



FEDERAL ELECTION
COMMISSION

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TESTIMONY BEFORE THE
COMMITTEE ON HOUSE ADMINISTRATION

U.S. HOUSE OF REPRESENTATIVES

HEARING: *OVERSIGHT OF THE FEDERAL ELECTION COMMISSION*

SEPTEMBER 25, 2019

Introduction

The Federal Election Commission (“FEC”) appreciates the opportunity to provide this report to the Committee on House Administration. On September 1, 2019, the FEC began working without a quorum of four Commissioners. Although certain Commission actions require an affirmative vote of four Commissioners, the FEC remains open for business, and much work continues to further the agency’s vital mission. The three currently serving Commissioners and the FEC staff look forward to continuing to work with the Committee on House Administration as it performs its oversight function.

As you know, the Federal Election Commission was established by the Federal Election Campaign Act Amendments of 1974.¹ Congress created the Commission to strengthen the integrity of the federal campaign finance process under the Federal Election Campaign Act.² The Commission is also responsible for administering the public funding program for Presidential campaigns under the Presidential Election Campaign Fund Act and the Presidential Primary Matching Payment Account Act.³ The Federal Election Campaign Act, which is the foundation of federal campaign finance regulation, reflects Congress’s efforts to ensure that voters are fully informed about the sources of candidates’ financial support. The Act also imposes amount limitations and source prohibitions on contributions received by federal candidates, political party committees and other political committees. Public confidence in the political process depends not only on laws and regulations to ensure transparency of campaign finance, but also on the knowledge that noncompliance may lead to enforcement proceedings.

The Federal Election Commission’s mission is to protect the integrity of the federal campaign finance process by providing transparency and fairly enforcing and administering federal campaign finance laws. The FEC’s strategic goal of fairly, efficiently and effectively administering and enforcing the Federal Election Campaign Act encompasses four strategic objectives:

- to inform the public about how federal campaigns and committees are financed;
- to promote voluntary compliance through educational outreach and to enforce campaign finance laws effectively and fairly;
- to interpret the FECA and related statutes, providing timely guidance to the public regarding the requirements of the law; and
- to foster a culture of high performance in order to ensure that the agency accomplishes its mission efficiently and effectively.

¹ Federal Election Campaign Act Amendments of 1974, Public Law 93-443, 88 Stat. 1263 (1974).

² Federal Election Campaign Act of 1971, Public Law 92-225, 86 Stat. 3 (1972), as amended (FECA or the Act). FECA is codified at 2 U.S.C. §§ 431 to 455.

³ Presidential Election Campaign Fund Act, Public Law 92-178, 85 Stat. 562 (1971), codified at 26 U.S.C. §§ 9001 to 9013; and Presidential Primary Matching Payment Account Act, Public Law 93-443, 88 Stat. 1297 (1974), codified at 26 U.S.C. §§ 9031 to 9042.

To accomplish its legislative mandate, the FEC is directed by up to six Commissioners, and the three currently serving Commissioners all appear before the Committee today. Currently, 304 employees (which includes the Commissioners) support the agency in accomplishing its mission. The Commission maintains its newly redesigned website at www.fec.gov and, in March 2018, moved to its new offices at 1050 First Street, Northeast, in Washington, D.C. The Federal Election Commission received an appropriation of \$71,250,000 for Fiscal Year (FY) 2019.

FECA requires an affirmative vote by four Commissioners to make decisions in many areas, including regulations, advisory opinions, audit matters and enforcement. Currently, documents recommending actions can be prepared for Commission consideration, but decisions must be delayed until a quorum is restored when new Members join the Commission. Nonetheless, FECA's requirements and Commission regulations remain fully in effect, and political committees and other filers must continue to disclose their campaign finance activity to the FEC on the regular schedule. Agency staff remains ready to help committees and the public understand and comply with the law, process and review committee reports, including issuing Requests for Additional Information, and provide public access to campaign finance data. While the Commission cannot take action on many legal matters, FEC's Office of General Counsel staff continues to litigate ongoing court cases, process new enforcement complaints and responses, and investigate matters previously authorized by the Commission. Furthermore, the FEC's Reports Analysis Division, Information Division, Information Technology Division, and Office of Compliance, among others, are still on the job, answering questions, maintaining our website, conducting ongoing audits, and processing and reviewing disclosure reports and other filings. Despite the lack of quorum, Commissioners expect to be occupied fully, reviewing case files and preparing for new Members to join the Commission.

FEC Directive 10, Section L sets forth the rules of procedure to be followed when the Commission has fewer than four sitting members and includes a list of matters on which the Commission may still act.⁴ These include notices of filing dates, non-filer notices, debt settlement plans, administrative terminations, and appeals under the Freedom of Information and Privacy Acts. The Commission intends to comply with the statutory requirement set forth in section 306 of FECA that the Commission meet at least once each month.

⁴ See FEC Directive No. 10, Rules of Procedure of the FEC Pursuant to 2 U.S.C. § 437c(e) (Dec. 20, 2007); available at https://www.fec.gov/resources/cms-content/documents/directive_10.pdf.

I. FEC's PERFORMANCE AND OPERATIONS

A. CAMPAIGN FINANCE INFORMATION

1. Engaging and Informing the Public About Campaign Finance Information

Disclosing the sources and amounts of funds used to finance federal elections is one of the most important duties of the FEC. Full disclosure of the sources and amounts of campaign funds and fair enforcement of federal campaign finance laws allow the public to make informed decisions in the political process. Transparency requires that information is not only kept by the FEC, but also provided to the public in an easily accessible way. The campaign finance reports are accessible to the public through the FEC's website at <https://www.fec.gov/data/>. By making disclosure reports available online, the FEC provides the public with up-to-date information about the financing of federal elections and political committees' compliance with campaign finance laws.

