



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 27, 2023

The Honorable Bryan Steil
Chairman, Committee on House Administration
United States House of Representatives
1309 Longworth House Office Building
Washington, DC 20515

Dear Chairman Steil:

Thank you for your letter of October 13, 2023 to all six Commissioners of the Federal Election Commission. Enclosed please find the Commission's response to the questions for the record that were posed in that letter. Electronic copies of the attachments are also enclosed.

Should you or your staff members wish to communicate further on these or any other matters at any time, please do not hesitate to contact me at dlindenbaum@fec.gov or (202) 316-6439, or through the Commission's Director of Congressional Affairs, Duane Pugh, at dpugh@fec.gov or (202) 694-1002.

On behalf of the Commission,

A handwritten signature in black ink, appearing to read "Dara Lindenbaum", written over a horizontal line.

Dara Lindenbaum
Chair

Enclosures

cc: Hon. Joseph D. Morelle, Ranking Member, Committee on House Administration



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RESPONSES TO QUESTIONS FOR THE RECORD FROM THE COMMITTEE ON HOUSE ADMINISTRATION

October 27, 2023

Majority

1. *The Commission has established an internal Committee on Diversity, Equity, Inclusion, and Accessibility (“DEIA Committee”). Please answer the following questions with regard to the DEIA Committee.*

a. *Who supervises or directs the DEIA Committee?*

The FEC’s Diversity, Equity, Inclusion and Accessibility Council (DEIA Council) is a collaborative engagement of agency employees that is staff-led and staff-driven. During the DEIA Council’s first year, the Acting General Counsel served as Executive Sponsor/Advisor, which involved providing guidance and facilitating communication of the DEIA Council’s recommendations to the agency’s leadership. The FEC’s Director of the Office of Equal Employment Opportunity (OEEO) serves as a nonvoting member of the DEIA Council.

b. *Have agency funds been spent on the DEIA Committee’s activities?*
i. *If so, what amount?*

In 2020, the FEC’s OEEO spent \$9,850 on a facilitator who assisted in establishing the DEIA Council, which included drafting its charter and developing its strategic plan. During the period 2020 to the present, the FEC spent an additional \$37,044 on DEIA Council related activities, which are listed below in response to Part d. of this question.

c. *How many staff hours have been expended on DEIA Committee activities since its creation? Please include only those hours that are compensated work hours, and not to include volunteer hours, used leave, or other uncompensated work time.*

The FEC does not track compensated work hours by activity. Staff participate in the DEIA Council or attend its events on a collateral basis, subject to supervisory approval.

d. Please provide copies of all DEIA Committee trainings, presentations, events, or other materials distributed to Federal Election Commission staff, including those of outside speakers.

Listed below are all of the trainings, presentations and events that were offered as DEIA Council activities. The materials related to each are listed below and attached.

2021

- February 22 and March 3, 2021: *The New IQ Training*
 - Facilitator: Dr. Bruce Stewart of Small World Solutions
 - Joint event: DE&I Council¹ & Employee Engagement Steering Committee
 - Attachment A: Workbook
- November 16, 2021: *Achieving Equitable Outcomes in The Federal Workplace as We Transition Back into the Office*
 - Facilitator: Damario Solomon-Simmons, Esq. of Solomon Simmons Law
 - Joint event: OEEO & DE&I Council
 - Attachment B: Slide deck

2022

- January 20, 2022: *DE&I Council Strategic Planning Session*
 - Facilitator: Dr. Bruce Stewart of Small World Solutions
 - Attachment C: Slide Deck
- September 19-23, 2022: *FEC DE&I Diversity Week*
 - Attachment D: Flyers, webpage and linked materials
- October 12, 2022: *Unconscious Bias Training*
 - Facilitator: Carlos Montez of Franklin Covey
 - Attachment E: Slide Deck and materials

2023

- March 13, 2023: *Recruiting, Hiring and Developing Diverse Talent*
 - Facilitator: Sharon Fitzpatrick of The Fitzpatrick Group
 - Joint event: OEEO, DEIA Council, OHR
 - Attachment F: Agenda and Participant Guide

In addition to the event-related materials listed above, also attached are other DEIA Council related materials that have been distributed to FEC staff through FECNet, an internal FEC employee intranet. Attachment G includes a copy of the DEIA Council page and the materials

¹ Prior to October 2022, the DEIA Council was known as the Diversity, Equity and Inclusion (DE&I) Council.

linked on it, and Attachment H includes a copy of the DEIA Resources page and the materials linked on it. Finally, Attachment I includes emails that were sent all agency employees related to DEIA Council events.²

2. *As we discussed at the hearing, many Americans have trouble downloading from the Federal Election Commission's website reports filed by large conduit entities, such as ActBlue and WinRed, because of the large file sizes.*

Filings by large conduit entities are increasingly voluminous; in fact, some reports received from large conduit committees would, if printed, be as long as 9.5 million pages. When users download a report of this size from FEC.gov to their personal systems, the downloading strains the FEC's server performance and, once downloaded to users' personal systems, these files often prove impractical for standard laptops to store and open. Rather than seeking to improve the process of downloading entire reports, the FEC is seeking alternative solutions to get the users the data they seek in amounts that personal systems can handle, as discussed in further detail below.

