



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

**RESPONSES TO QUESTIONS FROM
THE MINORITY MEMBERS OF THE
COMMITTEE ON HOUSE ADMINISTRATION**

June 16, 2023

1. *According to the Office of the Inspector General's ("OIG") Semiannual Report to Congress released in November 2022,¹ there are currently seven outstanding recommendations that are older than six months.*
 - a. *How many of these recommendations are still outstanding? For how long have they been outstanding?*
 - b. *Why have these recommendations gone unaddressed for so long?*
 - c. *How does the Commission plan to address these recommendations?*
 - d. *How does the Commission plan to ensure that future recommendations are addressed in a timely manner?*

The Federal Election Commission (FEC) continues dedicating resources to closing outstanding recommendations from OIG audits, special reviews, and inspections with an emphasis on addressing the most critical recommendations first. As a result of these efforts, FEC management closed four outstanding recommendations from four OIG engagements during the most recent OIG semiannual review period (October 2022 to March 2023). Closing three of these recommendations resulted in retiring all outstanding recommendations related to the following matters: (1) Special Review: Use of TRANServe Benefits during the FY 19 Government Shutdown (August 2020); (2) FEC's Compliance Review with Improper Payments Reporting for Fiscal Year 2021 (May 2022); and (3) I22INV00010: Lost FEC Laptop Reported by an Agency Employee (June 2022).

As of March 31, 2023, there were seven open recommendations that were older than six months across the following three matters:

- Inspection of the FEC's Disaster Recovery Plan and Continuity of Operations Plan (January 2013 two open recommendations);
- Investigation of Allegations of Bias Against FEC Personnel Reviewing the 58th Presidential Inaugural Committee Reports (August 2021 four open recommendations); and
- Special Review of the FEC's Contracting Officers Representative (COR) Program (May 2022 one open recommendation).

Attachment A is a document explaining the remaining recommendations and the status of the corrective actions FEC management is taking to address each recommendation.

¹ OFF. OF THE INSPECTOR GEN., FED. ELECTION COMM'N, SEMIANNUAL REPORT TO CONGRESS 11 (November 2022), https://www.fec.gov/resources/cms-content/documents/FEC_OIG_SAR_Apr-Sep_2022.pdf.

The Commission intends to continue to focus on resolving recommendations and seeking the resources necessary to do so, and it believes the record of recent successes resolving these issues will continue.

2. *The OIG Semiannual Report listed the five top management challenges that it believes the Commission faces.*
 - a. *Does the Commission agree with the OIG's assessment?*

In October 2022, the Office of Inspector General identified the most serious management and performance challenges faced by the FEC.² The five challenges are: (1) Growth of Election Spending; (2) Identifying and Regulating Unlawful Foreign Contributions; (3) Continuity of Operations; (4) Human Capital Management; and (5) Cybersecurity. The Commission agrees with OIG that these five are serious management and performance challenges faced by the FEC.

Question 2.b. concerns cybersecurity, and question 2.c. concerns foreign national contributions, so those challenges are addressed in response to those subparts of this question. The remaining challenges are addressed here.

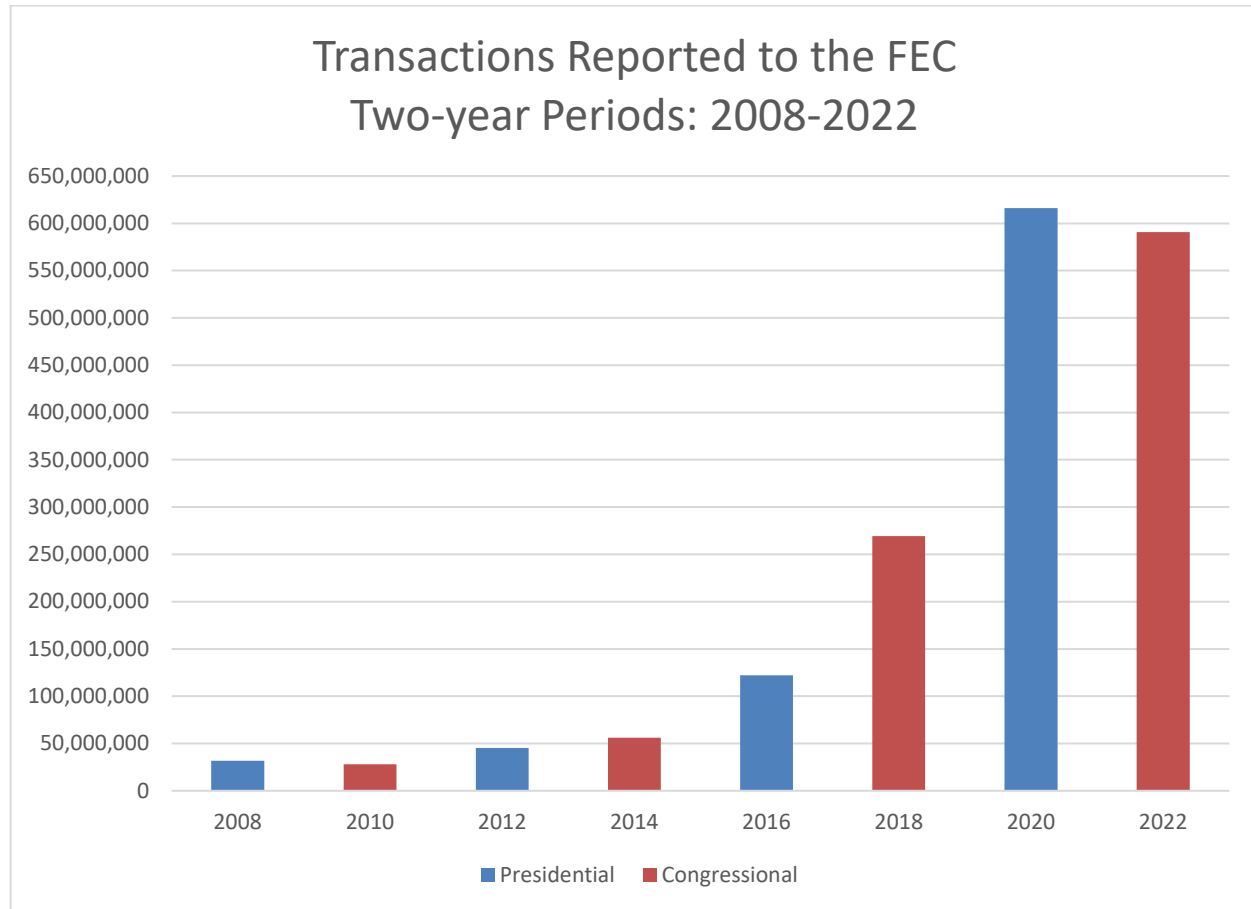
(1) Growth of Election Spending

The FEC receives campaign finance reports, statements, and other disclosure documents from more than 16,000 political committees and other filers. During the 2020 election cycle, these filers reported more than 600 million financial transactions, which were reviewed by FEC staff and disclosed to the public on the FEC's website. This is more than double the number of transactions reported in the previous election cycle, and a nearly 400 percent increase compared to 2016, the last presidential election cycle. During the 2022 election cycle, these filers reported more than 590 million financial transactions, also which were reviewed by FEC staff and disclosed to the public on the FEC's website. This is a nearly 120 percent increase compared to 2018, the last nonpresidential election cycle.

Changes in the way political committees raise and spend funds have contributed to this stark increase in the number of transactions disclosed to the FEC. Campaign finance disclosure data must be received, processed and made available to the public within tight deadlines for public disclosure, and it must be safeguarded to ensure the integrity and accessibility of the information. Table 1 below illustrates the growth of data transactions that the FEC needs to process, store, search, and display to support the FEC's disclosure mission.

² See FEC OIG, *Management and Performance Challenges Facing the FEC for FY 2023*, at 1 (Nov. 14, 2022), available at: <https://www.fec.gov/resources/cms-content/documents/FY-2023-Mgmt-Challenges.pdf>. OIG notes: "All FY 2022 management challenges have been included in this report although some have been updated, retitled, and/or consolidated." *Id.*, at 8.

Table 1.



Aside from the substantial increase in the number of transactions reported to the FEC, the FEC website's Application Programming Interface (API), which permits users to customize data searches making vast quantities of campaign finance data readily available, received over 407 million hits during the 2020, the last presidential election cycle. During 2022, the last nonpresidential election cycle, the API received 480 million hits. With the steep rise in transactions reported every election cycle comes a heavier burden on the FEC's API to quickly search across the FEC's campaign finance database and display the data requested by the public. Thus, the FEC is facing challenges in processing and reviewing historically high levels of campaign finance disclosure information, while satisfying an increased demand for customer service and data information requests from the public.

(3) Continuity of Operations

The Commission agrees with OIG that the agency's telework program is an important element of the agency's Continuity of Operations (COOP) planning. Throughout the COVID-19 pandemic, the agency maintained a maximum telework status that prioritized protection of employee health and safety, while ensuring the FEC's operations could continue with minimal disruptions. Upon returning additional employees to the physical workplace in late-February 2022, the FEC implemented a one-year Expanded Workplace Flexibilities Pilot Program covering both bargaining unit and non-bargaining unit employees that provided significantly expanded telework

options for employees as compared to the agency's pre-pandemic policies.