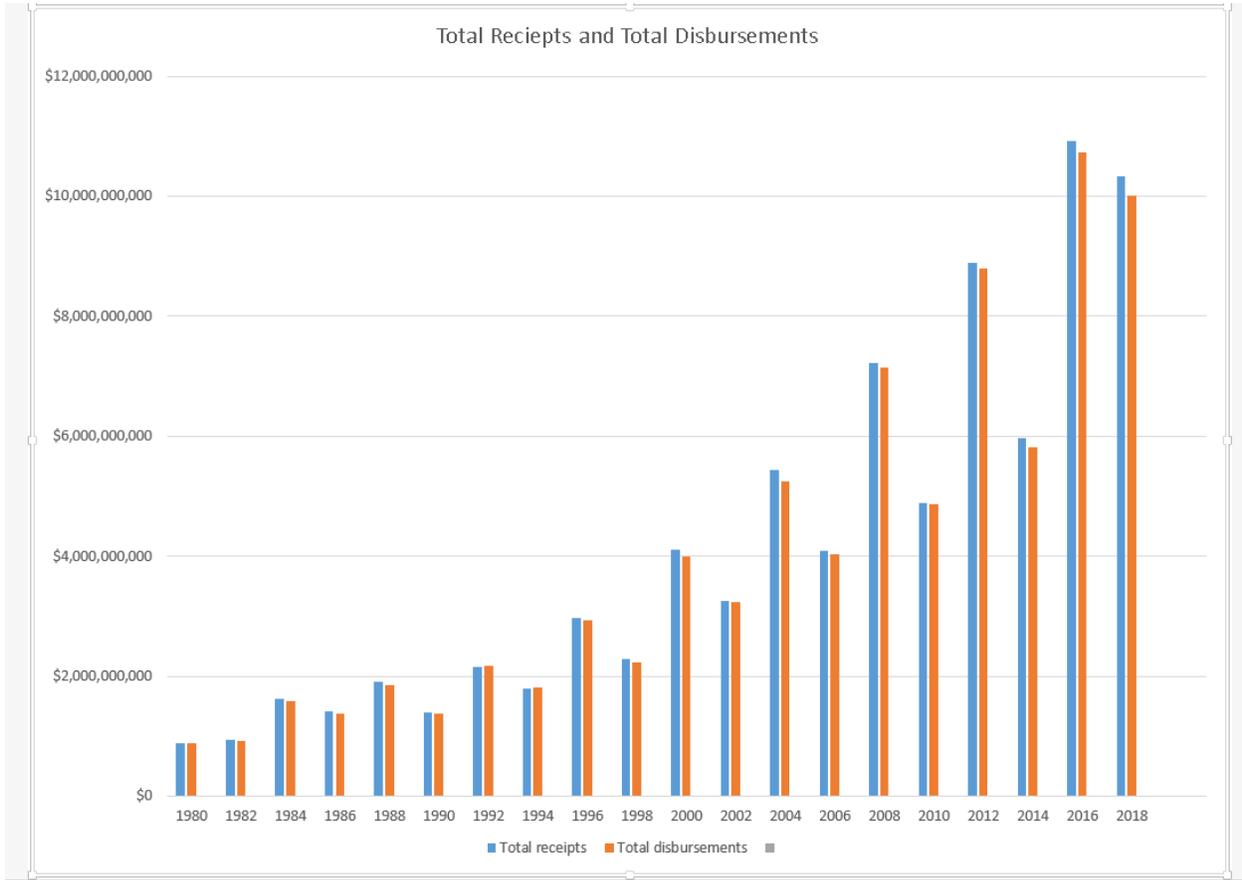
The table immediately below presents the Total Receipts and Disbursements Reported to the FEC by all entities that disclosed to the FEC over the last four completed election cycles. For each election cycle, it also includes a count of the number of transactions reported to the FEC. This count shows dramatic increases due to new fundraising and contribution sharing techniques that have resulted in voluminous reports to be processed at the FEC.