- a. *Are current law and the Commission's resources sufficient to address this problem? If not, what recommendations does the Commission have for Congress to consider as it examines possible solutions?*

Sufficiency of current resources and increasing needs

The FEC continues to seek technological innovations that will make campaign data available to the public quickly and in a manner that is useful to them. Over the past ten years, the FEC has seen a dramatic increase in the number of individual financial transactions reported each election cycle, in large part as a result of filings by large conduit entities. The agency does not expect that members of the public would, or should need to, have access to the computing power needed to store and access downloads of tremendous size in order to access campaign finance data. In fact, the FEC generates PDF files of more than 100,000 pages only when requested to do so.

Given the increasing size of filings, creating more capacity for individual members of the public to download campaign finance reports may not be the most optimal long-term technological solution to making these datasets available to the public. Instead, the FEC is working to create a user-friendly interface that will eliminate the need for our data users to download these extensive data sets onto their personal systems. Delivering data to the public efficiently and in a user-friendly format is part of the FEC's goal in modernizing its own data infrastructure. With improvements to the FEC's data infrastructure, the agency expects to have the capability to provide faster and more robust searches of reports and data delivery through the FEC's website and application programming interface (API). This capability could allow the FEC to develop website interfaces that would replace the need for individual members of the public to essentially make a copy of an entire report and house that copy on their personal device. In tandem with this effort, the FEC is also exploring shorter term solutions that would allow users to create and

² Duplicative emails, such as reminders of information already provided, were not included in Attachment I.

download PDF files of specific sections of reports on demand, rather than downloading the entire report.

The FEC is undertaking work to modernize its data infrastructure as part of a multi-year project to modernize its “data pipeline.” However, the agency does not currently have the staff and funding resources to complete the data pipeline modernization project and build out search and display features to meet the public’s requests for increasingly large data sets. Work for the data pipeline modernization project is pending funding for FYs 2024 and 2025. Indeed, without adequate funding for this project, the agency risks not only continued difficulties in providing access to data at current levels but also a potential degradation in the quality of services provided to the public through the FEC website and API. Funding and staff for the data pipeline modernization project, as well as other avenues for ensuring the FEC’s technology infrastructure can keep up with both emerging technologies and evolving campaign finance trends, is necessary to ensure the FEC can make campaign finance data quickly and usefully available to the public.

Current law and recommendations

FECA establishes that, for contribution limit purposes, contributions made by a person include contributions that are “in any way earmarked or otherwise directed through an intermediary or conduit.” FECA also imposes a reporting requirement on the intermediary or conduit that requires reporting both to the FEC and to the intended recipient. FECA, § 315(a)(8), *codified at* 52 U.S.C. § 30116(a)(8). However, this reporting requirement does not include a threshold for itemization of contributions, which means that contributions of any dollar amount must be separately reported.

Some contributors divide contributions among many recipients, which can make some transactions of less than one dollar. Separately reporting transactions of this size can lead to enormous reports with up to 10,000 transactions for \$100 of activity, which is having a significant impact on the total number of reported transactions by all FEC filers. From 2016 to 2020, the FEC saw the number of reported transactions increase by more than 400 percent. More than 96 percent of this increase is attributable to conduit and intermediary reports.

In August 2022, the Commission received a petition for rulemaking urging the Commission to amend its regulations to establish an itemization threshold for conduit reports. In October 2022, the Commission published a notice of availability seeking comment on whether the Commission should initiate a full rulemaking on the proposal in the Petition. The Commission has received 10 comments on the rulemaking petition; no final decision on whether to commence a rulemaking has been reached.³

³ See materials related to REGS 2022-05 at <https://sers.fec.gov/fosers/>.

Minority

1. *Could you please comment on how delinking the salaries would impact the agency?*

The current provision in FECA specifies that the Staff Director and General Counsel are to be paid at Level IV and Level V of the Executive Schedule, respectively.⁴ Both positions supervise personnel at the GS-15 and Senior Level pay scales, which often provide higher salaries than Levels IV and V of the Executive Schedule. The Staff Director and General Counsel have significant responsibilities and oversight duties with respect to both administrative and legal areas, as well as management over almost all agency personnel. According to recruiting specialists who have worked with the Commission, the current limit makes attracting a strong pool of applicants to these positions more challenging. The appointment and retention of these key leaders have been identified as ongoing management and performance challenges to the Commission by the Inspector General in the nine most recent Agency Financial Reports covering 2014 through 2022 and in previous Performance and Accountability Reports. The General Counsel's position is currently filled on an acting basis.

The Commission has approved a Legislative Recommendation that proposes to remove the statutory references to the Executive Schedule and amend FECA to specify that the Staff Director and General Counsel would be compensated under the same schedule as the Commission's other senior managers. This revision would remedy the current situation where the Commission's top managers are compensated at a lower rate than many of their direct reports and will ensure that the Commission can retain highly qualified individuals to serve in those positions as well as enable it to remain competitive in the marketplace for Federal executives when vacancies arise. Changing the salaries for these two positions would not require an increase in the Commission's appropriation request.

