meetings of July 14, 16, 2015.
3.	X	X	8/30/11	11/29/11 resubmitted 4/29/14	X	91	X	1,400	1,309	FGCR submitted to Comm'rs Nov. 29, 2011, and withdrawn Jan. 31, 2012. Resubmitted Apr. 29, 2014. Held over meetings of July 14, 16, 2015.
4.	X	X	11/16/11	6/06/12	X	203	X	1,322	1,119	Held over meetings of Oct. 16, 2012; Jan. 8, 10, Dec. 3, 2013; Jan. 13, 15, Feb. 10, 12, Mar. 3, 10, 17, 19, Apr. 21, 22, May 19, 21, June 16, 18, July 14, 16, 2015. Tentatively scheduled for an upcoming executive session.
5.	X	X	11/16/11	6/06/12	X	203	X	1,322	1,119	Held over meetings of Oct. 16, 2012; Jan. 8, 10, Dec. 3, 2013; Jan. 13, 15, Feb. 10, 12, Mar. 3, 10, 17, 19, Apr. 21, 22, May 19, 21, June 16, 18, July 14, 16, 2015. Tentatively scheduled for an upcoming executive session.
6.	X	X	11/16/11	8/28/12	X	286	X	1,322	1,036	Held over meetings of Oct. 16, 2012; Jan. 8, 10, Dec. 3, 2013; Jan. 13, 15, Feb. 10, 12, Mar. 3, 10, 17, 19, Apr. 21, 22, May 19, 21, June 16, 18, July 14, 16, 2015. Tentatively scheduled for an upcoming executive session.
7.	X	X	10/09/12	2/26/13	X	140	X	994	854	FGCR submitted to Comm'rs on Feb. 1, 2013, and withdrawn Feb. 19, 2013. Resubmitted Feb. 26, 2013. Held over meetings of Apr. 22, May 6, 20, Jun. 10, 2014; Feb. 10, 12, Mar. 3, 10, 17,

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Item #	A	B	Date Assigned to OGC Attorney	Date of OGC's Recommendations to Comm'n	C	Days Between Assignment and OGC's Recommendations to Comm'n	D	Days Between Assignment and Comm'n Inaction (as of 6/30/15)	Days Between OGC's Recommendations and Comm'n Inaction (as of 6/30/15)	Holdovers and Other Relevant Information
										19, Apr. 21, 22, May 19, 21, June 16, 18, July 14, 16, 2015.
8.	X	X	5/10/12	2/27/13	X	293	X	1,146	853	Held over meetings of Sept. 24, 26, 2013; Dec. 9, 11, 16, 2014; Jan. 13, 15, Feb. 10, 12, Mar. 3, 10, 17, Apr. 21, 22, May 19, 21, June 16, 18, 2015. Tentatively scheduled for an upcoming executive session.
9.	X	X	4/17/13	11/08/13	X	205	X	804	599	Held over meeting of Apr. 22, 2014. Held in abeyance by a vote of Comm'rs on Sept. 16, 2014. Not yet scheduled for an executive session.
10.	X	X	4/23/13	1/14/14	X	266	X	798	532	FGCR submitted to Comm'rs on Jan. 14, 2014, withdrawn and resubmitted on Mar. 31, 2015. Held over meetings of May 19, 21, June 16, 18, 2015. Held in abeyance by a vote of Comm'rs on June 18, 2015. Tentatively scheduled for an upcoming executive session.
11.	X	X	4/08/13	3/07/14	X	333	X	813	480	Tentatively scheduled for an upcoming executive session.
12.	X	X	4/02/13	3/07/14	X	339	X	819	480	Tentatively scheduled for an upcoming executive session.
13.	X	X	10/09/12	3/10/14	X	517	X	629	477	Held over meetings of Feb. 10, 12, Mar. 3, 10, 17, 19, Apr. 21, 22, May 19, 21, June 16, 18, July 14, 16, 2015.
14.	X	X	4/03/13	3/11/14	X	342	X	818	476	Held over meetings of Apr. 22, May 6, 20, Jun. 10, 2014; Mar. 3, 10, 17, 19, Apr. 21, 22, May 19, 21, June 16, 18, July 14, 16, 2015. Tentatively scheduled for an upcoming executive session.
15.	X	X	1/16/14	5/15/14	X	119	X	530	411	Not yet scheduled for an executive session.
16.	X	X	1/15/14	5/15/14	X	120	X	531	411	Not yet scheduled for an executive session.