Total Reported Receipts, Disbursements and Transactions

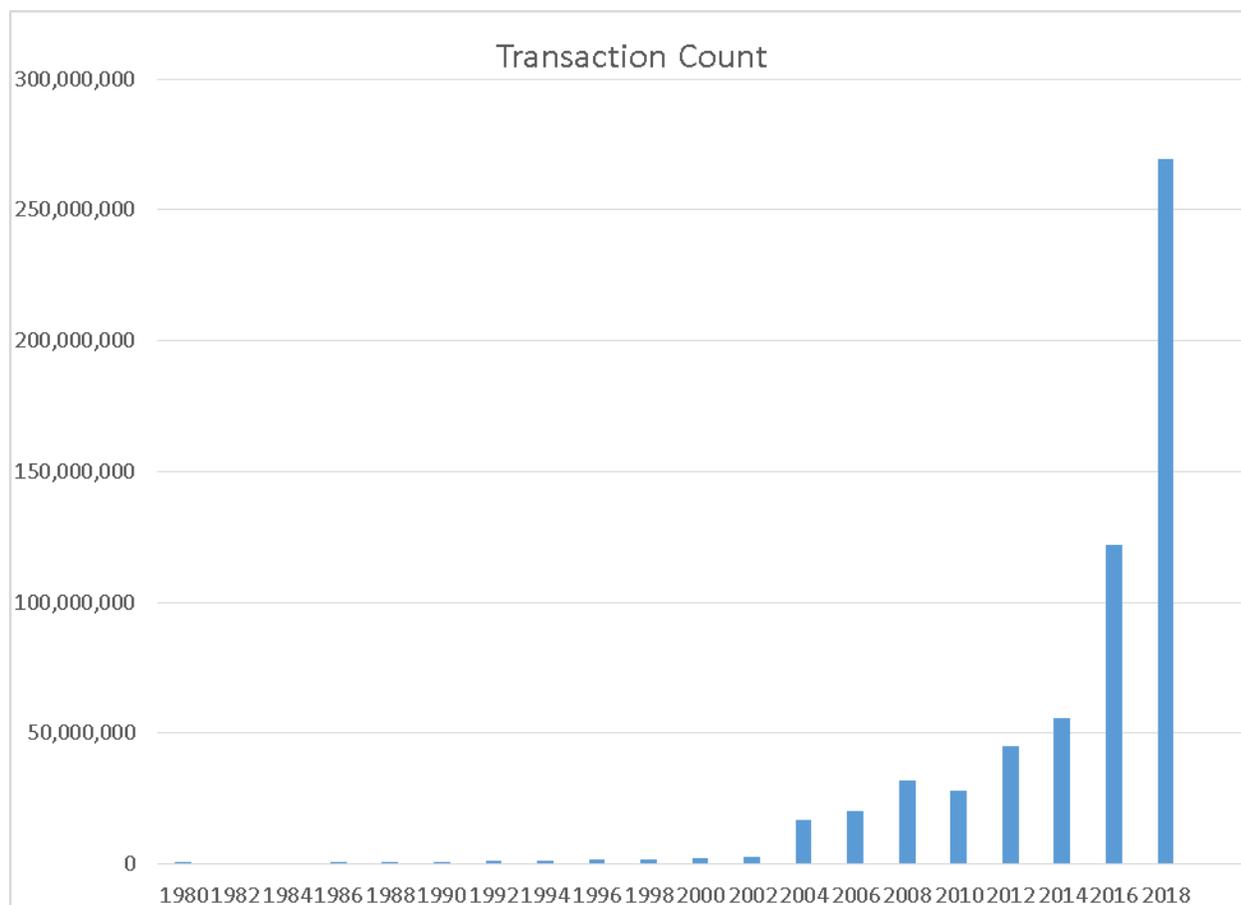
| Election Cycle | Total Receipts | Total Disbursements | Transaction Count |
|----------------|------------------|---------------------|-------------------|
| 2012 | \$8,884,594,132 | \$8,795,764,278 | 45,246,781 |
| 2014 | \$5,976,582,396 | \$5,815,419,284 | 55,976,477 |
| 2016 | \$10,926,836,244 | \$10,729,954,205 | 122,147,807 |
| 2018 | \$10,333,084,467 | \$10,010,442,497 | 269,306,129 |

Over the past several years, the FEC has made significant progress to modernize its IT systems and processes. These efforts include the redesign of the FEC website and the migration to a cloud environment of the FEC's campaign finance database, which contains over forty years of transaction-level campaign finance data reported to the agency. Handling the surge in transaction counts would have been extraordinarily difficult and expensive, if the database had not migrated to a cloud environment. Moreover, as a result of the migration, the FEC was able to shut down one of its four physical data centers during FY 2018 and realize reduced future costs. To continue to mitigate an anticipated steep rise in future cost, the FEC is pursuing a modernization plan now and over the next several years to continue cloud migration and improvement IT processes.

The graph below presents Total Receipts and Disbursements Reported to the FEC by all entities since 1980.



The following graph shows the recent dramatic increase in the number of transactions reported in campaign finance disclosure reports.



Transparency requires that information is not only kept by the FEC, but also provided to the public in an easily accessible way. In order to make certain that campaign finance disclosure information is quickly available and easily accessible to the public, the agency has made a number of improvements to modernize its campaign finance disclosure database and public interface. Specifically, the FEC has developed application programming interfaces (APIs) and other tools to improve access to campaign finance data.

2. Protecting Campaign Finance Information

Protecting information technology systems and data has never been more vital than in the current environment, particularly for the campaign finance information reported to the FEC. The Commission has taken strategic steps to implement a platform of security and privacy. FEC recognizes that perfect security is not feasible; it is a continuing process of detecting risks, process improvements and hardening defenses. For that reason, the benchmark of the FEC's approach to cybersecurity is practicability and continuous improvement. Our cybersecurity strategy outlines an approach of securing our infrastructure and preventing intrusions through a

holistic cybersecurity program led by the Chief Information Security Officer. In partnership with the United States Department of Homeland Security and cybersecurity partners, the agency continues to evaluate emerging threat vectors and focus on efforts to enhance both defenses and mitigation strategies as potential intrusion attempts occur on a regular basis.

The FEC has adopted a four pillared approach to security and privacy. The four pillars are to (1) adopt National Institute of Standards and Technology Cyber Security Framework; (2) implement a robust security architecture; (3) adopt Cloud First Initiative; and (4) build a cybersecurity culture.