In March 2023, the Commission approved a new permanent Workplace Flexibilities Program Policy for Non-Bargaining Unit Employees, which maintains many of the telework and work schedule flexibilities afforded under the Pilot Program while increasing in-office presence and establishing division-wide core days to better facilitate communication, teambuilding, and mentoring. Consistent with goals of more recent guidance from the Office of Management and Budget regarding agency work environments and organizational health,³ the FEC's policy aims to increase meaningful in-person work, while maintaining a robust telework program that supports COOP preparedness and can be used as a talent recruitment and retention tool. The agency is currently in negotiations with its labor union over a permanent policy for bargaining unit employees.

To evaluate the impact of telework policies on FEC operations, as well as employee recruitment and retention, the agency collected and evaluated data during the Pilot Program and is continuing to do so through exit interviews and information gathering during the hiring process.

(4) Human Capital Management

Citing internal resource constraints and emerging external issues, the FEC's OIG has identified declining staffing levels and employee morale as Human Capital Management challenges for the FEC. The Commission understands and agrees that the success of its programs depends upon the skills and commitment of its staff. In recent years, the FEC has been challenged to recruit, train and retain talent necessary to meet the agency's workload and hiring goals, in part as a result of the FEC's relatively flat funding levels over the past several years. 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. 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. Overall, between FY 2012 and FY 2022, the FEC's staffing levels were reduced by over 17 percent. 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.

For FY 2023, the FEC requested and received an increase in its appropriation over FY 2022 levels, and the FEC has set as a priority filling vacant positions and rebuilding staffing levels. As of June 1, 2023, the FEC has increased its total onboard staff by 10 employees since the end of FY 2022. Funding at the FEC's requested level for FY 2024 would allow the agency to build on these efforts by filling critical vacancies, including in some of the areas where the FEC has experienced

³ Office of Management and Budget Memorandum M-23-15, *Measuring, Monitoring, and Improving Organizational Health and Organizational Performance in the Context of Evolving Agency Work Environments* (April 13, 2023).

increased demands in workload. Funding at the requested level for FY 2024 would support 340 employees and would allow the agency to pursue a concerted effort through FY 2024 and beyond to rebuild from reduced staffing levels to meet its increased workload and ensure the agency can satisfy the public's customer service expectations.

The FEC is also committed to continuously improving the performance of staff in support of the agency's mission objectives. Due to the COVID-19 pandemic and budget constraints, FEC spending on employee training was reduced during FY 2021. In FY 2022, the FEC began adjusting its spending to devote more resources to improve the skills base of the workforce, and the FEC intends to continue doing so in future fiscal years. However, with budget constraints continuing to affect the amount of funds that can be allocated to training, the FEC will focus on ensuring that mandatory training requirements are met first, along with training required to support activities that are deemed to be mission critical. The FEC's FY 2024 Congressional Budget Justification requests a modest increase over FY 2023 enacted funding for training and awards. To ensure the agency continues to meet its statutory obligations and to measure progress on its efforts to recruit, train and retain a high-performing workforce, the Commission has established a series of data driven metrics to measure customer satisfaction with educational outreach efforts, and to ensure that matters are moved efficiently and fairly through the enforcement and compliance processes, with complainants and respondents afforded sufficient transparency regarding the processes.

Agency employees, with the support of management, also have initiated significant efforts to increase morale and employee satisfaction across the agency, including by establishing an Employee Engagement Steering Committee and by supporting the establishment of the agency's Diversity, Equity, Inclusion and Accessibility Council (DEIA Council). The Engagement Steering Committee was established to help foster improved employee engagement across the agency. The Steering Committee, through the FEVS results and internal surveys, identifies key areas for improvement. Some of the areas that have been identified for improvement include providing better and more frequent communication from management to staff, more transparency in the hiring and budget processes, and suggested improvements to programs and policies addressing work/life balance. The Steering Committee also works with offices across the agency to promote training and development opportunities to the FEC workforce and co-sponsors Public Service Recognition Week. The DEIA Council was established to promote diversity, equity, inclusion and accessibility efforts across the agency. Through its efforts, the Council has provided numerous programs and trainings to staff, organized the FEC's first ever Diversity, Equity and Inclusion Week, is supporting the creation of Employee Resource Groups (ERGs), and has made several recommendations to help improve hiring, promotion and retention throughout the agency.

In addition to declining staffing levels and morale, the OIG included among the FEC's Human Capital Management challenges for FY 2023 issues related to the salary structures for commissioners and the Staff Director and General Counsel positions. Information related to these concerns is included below in the response to Question 29.

- b. *The OIG included cybersecurity in its most recent list of the Commission’s “Top Management Challenges.” What are the top cybersecurity challenges currently facing the Commission?*

The federal government continues to issue numerous cybersecurity-related initiatives to defend against the escalation of cyber-attacks, the increased activity of ransomware compromises and the attacks to widespread use of software systems. In response to these ever-growing cybersecurity threats, the FEC continually works to improve its security posture to protect its information systems.

The Office of the Chief Information Officer secures the Commission’s IT infrastructure against the threats of data misuse, destruction and inappropriate disclosures, while ensuring continuity of operations in the event of a disaster. The Commission actively secures its IT infrastructure, including implementing cybersecurity directives from the Cybersecurity and Infrastructure Security Agency (CISA) of the Department of Homeland Security (DHS) as well as implementing mandatory security awareness training programs for its employees and contractors. In addition, the FEC continues to develop strategies and initiatives relating to risk assessments of operations, disaster recovery and continuity of operations in the event of a disaster. In 2021, the Commission completed work on the update of its Continuity of Operations Plan (COOP) as well as its Disaster Recovery Plan and held tabletop exercises in 2022 and 2023 to ensure that staff involved in the COOP are adequately trained. Currently, the staff is modifying the agency’s Disaster Recovery Plan to incorporate our cloud-based IT assets.

As noted in the previous paragraph, DHS’s CISA regularly issues numerous cybersecurity directives with which federal agencies must comply by the stated deadlines. With only a small number of employees who are able to work on information security mandates and remediation measures, the Commission must rely on outside vendors to help meet these requirements.

In 2018, the FEC—and all federal agencies—were directed to fund and implement a government-wide program to better safeguard information technology assets.⁴ This direction was further made mandatory by OMB M-19-03, *Strengthening the Cybersecurity of Federal Agencies by enhancing the High Value Asset Program*, issued on December 10, 2018.⁵ That directive expanded the High Value Asset Program (HVA) to non-CFO agencies and therefore, applies to the FEC. DHS’s HVA program requires federal agencies to identify and submit lists of their high value assets to DHS, participate in DHS-led assessments, ensure timely remediation of identified vulnerabilities and report mitigation plans and progress. Within the agency’s austere budget climate, the FEC had made the difficult decision to defer funding for some high-priority security projects in favor of yet more pressing agency requirements. As a result, the agency was not in a position to execute some cybersecurity initiatives, such as HVA, on the timeline initially proposed. In FY2022, however, the agency contracted with a HVA vendor to help the agency comply with this mandate and has begun working on this program.

⁴ See DHS Binding Operational Directive 18-02 (May 7, 2018); available at: <https://www.cisa.gov/binding-operational-directive-18-02>.

⁵ See OMB M-19-03, *Strengthening the Cybersecurity of Federal Agencies by enhancing the High Value Asset Program* (Dec. 10, 2018), available at: <https://www.whitehouse.gov/wp-content/uploads/2018/12/M-19-03.pdf>.

The Commission continuously improves its security architecture. The Commission's security operation, along with continuous diagnostics and mitigation, allows the agency to identify and remediate vulnerabilities. In partnership with DHS and other strategic partners, the FEC identifies, protects, detects, responds to and recovers from the impact of known and potential security threats. In recent years, the FEC has worked with DHS to complete a security architecture review, a risk vulnerability assessment, two threat hunts, and a remote penetration test. Of note, the penetration test performed on FEC.gov found no major vulnerabilities. Through the engagement with the DHS, the FEC has recently implemented various cybersecurity tools, including vulnerability scanning tools and mobile threat defense. These engagements with DHS enable the FEC to identify and address cybersecurity gaps and thus improve its overall security posture. The FEC also works with vendors to ensure security and performance in its internal network. For example, in 2022, it completed an Office 365 Network Performance Assessment and plans to conduct an Office 365 Security Assessment later this year.

The Commission also responds as quickly as possible to executive orders and DHS mandates. For example, OMB Memorandum M-23-13, "No TikTok on Government Devices" Implementation Guidance, was recently issued to prohibit the use of TikTok on government-owned devices due to potential security concerns. In response to this directive, the FEC has implemented various technical and administrative controls to ensure compliance, including updating the agency's Rules of Behavior and Acceptable Use Standards to explicitly prohibit the use of TikTok on any FEC computing resources.

In 2022, the Commission renewed its general systems Authority to Operate (ATO) after a thorough review and audit conducted by the Department of the Interior. It also recently renewed the ATO for its legacy eFiling system. As of this writing, the FEC is in the process of renewing the ATO for FEC.gov and plans to seek an ATO for its cloud environment.