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Item #	A	B	Date Assigned to OGC Attorney	Date of OGC's Recommendations to Comm'n	C	Days Between Assignment and OGC's Recommendations to Comm'n	D	Days Between Assignment and Comm'n Inaction (as of 6/30/15)	Days Between OGC's Recommendations and Comm'n Inaction (as of 6/30/15)	Holdovers and Other Relevant Information
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17.	X	X	1/21/14	5/16/14; resubmitted 5/21/14	X	115	X	525	410	Not yet scheduled for an executive session.
18.	X	X	2/03/14	5/28/14	X	114	X	512	398	Not yet scheduled for an executive session.
19.	X	X	2/03/14	5/28/14	X	114	X	512	398	Not yet scheduled for an executive session.
20.	X	X	2/03/14	5/28/14	X	114	X	512	398	Not yet scheduled for an executive session.
21.	X	X	7/30/13	6/18/14	X	323	X	700	377	Not yet scheduled for an executive session.
22.	X	X	12/03/13	6/20/14	X	199	X	574	375	Not yet scheduled for an executive session.
23.	X	X	10/03/13	6/30/14	X	270	X	635	365	Not yet scheduled for an executive session.
24.	X	X	7/24/12	7/01/14	X	707	X	1,071	364	Not yet scheduled for an executive session.
25.	X	X	8/13/13	7/01/14	X	322	X	686	364	Not yet scheduled for an executive session.
26.	X	X	4/15/14	7/09/14	X	85	X	441	356	Not yet scheduled for an executive session.
27.	X	X	3/25/14	7/23/14	X	120	X	462	342	Not yet scheduled for an executive session.
28.	X	X	1/15/13	8/04/14	X	566	X	896	330	Not yet scheduled for an executive session.
29.	X	X	9/13/12	8/22/14	X	708	X	1,020	312	Not yet scheduled for an executive session.
30.	X	X	8/19/13	8/27/14	X	373	X	680	307	Not yet scheduled for an executive session.
31.	X	X	8/19/13	8/27/14	X	373	X	680	307	Not yet scheduled for an executive session.
32.	X	X	5/14/13	9/04/14	X	478	X	777	299	Not yet scheduled for an executive session.
33.	X	X	6/10/14	9/09/14	X	91	X	385	294	Not yet scheduled for an executive session.

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Item #	A	B	Date Assigned to OGC Attorney	Date of OGC's Recommendations to Comm'n	C	Days Between Assignment and OGC's Recommendations to Comm'n	D	Days Between Assignment and Comm'n Inaction (as of 6/30/15)	Days Between OGC's Recommendations and Comm'n Inaction (as of 6/30/15)	Holdovers and Other Relevant Information
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34.	X	X	7/09/14	9/09/14	X	62	X	356	294	Not yet scheduled for an executive session.
35.	X	X	6/17/14	9/10/14	X	85	X	378	293	Not yet scheduled for an executive session.
36.	X	X	5/20/14	9/11/14	X	114	X	406	292	Not yet scheduled for an executive session.
37.	X	X	6/17/14	9/16/14	X	91	X	378	287	Not yet scheduled for an executive session.
38.	X	X	5/28/14	9/25/14	X	120	X	398	278	Not yet scheduled for an executive session.
39.	X	X	6/12/14	10/08/14	X	118	X	383	265	Not yet scheduled for an executive session.
40.	X	X	7/16/14	10/14/14	X	90	X	349	259	Not yet scheduled for an executive session.
41.	X	X	7/18/14	10/16/14	X	90	X	347	257	Tentatively scheduled for an upcoming executive session.
42.	X	X	6/19/14	10/17/14	X	120	X	376	256	Not yet scheduled for an executive session.
43.	X	X	7/02/14	10/29/14	X	119	X	363	244	Not yet scheduled for an executive session.
44.	X	X	7/02/14	10/29/14	X	119	X	363	244	Not yet scheduled for an executive session.
45.	X	X	7/02/14	10/29/14	X	119	X	363	244	Not yet scheduled for an executive session.
46.	X	X	8/07/14	11/03/14	X	88	X	327	239	Not yet scheduled for an executive session.
47.	X	X	7/08/14	11/06/14	X	121	X	357	236	Not yet scheduled for an executive session.
48.	X	X	7/08/14	11/07/14	X	122	X	357	235	Not yet scheduled for an executive session.
49.	X	X	7/08/14	11/07/14	X	122	X	357	235	Not yet scheduled for an executive session.
50.	X	X	7/21/14	11/18/14	X	120	X	344	224	Not yet scheduled for an executive session.
51.	X	X	8/27/14	11/25/14	X	90	X	307	217	Not yet scheduled for an executive session.