Adopt National Institute of Standards and Technology Cyber Security Framework

The first pillar of the FEC's overarching strategy to protect security and privacy is to adopt the National Institute of Standards and Technology (NIST) Cyber Security Framework (CSF). The FEC is exempted from the Paperwork Reduction Act's requirement that federal agencies adhere to the NIST standards for information technology security. In FY 2014 the agency contracted with an IT security consultant to perform a comprehensive review of implementing further NIST guidelines at the FEC. During FY 2015, the Commission voted to adopt the NIST *Risk Management Framework* and NIST IT security control "best practices." Adoption of the NIST CSF was included as a strategic objective in the agency's IT Strategic Plan, FY 2017-2021. The FEC's cyber security strategy, which encompasses the NIST CSF and industry best practices, outlines an approach of securing our infrastructure and preventing intrusions through a holistic cybersecurity program.

Implement a Robust Security Architecture

The second pillar of our strategy is to implement a robust security architecture. In partnership with the Department of Homeland Security (DHS), Massachusetts Institute of Technology and the Pacific Northwest National Laboratory, the OCIO has collaborated with FEC stakeholders and technical experts to identify, protect, detect and respond to the impact of known and unknown threats, continuously assessing security controls and addressing the remaining residual risks. The FEC has also entered into an inter-agency agreement with DHS to participate in the Federal Continuous Diagnostics and Mitigation program. By partnering with DHS, the FEC is able to leverage that agency's cybersecurity resources, which would be cost prohibitive for an agency of the FEC's size to procure independently.

Following NIST guidelines and the Commission's own prioritization and resources, the first wave of projects undertaken to enhance to FEC's security architecture focused on the "protect" function to hinder threat actors from gaining access to FEC IT assets and data. The initial project included strengthening the FEC's perimeter defenses using Software Defined Perimeter and protecting users from inadvertently infecting their systems by using a robust end-point solution. The FEC has additionally implemented tools and services that:

- Detect and/or identify malicious behavior activities.
- Continuously log the entire FEC network flow, which allows OCIO staff to track and identify egress and ingress traffic.
- Identify critical, high and medium vulnerabilities to update/patch for mitigating FEC computer systems.
- Implemented email controls to filter and deliver only trusted emails.

Adopt Cloud First Initiative

The third pillar of our strategy is to adopt a cloud first initiative for security, accessibility and recoverability. Hosting systems and data in a cloud environment allows the FEC to utilize our cloud service providers' significant resources that are dedicated to maintaining the highest level of security. In addition, by utilizing the cloud service providers' robust disaster recovery solutions, the FEC eliminates the need to maintain physical disaster recovery sites, which are costly to maintain and secure. The FEC has already completed the migration of its largest database, the campaign finance database, and its website to a cloud environment. The FEC's new website, launched in May 2017, uses FedRAMP Authorized cloud services, which provides a standardized approach to security assessment, authorization, and continuous monitoring for cloud products and services.

Build a Cybersecurity Culture

The fourth pillar of this strategy is to build a cybersecurity culture. For this comprehensive cybersecurity strategy to be successful, the OCIO will partner with Federal agencies and industry leaders to leverage best practices for our IT workforce. The first line of defense in maintaining the protection and integrity of the agency's network is the ongoing education of employees about their role in identifying and preventing malicious activities. The Commission's main target will be recruiting and training talent with cybersecurity expertise. In April 2019, the FEC entered into a partnership with the Partnership for Public Service to participate in the Cybersecurity Talent Initiative. This selective, cross-sector program, which provides loan forgiveness to top bachelors and masters graduates around the United States in exchange for at least two-years' service at a federal agency, addresses the immediate cybersecurity talent deficiency faced by federal government agencies by attracting service-minded individuals to government who might not otherwise have applied.

B. PROMOTING COMPLIANCE WITH THE FEDERAL ELECTION CAMPAIGN ACT

1. Encouraging Compliance Through Education

Helping those subject to the Commission's jurisdiction understand their obligations under federal campaign finance laws is an essential component of voluntary compliance. The FEC's education and outreach programs provide information necessary for compliance with campaign finance laws and give the public the context necessary to interpret the campaign finance data filers disclose. The FEC maintains a toll-free line and public email accounts to respond to inquiries regarding campaign finance data disclosed to the public and questions about how to comply with campaign finance laws and its reporting requirements. The FEC's Public Disclosure and Media Relations Division and Congressional Affairs Office also respond to inquiries.

One way the Commission encourages voluntary compliance is by hosting conferences across the country, where Commissioners and staff explain how FECA applies to candidates, parties and political action committees. These conferences address recent changes in the law and focus on fundraising, methods of candidate support and reporting regulations.

The FEC also devotes considerable resources to ensuring that staff can provide distance learning opportunities to the general public. The Commission's website is one of the most important sources of instantly accessible information about FECA, Commission regulations, and Commission proceedings. In addition to viewing campaign finance data, anyone with Internet access can use the website to track Commission rulemakings, search advisory opinions, audits, and closed enforcement matters, view campaign finance data, and find reporting dates. The Commission places a high emphasis on providing educational materials about campaign finance laws and its requirements. Toward this end, the FEC has moved its focus away from the printing and manual distribution of its educational materials and instead looked for ways to leverage available technologies to create and disseminate dynamic and up-to-date educational materials through the website. While the Commission continues to make available printed copies of its educational brochures and publications, transitioning to primarily web-based media has allowed the agency to reduce significantly its printing and mailing costs and use of resources while at the same time encouraging new and expanded ways of communicating with the public via the website.