The FEC recognizes that perfect security is not feasible; rather, it is a continuing process of detecting risks, making process improvements and hardening defenses. For that reason, the benchmark of the FEC's approach to cybersecurity has always been practicability and continuous improvement. The FEC's cybersecurity strategy, noted in the FEC IT Strategic Plan⁶, outlines an approach of securing its infrastructure and preventing intrusions through a holistic cybersecurity program led by the Chief Information Security Officer (CISO). The strategy implements leading practices for a comprehensive cybersecurity from the National Institute for Standards and Technology's (NIST) Cyber Security Framework (CSF) and industry best practices.

NIST Cyber Security Framework: The CSF functions provide a common language regarding cybersecurity issues that can help facilitate important discussions between different organizations and encourages effective collaboration and communication with FEC leadership and partner agencies and industries. The FEC's cybersecurity strategy strives to mature the five functions of the NIST CSF:

Identify: This function seeks to develop a deep understanding to manage cybersecurity risks to systems, assets, data and capabilities. The projects in this function are foundational for effective

⁶ FEC OCIO, *IT Strategic Plan, 2020-2024*, available at: https://www.fec.gov/resources/cms-content/documents/IT_strategic_plan_2020-2024.pdf.

use of the framework. Understanding the business context, the resources that support critical functions and the related cybersecurity risks will enable the OCIO to focus and prioritize efforts. This action will be consistent with the organization's risk management action plans and business objectives.

Protect: This function seeks to help the team develop and implement the appropriate safeguards to ensure delivery of critical infrastructure services. This function supports the ability to limit or contain the impact of a potential cybersecurity event.

Detect: This function seeks to develop and implement the appropriate activities to identify the occurrence of a cybersecurity event. This will enable the OCIO to timely discover a cybersecurity event.

Respond: This function seeks to develop and implement the appropriate activities to take action regarding a detected cybersecurity event. The respond function supports the ability to contain the impact of a potential cybersecurity event.

Recover: This function seeks to develop and implement the appropriate activities to maintain plans for resilience and to restore any capabilities or services that were impaired due to a cybersecurity event. The recover function supports timely recovery to normal operations to reduce the impact from a cybersecurity event.

Moreover, the goal of the Commission's IT Strategic Plan⁷ is to define a robust, innovative and holistic security architecture that mitigates modern threats.

Through rigorous assessment and authorization methods, such as ATOs, and active participation in programs such as the DHS Continuous Diagnostics and Mitigation program, the OCIO will continue to improve its cybersecurity program and security architecture to safeguard FEC's infrastructure, networks and applications against cyber threats and malicious activities.

Following NIST guidelines and considering the Commission's own prioritization and resources, the first wave of projects primarily focuses on the "Protect" function to hinder threat actors from gaining access to the FEC's IT assets and data. For example, one project includes strengthening perimeter defenses using software-defined perimeter (SDP) and protecting FEC users from inadvertently infecting their systems by using a robust end-point security solution. SDP will ensure that anyone attempting to access the FEC infrastructure is authenticated and authorized at the perimeter prior to being able to access any resources on the network. The FEC will continue to implement the most advanced endpoint security solution to combat security threats.

Cloud Migration: The FEC has migrated its legacy applications and systems to the cloud. Leveraging cloud computing allows the Commission to take advantage of cloud service providers' significant resources and expertise dedicated to maintaining the highest level of security. Hosting information, data and systems in the cloud allows the FEC to better leverage government and industry best practices, such as DevSecOps, which improves our security posture by adding security mechanisms into the development and operation processes. Adopting a cloud first

⁷ *Id.*

initiative will ultimately result in the consolidation and the modernization of all FEC's application and systems. Moreover, in cloud architecture, the security controls are built into the native configuration.

Operating applications in a cloud environment, however, requires specialized design, development, and security considerations to ensure both the security of the FEC's systems and the integrity and accessibility of its data. In implementing cloud architecture, it is essential that the FEC takes a more comprehensive view of the risk to information systems, establishes a governance framework and remediates the vulnerabilities of critical infrastructure. OCIO anticipates that it will begin the process of seeking a third-party assessment of its cloud environment in order to seek an ATO in 2023, pending funding approval by the Commission. It is also necessary that staff possess the necessary skillset to administer the Commission's cloud resources. Seeking the expertise to manage the FEC's cybersecurity requirements in a cloud environment and the growing federal mandates is necessary.

Training and Staffing. Finally, 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 provides regular and mandatory training on these topics to agency staff. Beyond training its staff, the Commission also seeks to recruit and train 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 two-years' service at a federal agency, addressed the immediate cybersecurity talent deficiency faced by the Commission. With a two-year limit on the fellowship expiring, and in the hopes of retaining employees with cybersecurity expertise, the Commission has recently created a permanent position to replace this fellowship position and hired a permanent cybersecurity specialist. This brought the total staffing level of the Security team up to three employees. The Commission's CISO has recommended that the agency expand its cybersecurity staff further and create additional positions in order to address the heightened security risks.

- c. *The OIG's Semiannual Report also stated that the Commission's reliance on filers to self-identify unlawful foreign contributions poses a national security risk. The Commission's September 12, 2022, response to the Committee's question on unlawful foreign contributions identified several methods the Commission utilizes to investigate and identify such donors beyond reliance on filers to self-disclose. From May 1, 2019, to present, how many unlawful foreign contributions has the Commission identified through these methods?*

The Commission's September 12, 2022 response identified three methods utilized to identify prohibited foreign national contributions, as follows: (i) reviews of campaign finance reports conducted by the Reports Analysis Division (RAD); (ii) audits conducted by the Audit Division; and (iii) complaints processed by the Enforcement Division and the Alternative Dispute Resolution Office (ADRO).

From May 1, 2019 through June 12, 2023, RAD sent the following requests for additional information (RFAs) related to potential foreign national contributions.

Table 2.

	2019-2020	2021-2022	Total
Authorized Committees	45	37	86
Unauthorized Committees	57	28	90
Total	102	65	174

Since May 1, 2019 through June 16, 2023, RAD made no referrals to OGC or ADRO of foreign national issues during this period. One referral to the Audit Division from RAD included a \$2 apparent foreign national contribution.

Since May 1, 2019 through June 16, 2023, the Audit Division proposed no findings to the Commission related to FECA's foreign national prohibition. During this period, the ADRO closed no cases that included alleged violations of FECA's foreign national prohibition.

The response to this question with respect to enforcement matters is included in the answer to question 19 below.

3. *The Partnership for Public Service's 2022 Best Places to Work in the Federal Government report ranks the Commission as 26 out of 30 among small agencies.⁸ While this is a modest increase from the 2021 rankings, there is ample room for improvement. What challenges contribute to this poor ranking, its impact on Commission's management of human capital, and the Commission's ability to further its mission? What is the Commission doing to address these concerns?*

As detailed above in the response to Question 2, the FEC has faced certain Human Capital Management challenges in recent years that have impacted employee engagement and morale. For example, the FEC and the FEC's OIG have identified decreasing staffing levels amid increasing workloads as a challenge to improving FEC employees' engagement and satisfaction and to ensuring the agency can continue to further its mission. As explained in greater detail in the response to Question 2, the Commission is undertaking a concerted effort, as funding allows, to fill vacant positions within the agency. In addition, the Commission is taking steps through the Engagement Steering Committee to better understand and respond to employee concerns regarding such issues as communication and work/life balance. While the FEC's improvement in the Partnership for Public Service's 2022 Best Places to Work in the Federal Government rankings may have been modest, the FEC saw a 4.8-point increase in its engagement index score from 2021 to 2022—the highest increase among all small agencies. Indeed, the FEC was recognized by the Partnership as the “Most Improved Small Agency” in 2022. The Commission hopes to continue this upward trajectory in 2023 by prioritizing the rebuilding of staffing levels and increasing

⁸ See *Fed. Election Comm'n, P'SHIP FOR PUB. SERV.*, <https://bestplacestowork.org/rankings/detail/?c=LF00> (last accessed May 18, 2023).

investments in employee training and awards, as well as maintaining support for other initiatives to increase morale and employee satisfaction across the agency.

4. *What committees exist at the Commission, and what is each committee's purpose?*

The Commission has six committees: Finance, Regulations, Press, Personnel, Litigation and Information Technology (IT) Committees. The Chair and Vice Chair of the Commission appoint the members of committees after consultation with their colleagues about serving on committees. The Commission's committee structure is one mechanism that allows Commissioners on both sides of the aisle to work together in small groups to address various issues. Formal meetings are held as needed. However, a lack of formal meetings, agendas, and minutes does not necessarily indicate that Commissioners are not meeting to discuss committee matters in informal settings.

Finance Committee

The Finance Committee is composed of the Vice Chair, a member from the other political party, and the Chair as an *ex-officio* member. Traditionally, the Vice Chair serves as chair of this committee. The Finance Committee facilitates the decision-making process for planning purposes and presentation of budget issues for full Commission consideration.

Specific budget matters discussed and reviewed by the Finance Committee may include:

1. A summary of the budget requests submitted by the offices/divisions for deciding the funding level that FEC should seek from the Office of Management and Budget (OMB).
2. The budget submission to OMB, generally due in early September.
3. OMB's passback decision on funding level and deciding whether to appeal. If FEC decides to appeal, the Finance Committee receives and approves the written appeal to OMB.
4. The status of funds for the current fiscal year.
5. The Congressional budget request, generally due in early February.
6. The Management Plan.
7. The status of funds for the current fiscal year.

The Committee meets as needed to discuss these issues. Items 2 through 6 are subject to approval of the full Commission.