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Item #	A	B	Date Assigned to OGC Attorney	Date of OGC's Recommendations to Comm'n	C	Days Between Assignment and OGC's Recommendations to Comm'n	D	Days Between Assignment and Comm'n Inaction (as of 6/30/15)	Days Between OGC's Recommendations and Comm'n Inaction (as of 6/30/15)	Holdovers and Other Relevant Information
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52.	X	X	9/04/14	11/26/14	X	83	X	299	216	Not yet scheduled for an executive session.
53.	X	X	7/28/14	11/28/14	X	123	X	337	214	Not yet scheduled for an executive session.
54.	X	X	9/04/14	12/05/14	X	92	X	299	207	Not yet scheduled for an executive session.
55.	X	X	9/04/14	12/05/14	X	92	X	299	207	Not yet scheduled for an executive session.
56.	X	X	9/17/14	12/16/14	X	90	X	286	196	Not yet scheduled for an executive session.
57.	X	X	10/23/14	1/22/15	X	91	X	250	159	Not yet scheduled for an executive session.
58.	X	X	10/29/14	1/29/15	X	92	X	244	152	Not yet scheduled for an executive session.
59.	X	X	10/07/14	2/05/15	X	121	X	266	145	Not yet scheduled for an executive session.
60.	X	X	10/14/14	2/12/15	X	121	X	259	138	Not yet scheduled for an executive session.
61.	X	X	8/19/14	2/24/15	X	189	X	315	126	Not yet scheduled for an executive session.
62.	X	X	10/28/14	2/25/15	X	120	X	245	125	Not yet scheduled for an executive session.
63.	X	X	10/28/14	2/25/15	X	120	X	245	125	Not yet scheduled for an executive session.
64.	X	X	1/08/15	3/04/15	X	55	X	173	118	Not yet scheduled for an executive session.
65.	X	X	11/05/14	3/09/15	X	124	X	237	114	Not yet scheduled for an executive session.
66.	X	X	11/05/14	3/09/15	X	124	X	237	113	Not yet scheduled for an executive session.
67.	X	X	10/29/14	3/09/15, resubmitted 6/15/15	X	131	X	244	113	Report submitted to Comm'rs Mar. 6, 2015, and withdrawn May 15, 2015. Resubmitted May 15, 2015. Tentatively scheduled for an upcoming executive session.
68.	X	X	11/20/14	3/20/15	X	120	X	222	102	Not yet scheduled for an executive session.

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69.	X	X	11/20/14	3/20/15	X	120	X	222	102	Not yet scheduled for an executive session.
70.	X	X	1/13/15	3/30/15	X	76	X	168	92	Not yet scheduled for an executive session.
71.	X	X	1/14/15	5/12/15	X	118	X	167	49	Not yet scheduled for an executive session.
72.	X	X	1/13/15	5/14/15	X	121	X	168	47	Not yet scheduled for an executive session.
73.	X	X	2/03/15	5/27/15	X	113	X	147	34	Tentatively scheduled for an upcoming executive session.
74.	X	X	1/27/15	5/27/15	X	120	X	154	34	Tentatively scheduled for an upcoming executive session.
75.	X	X	1/29/15	5/29/15	X	120	X	152	32	Tentatively scheduled for an upcoming executive session.
76.	X	X	1/29/15	5/29/15	X	120	X	152	32	Not yet scheduled for an executive session.
77.	X	X	2/05/15	6/04/15	X	119	X	145	26	Not yet scheduled for an executive session.
78.	X	X	3/27/15	6/17/15	X	82	X	95	13	Tentatively scheduled for an upcoming executive session.