As part of this broad effort to improve its Internet communications and better serve the educational needs of the public, the Commission maintains its own YouTube channel, which can be found at <http://www.youtube.com/FECTube>. The YouTube channel offers a variety of instructional videos and tutorials that enable users to obtain guidance tailored to their specific activities.

The agency's educational outreach program has been significantly enhanced with the addition of an online training service that enables political committees, reporters, students and other groups to schedule live, interactive online training sessions with FEC staff. This on-demand service allows the FEC to provide tailored, distance learning presentations and training to the public in a manner that will significantly increase the availability of FEC staff to serve the public. The service also offers an efficient and effective way for alternative dispute resolution and other enforcement respondents to satisfy the terms of their agreements with the agency.

2. Enforcing FECA's Requirements

a. Enforcement and Compliance Processes

The FEC has formed strategies for ensuring that its enforcement and compliance programs are fair, effective and timely. The Commission's statutory obligation is to administer, interpret and enforce the Federal Election Campaign Act, which serves the compelling governmental interest in deterring corruption and the appearance of corruption in financing elections. In doing so, the Commission remains mindful of the First Amendment's guarantees of freedom of speech and association, and the practical implication of its actions on the political process.

The FEC has exclusive jurisdiction over civil enforcement of federal campaign finance laws.⁵ Commission enforcement actions, which are handled primarily by the Office of General Counsel (OGC), originate from a number of sources, including external complaints, referrals from other government agencies and matters generated by information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities. Enforcement matters are handled by OGC pursuant to the requirements of FECA. If the Commission cannot settle or conciliate a matter involving an alleged violation, the Commission may initiate civil litigation by filing and prosecuting a civil action in Federal district court to address the alleged violation. Closed enforcement matters are available via the FEC website.

To augment OGC's traditional enforcement role, the Office of Compliance manages several programs that seek to remedy alleged violations of FECA and encourage voluntary compliance. These programs include: 1) the Alternative Dispute Resolution Program, 2) the Administrative Fine Program and 3) the Audit Program. The Commission's Alternative Dispute Resolution Program is designed to resolve matters more swiftly by encouraging the settlement of less-complex enforcement matters with a streamlined process that focuses on remedial measures for candidates and political committees, such as training, internal audits and adopting compliance and internal control measures. Violations involving the late submission of, or failure to file, disclosure reports are subject to the Administrative Fine Program. This Program is administered by the Reports Analysis Division (RAD), which assess monetary penalties, and the Office of Administrative Review (OAR), which handles challenges to the penalty assessments. The Audit Program conducts "for cause" audits under the FECA in those cases where political committees have failed to meet the threshold requirements for demonstrating substantial compliance with the Act, and conducts mandatory audits under the public funding statutes. Subject to limited redactions, program review requirements approved by the Commission and used by RAD and the Audit Division are public documents.

The Office of Compliance's Reports Analysis Division (RAD) reviews an ever-increasing volume of reports to track compliance with the law and to ensure that the public record provides a full and accurate representation of reported campaign finance activity. If the FEC's review identifies an apparent violation or raises questions about the information disclosed on a report, RAD sends a request for additional information (RFAI letter) to the filer, affording an opportunity to take remedial action or correct the public record, if necessary. If the filer is able to resolve the FEC's concerns, it may avoid an enforcement action. If not, the Commission has several tools available to it, such as the Administrative Fine Program, Audit Program, the Alternative Dispute Resolution Program and the traditional enforcement program. In addition, RAD devotes a significant amount of resources assisting filers with compliance, handling phone calls on a daily basis, and electronic inquiries through a new web portal system.

The Alternative Dispute Resolution (ADR) Program was implemented in FY 2001 with the primary objective to enhance the agency's overall effectiveness through more expeditious resolution of enforcement matters with fewer resources required to process complaints and internal referrals. A case is closed when the Commission votes on the recommendation made by

⁵ It consults with the U.S. Department of Justice, as appropriate, on matters involving both civil and criminal enforcement of FECA.

the ADR Office (ADRO) as to what final action should be taken. The ADRO has closed 830 matters from the inception of the program through August 31, 2019, assessing \$2,018,897.34 in civil penalties.

In response to a legislative mandate, an Administrative Fine (AF) Program was implemented in July 2000 to address late and non-filing of disclosure reports in a more efficient and effective manner. The AF Program is administered by RAD and Office of Administrative Review (OAR), which are within the Office of Compliance. Since the Administrative Fine Program's inception in July 2000 through August 31, 2019, the Commission has closed 3,278 cases and assessed fines of \$4.8 million. Most importantly, the Administrative Fine Program continues to succeed in reducing the number of late and non-filed reports, thereby increasing campaign finance transparency through the timely disclosure of campaign finance activity. The Committee on House Administration was instrumental in the bipartisan passage of a bill extending the Administrative Fine Program through reports covering 2023.