Regulations Committee

The Regulations Committee is a working group that focuses on Commission rulemakings. It consists of two Commissioners, with no more than one member from the same party. Its meetings are usually attended by staff members of the other Commissioners as well as relevant staff from the Office of General Counsel and the Office of the Staff Director.

The Regulations Committee works closely with the General Counsel and the managers of the Policy Division and can be a venue for prioritizing rulemakings and making policy decisions on draft rules and rulemaking documents. Typically, the Office of General Counsel's Policy Division drafts and sends to the Regulations Committee and all Commissioners recommended rulemaking priorities and documents such as Notices of Proposed Rulemaking, final rules, and Explanations and Justifications for final rules. The Committee meets as needed to discuss these issues. In some rulemakings, Commissioners and their staffs may discuss draft rulemaking documents directly with OGC staff. In others, the Commissioners on the Regulations Committee will meet with their colleagues to get feedback on rulemaking documents, which they then convey to OGC-Policy.

Other Committees

The Personnel Committee consists of two members, with no more than one member from the same party. It works with the Office of Human Resources to coordinate Commission involvement in the interviewing and selection of candidates for positions that report directly to the Commission, and, on occasion, other positions. Typically, hiring approvals are handled by Committee members *via* email and in-person follow-up conversations as necessary.

The Press Committee consists of two members, one from each party, who work in ongoing consultation with the Press Office staff. The Press Committee reviews all agency press releases, including Weekly Digests, prior to publication and approves all official statements to the press made on behalf of the Commission.

The IT Committee was recently reestablished, and it also consists of two members, one from each party. The IT Committee provides guidance on the IT development process to the Commission to assist in decisions to prioritize and fund projects, which are made by a vote of the full Commission.

When formed, the Litigation Committee has been composed of two members of the Commission, with no more than one member from the same party. It provided oversight and guidance to the Litigation Division, particularly when novel challenges to Commission actions were filed and in-depth discussions regarding defense strategy would be beneficial. Regular meetings are not needed for this committee to carry out its duties. The full Commission receives written and oral monthly status reports from the Litigation Division, and events in litigation often happen too fast to lend themselves to regularly scheduled meetings. The Litigation Division circulates dispositive briefs to the full Commission before filing. While some major decisions in litigation—such as the initiation of an enforcement action or the decision to appeal—require a formal vote of the full Commission, less consequential issues handled by OGC's Litigation Division can sometimes be resolved through staff discussions with the Litigation Committee.

5. *For each committee listed in Question 4, how many times has it met each year since 2019? Please provide a copy of any agendas and minutes from these committee meetings.*

Since 2019, the Finance Committee has held at least the following number of formal meetings.

2019: 4
2020: 3
2021: 3
2022: 4
2023: 1

Agendas are provided for these meetings in Attachment B.⁹ The Finance Committee does not keep minutes of its meetings.

Since 2019, the Regulations Committee has held at least the following number of formal meetings:

2019: 1
2020: 0
2021: 3
2022: 3
2023: 4

Agendas were located and provided for three Regulations Committee meetings identified above in Attachment C. The Regulations Committee does not keep minutes of its meetings.

Other Committees

The Personnel Committee has continued to meet informally as necessary, and it scheduled one more formal meeting in 2022 and two in 2023 as well. A copy of the agenda for the 2022 meeting is Attachment D. The Personnel Committee does not keep minutes of its meetings. The IT Committee met once in 2023, with no formal agenda or minutes. Formal meetings are not needed for the Litigation or Press Committees to carry out their duties, and they have not held any during the period 2019 to the present.

6. *The Committee's July 18, 2022, letter and Commission responses discussed the acting status of the General Counsel position, which has been in an "acting" capacity since July 2013. Specifically, the letter noted that early in 2022, the Commission posted for the position of General Counsel.*

⁹ The finance committee held a briefing on December 8, 2022 on FY 2023 and FY 2024 Budget projections, but did not provide a formal agenda.

- a. *Responding to the inquiry about the status of that job posting, the Commission noted that, “On September 30, 2021, the Commission began the hiring process for a permanent General Counsel. Applications have been received and remain under active consideration at the Commission. Consequently, the Commission is limited in what further information about its intentions with respect to the pending applications can be provided at this time. The Commission anticipates a decision about the pending applications soon.” What is the status of that job posting?*

The Commission closed the job posting in question without making a selection for the position due to considerations regarding the small applicant pool and the low number of applicants meeting minimum qualification standards, as well as timing issues.

- b. *Is the Commission still looking to fill the role on a permanent basis? Why or why not?*

Yes, the Commission is still looking to fill this role on a permanent basis. The General Counsel position continues to be a strategically important executive position at the FEC. A vacancy announcement for this position was opened on June 15, 2023 and will close on July 14, 2023. Additionally, the Office of Human Resources worked with partners throughout the agency to source additional outlets for recruiting potential candidates for this position with the goal of expanding the applicant pool. As noted in the answer to question 29 below, the statutory salary cap, which sets the General Counsel’s salary at a level below that of a number of those reporting to that position, adds to the challenges in filling this position.

7. *According to Status of Enforcement—Fiscal Year 2023, Second Quarter (01/01/23-03/31/23), memorandum from the Office of General Counsel, as of April 28, 2023, there was a caseload of 184 enforcement cases, 19 of which were awaiting Commission action.*
 - a. *How many enforcement cases are on the Commission’s enforcement docket as of the date of this letter?*
 - b. *How many cases are active and inactive.*

As of June 16 , 2023, OGC-Enforcement’s docket includes 191 cases, including 105 active matters and 86 inactive matters.

Please explain how you designate a case as “inactive” or “active.”

Any complaint, referral, or *sua sponte* submission received by the Commission is initially designated as “inactive.” A case is “activated” when the Associate General Counsel for Enforcement assigns it to an OGC Enforcement Division attorney.

This assignment happens after OGC completes the intake process handled by OGC Enforcement Division’s Complaints Examination and Legal Administration team. In brief, this process involves notification of the respondents; receipt of responses from the respondents; and evaluation of the complaint and response using objective criteria approved by the Commission

under its Enforcement Priority System (EPS). Respondents have 15 days to respond to a complaint pursuant to FECA; however, a respondent may request an extension of up to 30 days.¹⁰

Some matters are disposed of without ever being “activated;” these cases are either transferred to the Alternative Dispute Resolution Office or, if the EPS rating indicates the matter does not warrant the further use of Commission resources, OGC generally uses a streamlined EPS dismissal process to recommend the Commission dismiss the matter.

- c. *How many of those cases are awaiting Commission action? How long have those matters been awaiting Commission action?*

As of June 16, 2023, 33 pending matters are the subjects of 29 reports or memoranda pending before the Commission. The items awaiting Commission action have been pending for an average of 69 days. Some of them have been discussed in Executive Session but not finally resolved.

- d. *The Status of Enforcement notes that the Office of General Counsel met its internal circulation goal for First General Counsel Reports (“FGCR”) 74% of the time, which is down from the prior quarter. What contributes to delayed circulation of FGCRs?*

The Office of General Counsel’s ability to meet its internal circulation goals for First General Counsel’s Reports is impacted by, among other things, staffing levels, including staff transitions due to departures or promotions, and workload. As discussed in the Commission’s September 2022 Response (question 21.c), the period between May 2019 and September 2022 was one in which the Commission was able to process a very large number of matters, with a high level of productivity, and in so doing made very substantial progress on reducing the agency’s backlog. Since September 2022, the state of the docket has continued to improve as OGC has circulated FGCRs in older and newer cases and the Commission has considered them. The on-time circulation rate of FGCRs in Fiscal Years 2019 (68%), FY 2020 (68%), FY 2021 (73%), and FY 2022 (68%) has been trending upwards with a rate of 81% in the First Quarter of FY 2023 and the 74% rate in the Second Quarter of FY 2023 mentioned in the question. The overall on-time circulation rate for FGCRs in Fiscal Year 2023 currently stands at 78%. OGC’s ability to continue this progress throughout the rest of FY 2023 will depend upon new case volume and the degree to which it can successfully attract and retain high-quality staff. In an effort to meet the staffing need, the Commission has recently issued a one-year standing register vacancy announcement for Enforcement Staff Attorney positions, and it has added lower experience thresholds so that a greater number of applicants can be considered.

¹⁰ FECA, § 309(a), codified at 52 U.S.C. § 30109(a).

- e. *How would the Commission characterize its progress in reducing its enforcement backlog since September 2022? What hurdles has the Commission faced in reducing the enforcement backlog?*

As mentioned in the answer to the prior question, and in its September 2022 Response (question 21.c), the Commission made very substantial progress on the backlog between May 2019 and September 2022, and it has continued that progress since September 2022. As of June 16, 2023, the overall caseload stands at 191 matters, down from 215 when the Commission last responded to the Committee in September 2022. OGC has continued to make progress in circulating FGCRs in older cases, and the number of such cases remaining is declining. Currently, the Commission is often able to consider FGCRs at a Commission Executive Session, if not resolved on tally, shortly after they are circulated, and the number of matters presenting challenges due to impending statute of limitations concerns is down. As discussed in response to the prior subpart to this question, the Commission's ability to make progress on Enforcement matters depends primarily upon its caseload and staffing levels. OGC faces staffing challenges, due to departures and promotions, but the Commission is proactively working to attract and retain staff. In an effort to meet the staffing need, the Commission has recently issued a one-year standing register vacancy announcement for Enforcement Staff Attorney positions, and it has added lower experience thresholds so that a greater number of applicants can be considered.