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FEDERAL ELECTION COMMISSION		
MANUAL OF DIRECTIVES	COMMISSION DIRECTIVE:	
	REVOKES:	NO. 68
	EFFECTIVE DATE: December 31, 2009	
SUBJECT: Enforcement Procedures		

The purpose of this directive is to provide written guidelines on providing status reports to 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 RESPONDENTS

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 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 (12) 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 (12) month interval thereafter.
2. After the Commission Finds RTB. The Office of General Counsel and the Office of Alternative Dispute Resolution will provide respondents and the Commission with a status report if the Commission has not voted on the matter within twelve (12) months of the reason to believe finding and at every twelve (12) month interval thereafter.

B. Content. The status report shall include the following information:

- 1) The matter number and date of receipt of a complaint, *sua sponte* submission or referral;
- 2) Whether the matter is pending with the Office of General Counsel, the Office of Alternative Dispute Resolution, or the Commission; and
- 3) A reasonable estimate as to the date by which the Commission is expected to vote on the matter.

C. Timing. The Office of General Counsel will provide the status report within five (5) business days of the matter reaching twelve (12) months from receipt and twelve (12)

months from a reason to believe finding. The Office of General Counsel will also circulate the status report to the Commission on an 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) 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) A list of all enforcement matters that have been pending for more than twelve (12) months from receipt 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. The Status of Enforcement shall also indicate the date upon which each respondent was sent a status report in accordance with Section I, above.
 - 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 OGC, the date(s) upon which 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.
 - 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.

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.
- 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) 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, 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 (12) months. 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 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).

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 17, 2009.



Alec Palmer
Acting Staff Director



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: The Commission

FROM: Steven T. Walther
Commissioner *SW*

RE: Motion to Amend Directive 68 to Establish Deadlines for the Timely Processing of Enforcement Matters

DATE: May 1, 2019

I intend to move, at the open meeting of May 9, 2019, that the Commission approve amendments to Directive 68 (“Enforcement Procedures”) that establish deadlines for the timely processing of enforcement matters before the Commission. *See* Attachment 1.

The main purpose of Directive 68 is to provide written guidelines on status reports to respondents, and on quarterly reports to the Commission that include information regarding the Commission’s enforcement caseload, including a procedure to accelerate the processing of statute-of-limitations imperiled matters.

Directive 68 was last amended by the Commission on December 14, 2017, pursuant to a motion I made to improve the transparency of the enforcement process. *See* Attachment 2.¹ My intention at that time was to supplement the information contained in the Commission’s quarterly Status of Enforcement reports (“SOE reports”) and, to the extent possible, make the information in those reports available to the public. Pursuant to those amendments, each SOE report is now placed on the Commission’s website in redacted form within 15 days of circulation of the report to the Commission.² The versions made available to the public include a wealth of informative statistics, including information regarding the Commission’s enforcement caseload and charts showing the number of cases at each stage of the enforcement process.

¹ Directive 68 is also available on the Commission’s website at https://www.fec.gov/resources/cms-content/documents/directive_68.pdf.

² *See* <https://transition.fec.gov/em/enfpro/EnforcementProfile.shtml>.

There is, however, more that can be done to improve the efficiency of the process, given the current backlog of enforcement matters before the Commission. As indicated in the most recent SOE report placed on the Commission's website, there are 75 reports with recommendations from the Office of General Counsel that were awaiting Commission action as of March 12, 2019.³

The proposed amendments (Attachment 1), labeled as Section VI to follow current Section V of Directive 68 (Attachment 2), are intended to speed up the entire enforcement process, starting from the time a complaint or other enforcement matter is first received through formal action being taken by the Commission.

There have been previous proposals to increase the Commission's efficiency in this regard, but so far none have garnered the support of at least four Commissioners. For example, several memoranda I have made public over the past few years have included charts containing categories of data relevant to the Commission's prioritization of its enforcement docket.⁴ The proposed amendments attached herein would serve to further promote efficiency and accountability regarding the Commission's performance on enforcement matters.

Attachments (2)

³ See https://www.fec.gov/resources/cms-content/documents/Status_of_Enforcement__FY2019_1stQtr.pdf.