The Commission generally conducts audits when a committee appears not to have met the threshold requirements for substantial compliance. The audit determines whether the committee complied with the limitations, prohibitions and disclosure requirements of FECA. In addition, the Commission is required by law to audit Presidential campaigns that accept public funds. The Commission has completed a total of 1,036 audits since 1976, these reports are available for review on the FEC website, and searchable by election cycle, committee/candidate name and by overall finding and/or issue.

b. Recent Enhancements to the Processes and Procedures

In 2016, the Commission updated its policy regarding the types of enforcement case file documents that are made public on conclusion of an enforcement matter. Significant additions to the types of documents released included all General Counsel's Reports, and not just those that recommend dispositive actions; all draft Factual and Legal Analyses that are subject to a Commission vote; and agreements with respondents to toll the statute of limitations. The Commission also clarified that it would not release to the public *sua sponte* submissions, or external referrals from other agencies and law enforcement sources in cases where the Commission declines to open a Matter Under Review. In the same Federal Register notice, the Commission announced a policy of releasing a wide variety of administrative materials, including various statistics about its enforcement docket. Files of closed enforcement cases, as well as the administrative materials, can be found on the Commission's web site.

c. Status of FEC Enforcement

Between January 1, 2012 and September 20, 2019, the Commission closed 947 Matters Under Review (MURs) through the ordinary enforcement process described in section 309 of FECA.⁶ It also closed an additional 32 Matters Under Review on OGC's docket by

⁶ Matters Under Review are a type of administrative enforcement matter handled by the Commission's Office of General Counsel pursuant to section 309 of FECA. External complaints filed with the Commission are designated Matters Under Review (MURs) and assigned a MUR number upon receipt. MURs may be designated by

referring them to ADRO for resolution. 250 matters are currently pending at the FEC. 199 of those matters are active and 51 are inactive.

The following chart shows the election cycle that pertains to the matters currently pending at the FEC.

| Election Cycle | Active | Inactive | Total |
|-----------------------|---------------|-----------------|--------------|
| 2012 | 1 | 0 | 1 |
| 2014 | 3 | 0 | 3 |
| 2016 | 78 | 6 | 84 |
| 2018 | 106 | 31 | 137 |
| 2020 | 11 | 14 | 25 |
| | 199 | 51 | 250 |

(As of Sept. 20, 2019)

In September 2016, the Commission directed the agency to prioritize foreign national prohibition matters. In response, the Office of General Counsel has taken a number of steps to do so. Along with cases that are statute-of-limitations imperiled when OGC receives them, foreign national prohibition cases are assigned to OGC staff attorneys before any other class of cases. OGC has also modified its Status of Enforcement reports to the Commission so that the Commission is provided with complete data on every foreign national prohibition case on a quarterly basis. Further, OGC has revised its procedures so that it may more efficiently track the progress of all foreign national prohibition matters through the enforcement process. Finally, for foreign national prohibition matters that are not resolved by tally votes, the Commission has prioritized the placement of these matters on Executive Session agendas for faster Commission consideration.

As of September 15, 2016, the Commission had 14 enforcement matters in house that included alleged violations of the foreign national prohibition. All 14 of those have been closed.⁷

the Commission itself; for instance, if the Commission determines to sever an allegation or a respondent from an existing MUR and pursue a case separately, it will open a new MUR, sever the portions of the case from the existing MUR, and transfer them to the new MUR. There are also preliminary types of enforcement matters that may also become MURs and are assigned MUR numbers if the Commission determines to “open a MUR” and pursue the matter. These case types are RAD referrals, Audit Referrals, and Pre-MURs (*sua sponte* submissions or external referrals), and other internally-generated matters.

⁷ See FEC Report to the Committees on Appropriations on Enforcing the Foreign National Prohibition, 8-9 and n. 36 (Sept. 18, 2018), *copy enclosed and available at* https://www.fec.gov/resources/cms-content/documents/Foreign_National_Report_To_Congress.pdf (“Appropriations Report”) (discussion of MUR 7035 (Australian Labor Party, *et al.*)); *id.* at 8 and n. 35 (discussion of MUR 7081 (Floridians for a Strong Middle Class)); *id.* at 9 and n.39 (discussion of MURs 6962 and 6982 (Project Veritas, *et al.*)); *id.* at 9 and n. 38 (discussion of MUR 6944 (Farias)); *id.* at 9 (discussion of MUR 6976 (City Council Committee for Johnny W. Streets, Jr.)); *id.* at 11 and n.46 (discussion of MURs 7094, 7096 and 7098 (Donald J. Trump for President, *et al.*)); MUR 7122 (Right to Rise USA), <https://www.fec.gov/data/legal/matter-under-review/7122/>; MUR 6959 (DNC and Nava), <https://www.fec.gov/data/legal/matter-under-review/6959/>; MUR 7059 (Human Rights for Vietnam PAC, *et al.*),

Subsequent to September 15, 2016, and as of September 20, 2019, the Commission received an additional 46 enforcement matters that include alleged violations of the foreign national prohibition. Of those 46, 11 have been closed⁸ and 35 remain open. Of the remaining 35 matters, 33 are active and assigned to OGC Enforcement attorneys, while two were recently received by the Commission and are inactive.

C. INTERPRETING AND DEVELOPING THE CAMPAIGN FINANCE LAWS

The Commission responds to questions about how the Federal Election Campaign Act applies to specific situations by issuing advisory opinions (AOs). In addition, Congressional action, judicial decisions, petitions for rulemaking, Commission initiatives, or other changes in campaign finance often necessitate that the Commission update or adopt new regulations.

The Commission has recently issued several noteworthy AOs.