- f. *When quorum was restored in December 2020, the Commission's backlog was 446 cases. Since then, how many matters has the Commission dismissed where OGC recommended a reason to believe finding?*

From December 15, 2020¹¹ to June 9, 2023, the Commission has closed and made public 28 MURs in which the Office of General Counsel recommended finding reason to believe, and the Commission, at that stage or subsequently, voted by a majority specifically to "dismiss" at least one respondent (which may or may not have been the respondent for which OGC recommended an RTB finding). These matters are listed by MUR number in Attachment E.

How many matters did the Commission deadlock¹²³ and then subsequently closed the file? Please provide MUR numbers.

From December 15, 2020 to June 9, 2023, the Commission has closed and made public 120 MURs in which there was at least one motion that failed to receive four affirmative votes. These MURs are listed by MUR number in Attachment F.

¹¹ Commissioner Broussard was sworn into office on December 15, 2020.

¹² For purposes of this question, assume a "deadlock" is an equally divided vote of the Commission or any other vote that lacks four affirmative votes.

8. *Please list all enforcement matters, excluding alternative dispute resolution and administrative fines matters, in which the Commission has imposed a civil penalty since May 1, 2019, as a result of violations detected by the Commission “in the normal course of carrying out its supervisory responsibilities” 52 U.S.C. § 30109(a)(2). For each matter, provide the MUR number and the amount of the civil penalty imposed.*

From May 1, 2019 to May 8, 2023, the Commission has closed 50 MURs that: (i) originated as an internal referral from RAD or the Audit Division, (ii) were processed by the Enforcement Division, and (iii) in which respondents agreed to pay a civil penalty. Table 3 includes the requested information about these MURs.

Please note that while the Commission is authorized to impose civil penalties in administrative fine proceedings,¹³ and to order repayments in the public funding context,¹⁴ the Commission is not authorized to *impose* civil penalties in MURs processed by the Enforcement Division or the Alternative Dispute Resolution Office. Instead, all civil penalties in those contexts result from conciliation agreements negotiated and agreed to by respondents and the Commission. FECA directs the Commission to engage in such negotiations following a finding of probable cause to believe FECA or Commission regulations have been violated.¹⁵ Under Commission regulations, such negotiations are also very frequently conducted prior to a finding of probable cause to believe a violation has occurred.¹⁶ After a probable cause finding, if negotiations to reach a conciliation agreement are unsuccessful, the Commission is authorized to file suit in federal district court and seek a judicially-imposed civil penalty.¹⁷

Table 3.

	MUR number	Primary Respondent	Civil Penalty Amount
1	7435	David Vitter for U.S. Senate	\$34,000
2	7597	Texas Democratic Party	\$17,000
3	7607	Powerpac.Org	\$7,600
4	7598	Democratic Party of South Carolina	\$29,600
5	7545	Tea Party Majority Fund	\$50,000
6	7616	Oakland County Democratic Party	\$19,936
7	7456	Am. Fed’n of Teachers, AFL-CIO Cmte. on Pol. Educ.	\$34,000
8	7611	American Delta Party	\$5,500
9	7600	Utah State Democratic Committee	\$16,500
10	7467	Freedom’s Defense Fund	\$50,000
11	7409	Mason Tenders District Council of Greater NY & LI PAC	\$15,000
12	7599	Nevada State Democratic Party	\$34,000

¹³ FECA, § 309(a)(4)(C)(i)(II), *codified at* 52 U.S.C. § 30109(a)(4)(C)(i)(II).

¹⁴ 26 U.S.C. § 9007(b), 9008(h), & 9038(b).

¹⁵ FECA, § 309(a)(4)(A)(i), (a)(5)(A) & (B), *codified at* 52 U.S.C. § 30109(a)(4)(A)(i), (a)(5)(A) & (B).

¹⁶ 11 C.F.R. § 111.18(d).

¹⁷ FECA, § 309(a)(6)(A), *codified at* 52 U.S.C. § 30109(a)(6)(A); see also 11 C.F.R. § 111.24(a).

	MUR number	Primary Respondent	Civil Penalty Amount
13	7555	America Comes First PAC	\$2,000
14	7767	Hall for Congress	\$21,183
15	7768	Ambulatory Surgery Center Assoc. PAC (ASCAPAC)	\$30,000
16 17	7556 & 7601	Kansas Democratic Party	\$60,000
18	7603	Wyoming Republican Party, Inc.	\$52,000
19	7895	DNC Services Corp./Democratic National Committee	\$21,600
20	7769	Jill Stein for President	\$25,000
21	7896	Integrity NJ	\$40,000
22	7877	Tennessee Democratic Party	\$103,000
23	7902	Michigan Democratic State Central Committee	\$19,000
24	7916	Rebuilding America Now	\$20,000
25	7872	South Dakota Democratic Party	\$40,000
26	7922	Bryan Williams	\$20,528
27	7948	Grassroots Victory PAC	\$7,000
28	7972	ProgressNow AZ – Federal	\$78,000
29	7970	Washington State Democratic Central Committee	\$14,000
30	7971	Indiana Democratic Congressional Victory Committee	\$25,000
31	8000	Jim Jordan for Congress	\$60,000
32	7973	Burgess 4 Utah	\$13,500
33	7899	Democratic Executive Committee of Florida	\$44,000
34	7999	Republican Party of Arkansas	\$125,000
35	7928	Renacci for U.S. Senate	\$16,500
36	7962	Just the Truth PAC	\$42,000
37	8012	Black Voters Matter Action PAC	\$45,000
38	8029	Dr. Jay for Congress	\$500
39	8030	Dan Crenshaw for Congress	\$42,000
40	8031	Hawaii Republican Party	\$60,000
41	8049	Workers Vote	\$69,000
42	8050	Montana Democratic Party	\$38,000
43	8070	Democratic Executive Committee of Florida	\$43,000
44	7871	Committee to Elect Alan Grayson	\$55,000
45	8042	Republican Party of Minnesota – Federal	\$53,000
46	8061	Republican Party of Minnesota – Federal	\$58,500
47	8067	UtePAC	\$17,000
48	8068	Michigan Dem State Central Committee	\$27,000
49	8074	Kim Klacik for Congress	\$19,000
50	8094	Brady PAC	\$14,000
		Total	\$1,733,447

9. *From May 1, 2019, to the present, how many enforcement actions were initiated as a result of:*
- Complaint-generated matters?*
 - Internally-generated matters?*
 - External referrals?*
 - Sua sponte submissions?*

Table 4.

Year	Complaints	Internal Referrals	External Referrals	<i>Sua Sponte</i>	Total
2019	105	19	2	9	135
2020	187	5	0	16	208
2021	62	18	2	5	87
2022	112	15	1	7	135
2023 ¹⁸	38	5	0	4	47

10. *How many enforcement cases, organized by election cycle, are still unresolved and not yet closed?*

Table 5.¹⁹

Election Cycle	Total
2016	4
2018	11
2020	57
2022	116
2024	6
Total	194

11. *How many administrative fines cases has the Commission closed since May 1, 2019? What is the total civil penalty amount imposed by the Administrative Fines program since May 1, 2019?*

Between April 1, 2019 and May 1, 2023, the Commission closed 908 Administrative Fine cases with civil penalties totaling \$3,169,414.²⁰

¹⁸ The data for 2023 covers January 1 to May 1, 2023.

¹⁹ The data in Table 5 is as of May 25, 2023. As with previous responses, cases with activity in more than one election cycle are counted once in the latest cycle.

²⁰ April 1, 2019 was chosen because the data submitted in May 2019 ended on that date.

12. *How many MURs has the Commission closed since May 1, 2019?*

Between April 1, 2019 and May 1, 2023,²¹ the Commission closed 626 Matters Under Review through the ordinary enforcement process described in section 309 of FECA.²² It also closed an additional nine MURs on OGC's docket by referring them to the Alternative Dispute Resolution Office for resolution.

13. *How many and what percentage of the MURs in Question 12 were resolved exclusively on a tally vote?*

Of the 626 Matters Under Review identified in response to Question 12, 168 MURs (or 27 percent) were resolved exclusively on tally.

14. *For purposes of this question, assume a "deadlocked vote" is an equally divided vote of the Commission or any other vote that lacks four affirmative votes. Of MURs considered in Executive Session since May 1, 2019, and that are now closed, how many and what percentage of the MURs included at least one deadlocked vote of the Commission during Executive Session? Please provide, categorized by year since 2019, the count and percentages. Please also provide the MUR number for each MUR that included at least one deadlocked vote.*

FECA requires four Commissioners' votes for certain decisions, without regard to how many Commissioners are currently serving. Consequently, the Commission views any position supported by four or more Commissioners as a Commission decision for that position, and not as a "deadlocked" vote.²³ However, the question seeks information about votes where there were not four affirmative votes.²⁴ Under this view, Commission votes of 2-4, for example, are viewed as

²¹ April 1, 2019 was chosen because the data submitted in May 2019 ended on that date.