⁴ The dates on which these memoranda were made public are as follows: Priorities Motion I: July 14, 2015 (https://www.fec.gov/resources/updates/agendas/2015/mtgdoc_15-41-a.pdf); Priorities Motion II: Sept. 15, 2015 (https://www.fec.gov/resources/updates/agendas/2015/mtgdoc_15-48-a.pdf); Priorities Motion III: Nov. 9, 2015 (https://www.fec.gov/resources/updates/agendas/2015/mtgdoc_15-63-a.pdf); Priorities Motion IV: Aug. 12, 2016 (https://www.fec.gov/resources/updates/agendas/2016/mtgdoc_16-33-a.pdf); Assessment of Commission Action: Nov. 15, 2017 (https://www.fec.gov/resources/cms-content/documents/mtgdoc_17-52-a.pdf). The motions I made in connection with those memoranda were not approved by the Commission. In addition, Chair Weintraub offered a proposal in 2015 that would have improved the timely resolution of enforcement reports circulated to the Commission by the Office of General Counsel. On September 17, 2015, the vote to adopt that proposal failed 3-3 (https://www.fec.gov/resources/updates/agendas/2015/mtgdoc_15-25-b.pdf).

MOTION TO AMEND DIRECTIVE 68 TO ESTABLISH DEADLINES FOR THE TIMELY PROCESSING OF ENFORCEMENT MATTERS

I hereby move that the Commission amend Directive No. 68 – which addresses “Enforcement Procedures” – to include new Section VI, as follows:

VI. TIMING OF COMMISSION ACTION ON ENFORCEMENT MATTERS

- A. Circulation of Recommendations to the Commission by the Office of General Counsel: Regardless of whether an enforcement matter is statute of limitations-sensitive (and therefore subject to the procedures set forth in Sections III and IV of this Directive), the Office of General Counsel will circulate substantive recommendations to the Commission on all matters within nine (9) months of the date that a matter is received by the Office of General Counsel. General Counsel’s Reports containing such recommendations will be submitted to the Commission’s Secretary for circulation consistent with Section II of Commission Directive 52 (Circulation Vote Procedures).

A “substantive” recommendation means a recommendation of whether to find reason to believe with respect to one or more respondents related to one or more potential violations, or otherwise whether to close the file with respect to a respondent through dismissal or other action.

The date an enforcement matter is received means the date of receipt of the complaint, referral from another government agency, or referral to the Office of General Counsel or the Office of Alternative Dispute Resolution from the Reports Analysis Division or the Audit Division.

Any enforcement matter in which the Office of General Counsel is unable to meet the nine (9) month deadline shall be automatically tabled for discussion on the agenda for the next regularly scheduled Executive Session.

- B. Enforcement Matters Circulated to the Commission with Recommendations by the Office of General Counsel. Regardless of whether an enforcement matter is statute of limitations-sensitive (and therefore subject to the procedures listed in Sections III and IV of this Directive), the Commission shall take substantive action on all substantive recommendations circulated to the Commission by the Office of General within three (3) months of the date of circulation, unless four or more Commissioners vote to extend the date for taking such action to a specific future date. “Substantive action” means a Commission vote on whether or not to proceed with enforcement action with respect to one or more respondents in a particular enforcement matter regarding the main allegations or legal issues.
- C. Enforcement Matters Pending for 12 (Twelve) Months Without A Substantive Recommendation. Regardless of whether the Office of General Counsel has circulated substantive recommendations, the Commission shall take substantive

action on all enforcement matters within twelve (12) months of the date of receipt of a complaint, referral from another government agency, or referral to the Office of General Counsel or the Office of Alternative Dispute Resolution from the Reports Analysis Division or the Audit Division. The date of the vote may be extended if four or more Commissioners vote to extend the date for taking such action to a specific future date.