In 2018 and 2019, the Commission issued several advisory opinions concerning provision of low- or no-cost cybersecurity services to candidates and political committees. The Commission concluded in each instance that provision of such services would not result in prohibited in-kind contributions and would be permissible under FECA and Commission regulations.⁹

Since 2017, the Commission has issued key clarifications about FECA's restrictions on personal use of campaign funds in the areas of childcare expenses, protection of the security of the personal devices of office holders, and the home security of Members of Congress. FECA and Commission regulations prohibit personal use of campaign funds, which occurs when campaign funds are used to fulfill any commitment, obligation, or expense that would exist irrespective of a candidate's campaign or an individual's duties as a federal officeholder. In each of the circumstances presented, the Commission determined that the proposed use of funds was permissible under FECA and Commission regulations and was not a prohibited personal use.¹⁰

<https://www.fec.gov/data/legal/matter-under-review/7059/>; MUR 6865 (Azano),
<https://www.fec.gov/data/legal/matter-under-review/6865/>; MUR 6932 (Clinton),
<https://www.fec.gov/data/legal/matter-under-review/6932/>.

⁸ See Appropriations Report at 8 and n. 33 (discussion of MUR 7141 (Beverly Hills Residents and Businesses to Preserve Our City)); *id.* at 10 and n.43 (discussion of ADR 822 (Arteaga)); *id.* at 7 and n. 30 (discussion of MUR 7205 (Jill Stein for President, *et al.*)); MUR 7144 (Jacobs, *et al.*), <https://www.fec.gov/data/legal/matter-under-review/7144/>; MURs 7430, 7444 and 7445 (Unknown Respondents), <https://www.fec.gov/data/legal/matter-under-review/7430/>; MUR 7232 (Party of Regions), <https://www.fec.gov/data/legal/matter-under-review/7272/>; MUR 7314 (NRA), <https://www.fec.gov/data/legal/matter-under-review/7314/>; MUR 7414 (Doyle for Congress), <https://www.fec.gov/data/legal/matter-under-review/7414/>.

⁹ See AO 2018-11 (Microsoft); AO 2018-12 (Defending Digital Campaigns); and AO 2019-12 (Area 1 Security).

¹⁰ See AO 2019-13 (MJ for Texas); AO 2018-06 (Liuba for Congress); AO 2018-15 (Wyden); and AO 2017-07 (Sergeant at Arms).

D. ADMINISTERING THE PRESIDENTIAL PUBLIC FUNDING PROGRAM

The Commission's responsibilities also include administering the public funding of Presidential elections, as provided in the Presidential Primary Matching Account Act and the Presidential Election Campaign Fund Act. Through the public funding program, the federal government provides matching funds to candidates seeking their party's Presidential nomination and grants to Presidential nominees for their general election campaigns.

The program is funded by taxpayers who voluntarily check off the \$3 designation for the Presidential Election Campaign on their income tax returns. The percentage of taxpayers who check off the designation for the Presidential Election Campaign Fund continues to decline. Recent statistics from the Internal Revenue Service show the following check off rates:

| Calendar Year | Percent of Tax Returns with PECF Designation |
|---------------|--|
| 2018 | 3.9 % |
| 2017 | 4.1 % |
| 2016 | 4.4 % |
| 2015 | 5.4 % |

Thus far in the 2020 Presidential election cycle, no candidate has applied for matching funds for the 2020 Presidential primary elections. In 2016, two primary candidates participated in public funding programs, and their campaigns received a total of \$1.5 million in public funds.

The balance in the Presidential Election Campaign Fund as of July 31, 2019, is \$353,074,995, according to the U.S. Treasury. This amount is unusually large for this program account, due to reduced candidate participation in the Presidential public funding programs.

E. THE 2018 FEC LEGISLATIVE RECOMMENDATIONS

The Federal Election Campaign Act authorizes the Commission to make recommendations for legislative action. In December 2018, the Commission most recently approved 11 Legislative Recommendations. The Recommendations are:

- Electronic Filing of Electioneering Communication Reports
- Authority to Create Senior Executive Service Positions
- Prohibit Fraudulent PAC Practices
- Fraudulent Misrepresentation of Campaign Authority
- Conversion of Campaign Funds
- Prohibit Aiding or Abetting the Making of Contributions in Name of Another

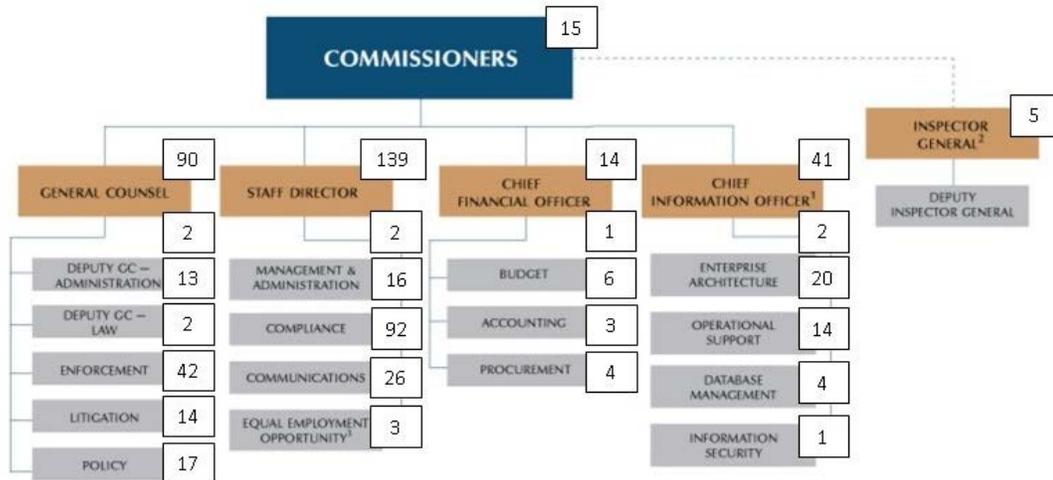
- Increase and Index for Inflation Registration and Reporting Thresholds
- Increase the In-Home Event Exemption and Unreimbursed Travel Expense Exemption for Candidates and Political Parties
- Permit Political Committees to Make Disbursements by Methods Other than Check
- Update Citations to Reflect the Recodification of FECA
- Repeal of Convention Funding Provisions Rendered Non-Operational by the Gabriella Miller Kids First Research Act

The Commission’s 2018 Legislative Recommendations can be found at <http://www.fec.gov/law/legrec2018.pdf> and are also attached.