²² Matters Under Review are a type of administrative enforcement matter handled by the Enforcement Division of the Commission's Office of General Counsel pursuant to section 309 of FECA (*codified at* 52 U.S.C. § 30109). External complaints filed with the Commission are designated MURs and assigned a MUR number upon receipt. MURs also may be designated by 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. Preliminary types of enforcement matters may become MURs with assigned MUR numbers if the Commission determines to "open a MUR" and pursue the matter. These preliminary types of enforcement matters are RAD Referrals, Audit Referrals, other internally-generated matters, and Pre-MURs (which are *sua sponte* submissions and external referrals).

²³ Congressional Research Service did not consider four or more negative votes to be a deadlocked vote in its work in 2009 or 2015. *See* CRS, "The Federal Election Commission: Enforcement Process and Selected Issues for Congress," R44319, at 10 n.44 (Dec. 22, 2015) and CRS, "Deadlocked Votes Among Members of the Federal Election Commission (FEC): Overview and Potential Considerations for Congress," R40779, at 5 & 10-11 (Oct. 6, 2009).

²⁴ In one such case, for example, an initial motion to dismiss the case as a matter of prosecutorial discretion was defeated by a vote 1-5, and the case then proceeded through multiple unanimous votes through reason-to-believe and

“deadlocked” votes. The data related to cases with votes without four affirmative votes is presented in footnotes in response to Questions 14 and 15.²⁵

Using a Commission vote database maintained by the Commission’s Secretary, an Enforcement Division case management database, and the Enforcement Query System on the FEC’s website, all MURs²⁶ that were considered by the Commission in Executive Session after April 1, 2019, and that were closed as of May 1, 2023, were examined. 451 such MURs were identified. 289 of these MURs, or 64 percent, had at least one vote after January 1, 2019, with no position receiving the support of four or more Commissioners, which the Commission has typically called a “split vote.”²⁷

Table 6 breaks down this data by calendar year. Some MURs are subject to one vote in one Executive Session, while others can be considered in multiple Executive Sessions that might fall in different years. The data below include each MUR considered by the Commission in Executive Session in each of the calendar years, so some MURs have been counted more than once.

Table 6.

Calendar Year	Closed MURs with At Least One Split Vote Considered in Executive Session	Closed MURs Considered in Executive Session	Percentage (At Least One Split/ Closed MURs in Exec.)
4/1-12/31 2019 ²⁸	72	85	85%
2020 ²⁹	8	11	73%
2021 ³⁰	137	200	69%
2022 ³¹	101	173	60%

probable-cause-to-believe findings, and was resolved by a conciliation agreement with admissions and a substantial civil penalty. *See* MUR 6394 (Pingree for Congress). The initial vote of 1-5 lacks four affirmative votes and is therefore responsive to this question. The Commission, however, would not consider this case an example of a “deadlocked” case.

²⁵ If additional cases with votes that lack four affirmative votes are also considered responsive to Question 14, an additional 24 MURs would be responsive for the entire period, for a total of 313 MURs or 69 percent.

²⁶ *See supra* n.19 (defining “Matters Under Review”).

²⁷ Split votes are most often 3-3 or 2-2, and can also be any other combination that lacks four or more votes in the affirmative or negative.

²⁸ The 2019 data cover the period from April 1, 2019 to December 31, 2019, which begins after the period covered in the Commission’s May 1, 2019 response to questions from the Committee on House Administration.

During 2019, the Commission was without a quorum of Commissioners from September 1, 2019 to December 31, 2019.

²⁹ During 2020, the Commission had a quorum from June 5 to July 3 and from December 15 to 31, 2020.

³⁰ If additional cases with votes that lack four affirmative votes are also considered responsive to Question 14, an additional nine MURs would be responsive for 2021, for a total of 146 MURs or 73 percent.

³¹ If additional cases with votes that lack four affirmative votes are also considered responsive to Question 14, an additional six MURs would be responsive for 2022, for a total of 107 MURs or 62 percent.

Calendar Year	Closed MURs with At Least One Split Vote Considered in Executive Session	Closed MURs Considered in Executive Session	Percentage (At Least One Split/ Closed MURs in Exec.)
1/1-4/30 2023 ³²	11	22	50%
Total for Entire Period ³³	289	451	64%

Attachments G and H include additional information about the 289 MURs described above.

Attachment I is a separate statement from Vice Chairman Cooksey and Commissioners Dickerson and Trainor.

15. *For purposes of this question, assume a “deadlocked vote” is an equally divided vote of the Commission or any other vote that lacks four affirmative votes. Of MURs considered in Executive Session since May 1, 2019, and that are now closed, how many and what percentage of the MURs deadlocked on all votes taken during Executive Session, other than a vote to close the file and send the appropriate letter(s)? Please provide, categorized by year since 2019, the count and percentages. Please also provide the MUR numbers and MUR subject of the cases that deadlocked on all votes taken in Executive Session (other than a vote to close the file and send the appropriate letter(s)).*

Of the 451 MURs that were considered by the Commission in Executive Session after April 1, 2019, and that were closed as of May 1, 2023, 64 of these MURs, or 14 percent, had split votes (as defined in response to Question 14) on all votes taken during the Executive Session, other than a vote to close the file.³⁴

Table 7.

Calendar Year	Closed MURs with All Split Votes Considered in Executive Session	Total Closed MURs Considered in Executive Session	Percentage (All Split/ Closed MURs in Exec.)
4/1-12/31/ 2019 ³⁵	20	85	24%

³² If additional cases with votes that lack four affirmative votes are also considered responsive to Question 14, an additional nine MURs would be responsive for 2023, for a total of 20 MURs or 91 percent.

³³ If additional cases with votes that lack four affirmative votes are also considered responsive to Question 14, an additional 24 MURs would be responsive for the entire period, for a total of 313 MURs or 69 percent.

³⁴ If additional cases with votes that lack four affirmative votes are also considered responsive to Question 15, an additional 15 MURs would be responsive for the entire period, for a total of 79 MURs or 17 percent.

³⁵ The period from April 1, 2019 to December 31, 2019 begins after the period covered in the Commission’s

Calendar Year	Closed MURs with All Split Votes Considered in Executive Session	Total Closed MURs Considered in Executive Session	Percentage (All Split/ Closed MURs in Exec.)
2020 ³⁶	3	11	27%
2021 ³⁷	28	200	14%
2022 ³⁸	22	173	13%
1/1-4/30 2023	1	22	5%
Total for Entire Period ³⁹	64	451	14%

Attachment H includes additional information about the 64 “all split” MURs described above.

16. *Since the Supreme Court’s decision in Citizens United v. Federal Election Commission,*⁴⁰ *how many times has the Commission found a violation of the coordination regulations?*⁴¹ *How many times has OGC recommended reason to believe a violation of the coordination regulations occurred, but the Commission did not adopt the recommendation? Please provide the MUR numbers and votes by commissioner name.*

Working with an Enforcement Division case management database and the Enforcement Query System on the FEC’s website, MURs that closed since January 2010 were evaluated to identify those that are responsive to questions 7.f., 16-19 and 27. Analyzing case files was required to identify responsive MURs, and a team of attorneys and paralegals was assembled and reviewed many hundreds of MUR case files to identify the responsive MURs and to obtain the information requested about OGC recommendations and Commissioners’ votes. OGC managers reviewed the

May 1, 2019 response to questions from the Committee on House Administration.

During 2019, the Commission was without a quorum of Commissioners from September 1, 2019 to December 31, 2019.

³⁶ During 2020, the Commission had a quorum from June 5 to July 3 and from December 15 to 31, 2020.

³⁷ If additional cases with votes that lack four affirmative votes are also considered responsive to Question 15, an additional five MURs would be responsive for 2021, for a total of 33 MURs or 17 percent.

³⁸ If additional cases with votes that lack four affirmative votes are also considered responsive to Question 15, an additional five MURs would be responsive for 2022, for a total of 27 MURs or 16 percent.

³⁹ If additional cases with votes that lack four affirmative votes are also considered responsive to Question 15, an additional 15 MURs would be responsive for the entire period, for a total of 79 MURs or 18 percent.

⁴⁰ *Citizens United v. Fed. Election Comm’n*, 558 U.S. 310 (2010).

⁴¹ For this question, please include cases in which the Commission found reason to believe that a respondent violated the coordination regulations, as well as cases where the Commission found violations of other provisions, such as the amount limitations or corporate contribution prohibition, based on the definition of coordination under 11 C.F.R. § 109.20 or coordinated communication under 11 C.F.R. § 109.21 in the regulations being satisfied, thus resulting in an excessive or prohibited in-kind contribution.

results and verified samples of the work to the extent possible in the time available to respond to these questions.

During the period from the decision in *Citizens United v. FEC*, which was issued January 21, 2010, through June 9, 2023, OGC recommended reason to believe regarding the coordination regulations in 55 matters, which are listed in Attachment J with MUR numbers and Commissioners' votes. These include alleged violations of excessive or prohibited contributions in the form of coordinated expenditures including republication of campaign materials as described in 11 C.F.R. § 109.23. The Commission found reason to believe that a violation involving the coordination regulations occurred in four of these matters. The Commission did not adopt recommendations to find reason to believe in 51 matters. In two matters where the Commission found reason to believe, OGC subsequently recommended probable cause to believe that a violation had occurred, but the Commission voted 2-4 against those recommendations.