- D. Commissioner Requests to Hold Over Enforcement Matters Tabled for Discussion at Executive Session. For any enforcement matter item scheduled for discussion at an Executive Session, a Commissioner may move to hold the item over until the next regularly scheduled Executive Session, or to any closed session that occurs prior to the next regularly scheduled Executive Session. Notwithstanding Directive 10, Section E.7(e) (“A motion to lay a matter over”), four or more Commissioners must approve such a motion, and no more than two such motions shall be entertained per item circulated.
- E. Commissioner Proposals to Revise Documents Circulated by the Office of General Counsel. For any documents recommended for the Commission’s approval by the Office General Counsel (e.g., Factual & Legal Analyses and Conciliation Agreements), Commissioners shall circulate by email any proposed changes to such documents at least 24 hours before the start of any Executive Session at which such documents are scheduled for vote.
- F. Matters in Abeyance. The deadlines set forth in this section shall be suspended pursuant to the terms of any abeyance request approved by the Commission, as follows:
- 1) Only the Commission may approve a request from a law enforcement agency or other entity to hold all or a portion of a pending enforcement or compliance matter or investigation in abeyance. All such abeyances must be limited to a specified period of time.
 - 2) The grant of a request for abeyance will be conditioned on the requesting agency or entity providing the Commission with regular status updates and, if legally permissible, appropriate sharing of information in the requesting agency’s or entity’s possession.
 - 3) A request for an abeyance lasting for more than six months will not be granted, except in unusual circumstances. However, upon expiration of any abeyance period, a requesting agency or entity may seek to extend the abeyance by renewing its request for an additional period of time.
 - 4) All abeyance requests must be in writing, must be directed to the Associate General Counsel for Enforcement, and must be limited to a specified period of time. If appropriate, the Associate General Counsel for Enforcement will seek to limit the scope of a request for abeyance in an effort to allow the Office of General Counsel to

continue working on portions of a matter that may be unrelated or merely tangential to the underlying reason supporting the request for abeyance.

- 5) The Associate General Counsel for Enforcement or his or her designee, in consultation with the General Counsel, will prepare a formal memorandum, and within five business days of receipt of the written request or as soon as practicable thereafter, the General Counsel will circulate the memorandum with appropriate recommendations in accordance with Section 2.A of Directive 52.
- 6) The memorandum will, at a minimum, describe: (a) the requesting law enforcement agency or entity; (b) the date the request was made; (c) the nature and scope of the request; (d) the reason given by the requesting agency or entity for the request; (e) the likely time during which the matter is expected to remain in abeyance; (f) what effect, if any, the proposed abeyance would have with respect to the applicable statute of limitations; and (g) the course of action recommended by General Counsel.
- 7) Pending Commission resolution of the abeyance request, if the matter is at a stage prior to the Commission making a reason to believe finding, or if the matter is “statute of limitations-sensitive” as defined in this Directive, the Office of General Counsel will continue to proceed with the matter as if no request for abeyance had been made. However, if the Commission has already made a reason to believe finding, the Office of General Counsel will, on a preliminary basis, but in no event for longer than 30 days, hold a matter in abeyance pending a decision from the Commission regarding the abeyance request.
- 8) If any Commissioner objects to a recommendation regarding a request for abeyance, the matter will be calendared for the next scheduled Executive Session, and, if not resolved, for each subsequent Executive Session until a resolution is achieved.

FEDERAL ELECTION COMMISSION		
MANUAL OF DIRECTIVES	COMMISSION DIRECTIVE:	
	REVOKES: (revises Section II.B and II.C)	NO. 68
	EFFECTIVE DATE: December 14, 2017	
SUBJECT: Enforcement Procedures		

The purpose of this directive is to provide written guidelines on providing status reports to 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 RESPONDENTS

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 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 (12) 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 (12) month interval thereafter.
2. After the Commission Finds RTB. The Office of General Counsel and the Office of Alternative Dispute Resolution will provide respondents and the Commission with a status report if the Commission has not voted on the matter within twelve (12) months of the reason to believe finding and at every twelve (12) month interval thereafter.

B. Content. The status report shall include the following information:

- 1) The matter number and date of receipt of a complaint, *sua sponte* submission or referral;
- 2) Whether the matter is pending with the Office of General Counsel, the Office of Alternative Dispute Resolution, or the Commission; and
- 3) A reasonable estimate as to the date by which the Commission is expected to vote on the matter.

C. Timing. The Office of General Counsel will provide the status report within five (5) business days of the matter reaching twelve (12) months from receipt and twelve (12)

months from a reason to believe finding. The Office of General Counsel will also circulate the status report to the Commission on an 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) 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 attorney;
 - c. the date of 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 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 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 submission of the FGCR.

- 3) A list of all enforcement matters that have been pending for more than twelve (12) months from the date of receipt of a complaint 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 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 or referral.

- 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 OGC, the date(s) upon which 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.
- 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.

- 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.
- 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) 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, 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 (12) months. 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 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).

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.



Alec Palmer
Staff Director