In addition, in response to a question from the minority of the Committee on House Administration, the Commission has noted that it would support legislation that would increase Commissioners' compensation. Many of the same reasons that apply to the Staff Director and General Counsel also apply to Commissioners. Additionally, the Commissioners' situation is exacerbated by the pay freeze at 2013 levels, which has created a situation where Commissioners receive less compensation than FEC employees in Senior Level positions, and less compensation than some agency employees in the GS-14 and GS-15 positions, including many of their direct reports. The Commission believes that finding suitable nominees willing to serve as Members of the FEC will be increasingly difficult the longer the current situation persists. Lapses in having a quorum of Commissioners serving prevent the agency from accomplishing many of its most important functions. An increase in Commissioner compensation may reduce the likelihood of further lapses of a quorum of Commissioners.

In response to this question, Commissioner Dickerson issued a supplemental statement, which is attached.

⁴ FECA, § 306(f)(1), *codified at* 52 U.S.C. § 30106(f)(1).

2. *Could you please add additional detail on the general staffing and pay issues experienced at the agency, and how they impact the FEC right now?*

With over 70 percent of the agency's annual obligations composed of expenses related to personnel, the agency's ability to increase or even maintain FTE levels in a given year is disproportionately affected by increases in personnel costs, most notably required employee salary and benefits increases. The FEC's appropriation increased by a total of only 4.8 percent between FY 2016 and FY 2022. Increases in overall personnel costs and unexpected expenses related to the COVID-19 pandemic placed further pressure on the FEC's budget during FYs 2020 and 2021, and into FY 2022. These constraints only served to magnify longer-term staffing challenges for the agency. During this period the FEC has been able to meet its statutory mission primarily due to efficiencies gained by reassigning staff using details, maximizing operational efficiencies through reorganizations, and improving technology and processes, among other efficiencies. However, in recent years the FEC has begun to exhaust the benefits that can be gained through such efficiencies and has, in some situations, reduced performance targets in response to these reductions in staffing amid increasing campaign finance activity.

While the Commission considers many factors when weighing agency staffing decisions, funding constraints represent the most immediate cause of the FEC's reduced staffing levels. Funding constraints affect the agency's ability to hire in multiple ways. At the most basic level, with higher funding levels the FEC is able to bring on additional staff, and with consistently higher funding levels the FEC would be able to meet and maintain its staffing goal for FY 2024, which is 340 FTE. However, with no funding increase in FY 2024 the agency would only strive to maintain staffing levels during the fiscal year or temporarily decrease staffing levels through attrition, and at continued flat funding through FY 2025 the agency could need to again plan for reduced staffing levels.

The FEC's ability to complete hiring plans and implement long-term human capital management strategies is also impeded by year-over-year funding uncertainty that results from lengthy periods under continuing resolutions and appropriation levels that have not kept up with inflation. For example, the agency's current budget does not allow for backfilling all vacated positions, and as a result, vacancies are prioritized by leadership and approved for filling by the Personnel Committee on an ongoing basis. Hiring managers are advised to keep hiring documents as up-to-date as possible, evaluate what their office/division needs regarding staffing, establish relationships with recruitment outlets, and move quickly if and when approval is received and it is determined that the agency has the funds to fill the position. However, without the ability to hire throughout the fiscal year as needed, managers can lose valuable time filling vacancies with interim internal appointments and other staffing remedies and may lose opportunities to hire permanently when staff is most needed. Moreover, long-term strategic staffing plans cannot easily be developed or implemented in an environment that does not allow for predictable hiring projections or for the achievement of targets identified in staffing plans.

3. *What actions do you need from Congress to address these challenges?*

First, the Commission renews and reemphasizes its requests that Congress fund the FEC at the requested levels in FY 2024 and FY 2025. In addition, as the Commission explained in its Legislative Recommendation entitled *Increase the Rate of Pay for FEC Staff Director and General Counsel*, Congress should amend FECA to accomplish this adjustment as well as consider legislation to increase Commissioner compensation. Congress could also consider providing multi-year funding for certain FEC programs, including hiring initiatives, to allow for long-term, strategic human capital management planning.



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**SUPPLEMENTAL RESPONSE TO QUESTIONS FOR THE RECORD
FROM THE COMMITTEE ON HOUSE ADMINISTRATION**

October 27, 2023

In response to the Committee Minority's question concerning the salaries of the Commission's Staff Director and General Counsel, my colleagues have recommended that commissioners' salaries should also be increased.

While there are sound personal and policy reasons for their position, I do not believe the FEC is uniquely affected by the government-wide freeze on executive compensation. Nor do I believe requests of this type should be provided to the Committee outside the usual channels for legislative recommendations.

I otherwise join the Commission's response in full.

A handwritten signature in blue ink, appearing to read "Allen J. Dickerson", written over a horizontal line.

Allen J. Dickerson
Commissioner