F. FEC’s ALLOCATION OF STAFF

In order to accomplish its mission and meet the requirements of other legislation, the Federal Election Commission has arranged its employees into various mission-related or support offices. The organizational chart below depicts that arrangement and has been annotated with the number of employees in each of the organizational units.

FEC’s Organizational Structure and Employees’ Distribution 304 Employees as of September 25, 2019



1 The position of Chief Information Officer normally reports directly to the Staff Director who, in turn, reports to the Commission itself. At present, however, the same individual is serving in both the position of the Staff Director and the position of the Chief Information Officer, pursuant to an authorization by the Commission and based, in part, on an advance decision from the Comptroller General. Accordingly, the organizational chart reflects both positions – the Staff Director and the Chief Information Officer – as reporting directly to the Commission.

2 The Office of the Inspector General (OIG) independently conducts audits, evaluations, and investigations. OIG keeps the Commission and Congress informed regarding major developments associated with their work.

3 The Director for Equal Employment Opportunity reports to the Staff Director on administrative issues but has direct reporting authority to the Commission on all EEO matters. See 29 CFR 1614.102(b)(4).

The Office of Compliance includes the Reports Analysis Division (59), the Audit Division (28), the Alternative Dispute Resolution Office (3), and the Office of Administrative

Review (1) (which reviews the challenges within the Administrative Fine Program). The Office of Communications includes the Information Division (15), the Public Disclosure and Media Relations Office (9) and Congressional Affairs (2).

In addition to the positions shown above, the Commission approved posting vacancy announcements for up to 25 additional positions: 13 in the Office of Staff Director, 10 in the Office of General Counsel and two in Office of Inspector General.¹¹

II. FEC’s BUDGET

The chart below presents the appropriations the Federal Election Commission has received in FY 2016 through FY 2019, the amounts provided in the bills passed by the House of Representatives and pending before the Senate for FY 2020, as well as the amount the FEC requested for FY 2021 in its September 2019 submission to the Office of Management and Budget (OMB). Excluded are amounts for lease termination expenses of \$5 million and \$8 million for FYs 16 and 17, respectively. The Federal Election Campaign Act requires that, whenever the FEC submits any budget request to OMB, the Commission must concurrently transmit a copy of the budget request to Congress.

| Fiscal Year | Source | Amount for Operational Budget |
|----------------|---------------------------------|-------------------------------|
| FY 2016 | Enacted | \$71,119,000 |
| FY 2017 | Enacted | \$71,119,000 |
| FY 2018 | Enacted | \$71,250,000 |
| FY 2019 | Enacted | \$71,250,000 |
| <i>FY 2020</i> | <i>House Bill</i> | <i>\$71,497,000</i> |
| <i>FY 2020</i> | <i>Senate Bill</i> | <i>\$70,537,500</i> |
| <i>FY 2021</i> | <i>FEC’s OMB Budget Request</i> | <i>\$72,653,625</i> |

The Commission is well aware of the constraints on federal spending generally, and although the FEC’s appropriation is a small portion of discretionary spending, the Commission appreciates the support of its mission that Congress has shown by maintaining these appropriation levels in this budget climate.

While funding amounts for the FEC have been generally level, the Commission faces rising costs. Personnel costs rise with increased costs for benefits. Non-personnel costs increase as well, including some by contractual provision. The Commission is continually reviewing its operations and processes for opportunities to enact cost-saving measures. Over the past decade, the Commission has critically analyzed every position vacated through attrition to determine whether the agency could absorb the loss of that position by using existing staff resources. Senate electronic filing continues to permit the FEC to avoid expenses as well.

¹¹ These figures do not include the vacancy announcement for the fellow in the Cybersecurity Talent Initiative, described above in part I.A.2.

As discussed above, the FEC is also implementing a multi-phase plan to reduce reliance on physical servers and migrate appropriate systems and data to a cloud environment. In conjunction with the redesign of the agency's website, the FEC successfully migrated its largest database, the campaign finance database, to a cloud environment and shut down one physical data center during FY 2018. Cloud hosting offers a number of benefits for the FEC's campaign finance database and website. The agency's Internet traffic is variable, with many more visitors accessing the website during election years and near reporting deadlines. With a cloud-hosted application and database infrastructure, the FEC only needs to pay for the actual usage, rather than constantly maintaining the capacity to support peak usage, even during periods of reduced usage. Website downtime is minimized and server maintenance is managed by the cloud computing provider. During FY 2020, the FEC will conduct a study to determine how best to migrate other appropriate systems and databases to the cloud, allowing the agency to realize greater efficiency and performance in future years.

Conclusion

The Commission appreciates the interest of the Committee on House Administration in the FEC. This document, together with the materials the Commission provided to the Committee in its preparation for this hearing, provide a thorough review of the Federal Election Commission. The Commissioners would be happy to respond to any questions you may have today or in further written submissions.