17. *Since the Supreme Court's decision in Citizens United v. Federal Election Commission, how many times has the Commission found a violation involving corporate contributions? How many times has OGC recommended reason to believe a prohibited corporate contribution occurred, but the Commission did not adopt those recommendations? Please provide the MUR numbers and votes by commissioner name.*

During the period from January 21, 2010 through June 9, 2023, the Commission has closed and made public 251 matters with allegations involving corporate contributions. OGC recommended reason to believe that a prohibited corporate contribution occurred in 80 matters, which are listed in Attachment K with MUR numbers and Commissioners' votes. The Commission found reason to believe that a violation involving corporate contributions occurred in 49 of these matters. In nine of these 49 MURs, the Commission approved some, but not all, of OGC's recommendations to find reason to believe that particular respondents had violated the corporate contribution prohibition. In the other 31 MURs, the Commission did not find reason to believe related to corporate contributions. In two matters where the Commission found reason to believe, subsequent recommendations from OGC were not adopted.

18. *Since the Supreme Court's decision in Citizens United v. Federal Election Commission, how many times has the Commission found a violation of the political committee status rules (e.g., registration and reporting obligations)? How many times has OGC recommended reason to believe a violation of the political committee status rules occurred, but the Commission did not adopt those recommendations? Please provide the MUR numbers and votes by commissioner name.*

During the period from January 21, 2010 through June 9, 2023, the Commission has closed and made public 109 matters involving alleged violations of FECA section 303 (codified at 52 U.S.C. § 30103 (formerly 2 U.S.C. § 433)). These include both matters where the allegation was that an organization had failed to register as a political committee and matters where an organization was alleged to have been untimely in registering as a political committee. OGC

recommended reason to believe that a violation of the political committee status rules occurred in 24 matters, which are listed in Attachment L with MUR numbers and Commissioners' votes. The Commission found reason to believe that a violation of the political committee status rules occurred in five of these matters. The Commission did not find reason to believe in 19 of these matters. In one of those matters where the Commission found reason to believe, OGC subsequently recommended probable cause to believe that a violation had occurred, but the Commission did not find probable cause to believe.

19. *Since Bluman v. Federal Election Commission,*⁴² *how many times has the Commission found a violation of the foreign nationals prohibition? How many times has OGC recommended reason to believe a violation of the foreign nationals prohibition occurred, but the Commission did not adopt those recommendations? Please provide the MUR numbers and votes by commissioner name.*

During the period from the *Bluman v. FEC* decision, which was issued January 9, 2012, and June 9, 2023, the Commission has closed and made public 93 matters alleging violations of FECA's foreign national prohibition. Of those, OGC recommended that the Commission find reason to believe that a violation occurred as to at least one respondent in 28 of those matters, which are listed in Attachment M with MUR numbers and Commissioners' votes. The Commission found reason to believe FECA's foreign national prohibition had been violated in 15 matters, and it did not adopt OGC's reason to believe recommendations in 13 matters. In one matter where the Commission found reason to believe, OGC subsequently recommended probable cause to believe that a violation had occurred, but the Commission found no probable cause to believe that a violation had occurred.

20. *Several Commissioners have cited looming statutes of limitations as a justification to vote against finding a reason to believe that a violation has occurred.*⁴³ *How many cases on the Commission's enforcement docket are imperiled by a looming statute of limitations?*

Of the 191 cases on the enforcement docket as of June 16, 2023, 20 have at least some activity that is beyond the statute of limitations or will be before June 16, 2024.

⁴² *Bluman v. Fed. Election Comm'n*, 800 F. Supp. 2d 281 (D.D.C. 2011), *aff'd* 132 S. Ct. 1087 (2012).

⁴³ *See, e.g.*, Stmt. of Reasons of Chair Dickerson & Comm'rs Cooksey & Trainor at 1, MUR 7425 (Donald J. Trump Found.) (Feb. 22, 2022); Stmt. of Reasons of Vice Chair Dickerson & Comm'rs Cooksey & Trainor at 2, MUR 7623 (Make Am. Great Again PAC (F/K/A Donald J. Trump for President, Inc.)) (Nov. 22, 2021); Stmt. of Reasons of Vice Chair Dickerson & Comm'rs Cooksey & Trainor at 1, MUR 7324 (A360 Media, LLC F/K/A Am. Media, Inc.) (June 28, 2021); Stmt. Of Reasons of Comm'rs Cooksey & Trainor at 1, MUR 7313 (Make Am. Great Again PAC (F/K/A Donald J. Trump for President, Inc.)) (Apr. 26, 2021); Stmt. of Reasons of Chairman Trainor at 4-5, MUR 7422 (Greitens for Missouri, *et al.*) (Aug. 28, 2020).

21. *In the Commission's September 12, 2022, responses, the Commission avowed that "[r]ecusal rules under the Standards of Ethical Conduct for Employees of the Executive Branch serve the interest of ensuring that every citizen can have complete confidence in the integrity of the Federal Government." In recent months, Commissioner Trainor has either "liked"⁴⁴ or "retweeted"⁴⁵ several social media posts that support or endorse the 2024 campaign of former President Trump. Commissioner Trainor also "liked" a social media post critiquing the April indictment and arrest of the former president related to, among other things, alleged campaign finance violations in New York.⁴⁶*

a. *Are the interests of ensuring the American public's confidence served by the appearance of partiality on the part of commissioners?*

All employees of the Executive Branch, including FEC Commissioners, are subject to, and abide by, 5 C.F.R. § 2635.502, a regulation of the U.S. Office of Government Ethics that requires recusal to avoid the appearance of a loss of impartiality. Specifically, a commissioner, or any other employee, must disqualify themselves from certain particular matters where there has been a determination that a reasonable person with knowledge of the relevant facts would question the employee's impartiality. Under the regulation, the obligation to recuse – or to seek an authorization from the agency to participate – pertains to particular matters involving specific parties in which a member of the employee's household has a financial interest or in which someone with whom the employee has a "covered relationship," as defined in the regulation, is a party or represents a party.

In addition, Section 2635.502(a)(2) states that "[a]n employee who is concerned that circumstances other than those specifically described in this section would raise a question regarding his impartiality should use the process described in this section to determine whether he should or should not participate in a particular matter." That process is contained in Section 2635.502(a)(1), which states that "[I]n considering whether a relationship would cause a reasonable person to question his impartiality, an employee may seek the assistance of his supervisor, an agency ethics official, or the agency designee." The Commission's Ethics Office emphasizes that if a matter involves circumstances other than those specified in the impartiality rules that may cause a reasonable person to question the employee's impartiality, the employee should consult with the Ethics Office before participating in the matter.

b. *Do the Commission's ethics rules apply to social media activity of the commissioners or other senior staff?*

The U.S. Office of Special Counsel ("OSC") is the agency responsible for enforcing the Hatch Act, 5 U.S.C. §§ 7321-7326, which governs the political activities of Executive Branch employees. OSC has put out extensive guidance on social media use by Executive Branch employees, which is linked here: [Social Media Guidance.pdf \(osc.gov\)](https://www.osc.gov/social-media-guidance). The "on duty or in the workplace" prohibition discussed at pages 2-4 of the OSC guidance does **not** apply to

⁴⁴ @ByronDonalds, TWITTER (May 11, 2023, 12:21 AM), <https://twitter.com/ByronDonalds/status/1656514884517896193>.

⁴⁵ @BuckSexton, TWITTER (Feb. 23, 2023, 9:31AM), <https://twitter.com/BuckSexton/status/1628764615143301120>.

⁴⁶ @JackPosobiec, TWITTER (Apr. 3, 2023, 9:06 PM), <https://twitter.com/JackPosobiec/status/1643057313727627265>.

Commissioners but applies to all other Commission employees, *see* 5 U.S.C. § 7324(b); the prohibitions on soliciting or receiving contributions and to the misuse of official authority to influence the outcome of an election discussed at pages 5-8 of the OSC guidance apply to all Commission employees, including Commissioners; and the prohibitions applicable to “further restricted employees” discussed at page 9 of the OSC guidance do **not** apply to Commissioners but apply to all other Commission employees. *See* 5 U.S.C § 7323(b)(2)(A).

c. What rules or standards, if any, apply to Commissioners’ comments related to ongoing criminal investigations or prosecutions?

If an ongoing criminal investigation or prosecution is proceeding parallel to an open Commission enforcement matter, neither Commissioners, Commission staff, nor any other person may make public any Commission notification or investigation regarding the matter, so long as it remains open and pending before the Commission. 52 U.S.C. § 30109(a)(12). The Commission will also attempt, in general, not to take actions or make statements that interfere with the investigation. This, for example, is one reason why the Commission will frequently agree to requests from the Department of Justice to abate its consideration of matters while a parallel criminal matter is pending – a practice codified in the recent Memorandum of Understanding with the Department of Justice discussed in the answer to question 22 below.⁴⁷

An Executive Branch-wide ethics regulation, 5 C.F.R. § 2635.703, prohibits the unauthorized dissemination of non-public material to outside parties to further the employee’s own private interests or those of another. Where an indictment has been brought and is the subject of public news coverage, there is no specific statute or regulation that prevents Commissioners from commenting on it so long as they do not reveal nonpublic government information. However, in making such comments about a matter that might come before the Commission but has not yet done so, they should take care not to make comments that would indicate that they have prejudged such a matter. Statements indicating prejudgment might implicate the impartiality rules discussed in response to Question 21a. above.

22. In a statement dated April 19, 2023, Commissioner Trainor wrote, in reference to the Memorandum of Understanding (“MOU”) between the Commission and the Department of Justice, that “[n]ot since the Alien and Sedition Acts of 1789 has there been a more grievous affront to the First Amendment than what we have before us today.”⁴⁸

a. What value does the Commission derive from the MOU?

The Commission’s new MOU with the U.S. Department of Justice explains in Paragraph 2 that “[t]he purpose of this MOU is to promote the enforcement of the federal campaign finance laws and to establish guidelines for the Commission and the Department to engage in parallel

⁴⁷ FEC-DOJ MOU, ¶ 10, Attachment N.

⁴⁸ Stmt. of Comm’r James E. “Trey” Trainor III regarding the Memorandum of Understanding between the Dep’t of Justice and the Fed. Election Comm’n (Apr. 19, 2023), https://www.fec.gov/resources/cms-content/documents/Trainor-Comments-on-MOU-between-FEC-and-DOJ-for-19-April-2023-FINAL-FOR-PUBLICATION_2.pdf.

proceedings, share information in appropriate circumstances, and otherwise properly advance the missions of both agencies subject to all relevant legal and ethical constraints informed by mutual respect of the independence of each agency.”

As a multimember body acting through voting decisions, Commissioners may support or oppose a particular agency action for different reasons. No Commissioner who voted in favor of the MOU issued a statement explaining his or her reasoning. Commissioners did however make individual comments at the Commission’s open meeting prior to voting to approve the MOU, which can be viewed at the following link: https://www.youtube.com/watch?v=MdCIOAZL_68&t=1625s.

Commissioner Trainor did not vote in favor of the motion to approve the MOU. He set forth his views of the MOU in a statement, which the question quotes, and which can be found at the following link: https://www.fec.gov/resources/cms-content/documents/Trainor-Comments-on-MOU-between-FEC-and-DOJ-for-19-April-2023-FINAL-FOR-PUBLICATION_2.pdf and as Attachment O.

- b. *Will the MOU enhance the Commission’s ability to fulfill its legal obligations and pursue its strategic objectives?*

As discussed in the answer to the prior portion of this question, MOU Paragraph 2 explains that “[t]he purpose of this MOU is to promote the enforcement of the federal campaign finance laws and to establish guidelines for the Commission and the Department to engage in parallel proceedings, share information in appropriate circumstances, and otherwise properly advance the missions of both agencies subject to all relevant legal and ethical constraints informed by mutual respect of the independence of each agency.”

23. *The Commission’s September 12, 2022, response to a question about the Corporate Transparency Act (“CTA”)⁴⁹ noted that further information would be forthcoming following the publication of a FinCEN NPRM, which would include whether agencies like the Commission are “engaged in . . . law enforcement activity.” What updates does the Commission have to share on implementing the CTA?*

The Corporate Transparency Act provides for sharing of beneficial ownership information (BOI) upon receipt of a request through appropriate protocols with, *inter alia*, “a Federal agency engaged in national security, intelligence, or law enforcement activity for use in furtherance of such activity.”⁵⁰ The Commission’s understanding is that the Department of the Treasury’s Financial Crimes Enforcement Network (FinCEN) is still in the process of promulgating implementing regulations for the CTA.

⁴⁹ Pub. L. 116-283 §§ 6401-6403, 134 Stat. 3388, 4604-4625 (2021).

⁵⁰ *Id.* § 6403, 134 Stat. at 4614 (creating new 31 U.S.C. § 5336(c)(2)(B)(i)(I)).

On April 1, 2021, FinCEN issued an Advance Notice of Proposed Rulemaking (ANPRM) soliciting public comment on questions relevant to the Treasury Department’s implementation of the CTA.⁵¹ Although the Commission did not comment on the ANPRM, Commissioners Broussard and Weintraub, in their capacities as individual commissioners, did.⁵² Specifically, Commissioners Broussard and Weintraub noted that the CTA does not define “a Federal agency engaged in national security, intelligence, or law enforcement activity,” and they urged the Secretary of the Treasury to write regulations clearly defining the phrase and specifically enumerating the Commission as a law enforcement agency able to access the beneficial ownership information FinCEN is required to collect under the CTA.

On December 8, 2021, FinCEN issued a Notice of Proposed Rulemaking (NPRM) soliciting public comment on proposed regulations addressing who must report beneficial ownership information, what information must be provided, and when a report is due.⁵³ FinCEN stated that the NPRM began the first of three sets of rulemakings FinCEN intends to issue in order to implement the requirements of the CTA.⁵⁴ The Commission did not submit comments on this NPRM. FinCEN indicated that future rulemakings would implement the CTA’s protocols for access to and disclosure of beneficial ownership information, and revise FinCEN’s existing customer due diligence rule concerning the identification and verification of beneficial owners by certain financial institutions.⁵⁵ On February 8, 2022, FinCEN issued a statement noting that the comment period for the “reporting NPRM” had closed and that “the next step in the CTA rulemaking series will be FinCEN’s publication of proposed rules on BOI access and disclosure requirements (the ‘Access NPRM’).”⁵⁶

On September 29, 2022, FinCEN issued a final rule establishing a BOI reporting requirement.⁵⁷ The rule, which is effective January 1, 2024, will require most corporations, limited liability companies, and other entities created in or registered to do business in the United States to report information about their beneficial owners—the persons who ultimately own or control the company—to FinCEN. Reporting companies created or registered before January 1, 2024, will have one year to file their initial reports, while reporting companies created or registered after January 1, 2024, will have 30 days after creation or registration to file their initial reports. Once the initial report has been filed, both existing and new reporting companies will have to file updates within 30 days of a change in their BOI.

⁵¹ Treasury Dept., *Beneficial Ownership Information Reporting Requirements*, 86 Fed. Reg. 17,557 (Apr. 1, 2021).

⁵² Chair Shana M. Broussard and Commissioner Ellen L. Weintraub, FEC, Comment on Docket Number FINCEN-2021-0005; RIN 1506-AB49: Beneficial Ownership Information Reporting Requirements (May 5, 2021), available at: <https://www.regulations.gov/comment/FINCEN-2021-0005-0164>.

⁵³ Treasury Dept., *Beneficial Ownership Information Reporting Requirements*, 86 Fed. Reg. 69,920 (Dec. 8, 2021).

⁵⁴ *Id.* at 69,921.

⁵⁵ *Id.*

⁵⁶ FinCEN, *Statement Regarding Beneficial Ownership Information Reporting and Next Steps*, Press Release (Feb. 8, 2022) available at: <https://www.fincen.gov/news/news-releases/fincen-statement-regarding-beneficial-ownership-information-reporting-and-next>.

⁵⁷ Treasury Dept., *Beneficial Ownership Information Reporting Requirements*, 87 Fed. Reg. 59498 (Sept. 30, 2022).

On December 15, 2022, FinCEN issued an NPRM that would implement provisions of the CTA that govern access to and protection of BOI.⁵⁸ The proposed regulations specify how government officials would access BOI in order to support law enforcement, national security, and intelligence activities. The notice describes federal agency access as “activity-based,” and thus a federal functional regulator “may be engaged in ‘law enforcement activity’ such as civil law enforcement, and can therefore still request BOI from FinCEN for use in furtherance of that activity.”⁵⁹ The proposed rule would define “law enforcement activity” to include “investigative and enforcement activities relating to civil or criminal violations of law.”⁶⁰ “Additionally, the proposed rule would make clear that law enforcement activity can include both criminal and civil investigations and actions, such as actions to impose or enforce civil penalties, civil forfeiture actions, and civil enforcement through administrative proceedings.”⁶¹ Federal-agency users engaged in law enforcement activity would have to submit brief justifications to FinCEN for their searches, explaining how their searches further a particular qualifying activity, and these justifications would be subject to oversight and audit by FinCEN.⁶² “The proposed rule would permit the disclosure by authorized recipients of BOI in limited circumstances that would further the core underlying . . . law enforcement objectives of the CTA while at the same time ensuring that BOI is disclosed only where appropriate for those purposes.”⁶³ Finally, it is worth noting that the proposed rule imposes certain security and confidentiality requirements on recipients of BOI.⁶⁴

The Commission will continue to monitor the progress of the Treasury Department’s rulemaking process to implement the CTA.

24. The Commission adopted revised audit procedures during the May 4, 2023, open meeting, which significantly revised the audit and accompanying legal review processes. The relevant documents for this meeting were released approximately 7 days before the open meeting, and the final, adopted drafts were released less than 24-hours before the open

⁵⁸ Treasury Dept., *Beneficial Ownership Information Access and Safeguards, and Use of FinCEN Identifiers for Entities*, 87 Fed. Reg. 77404 (Dec. 16, 2022).

⁵⁹ *Id.* at 77408-09; *see also id.* at 77412 (“Federal agency access is to be based upon the type of activity an agency is conducting rather than the identity of the agency or how it might be categorized.”).

⁶⁰ *Id.* at 77412 (“Proposed 31 CFR 1010.955(b)(1)(iii) is intended broadly to cover the types of functions in which Federal agencies engage when they work to enforce the laws of the United States. FinCEN believes that it is consistent with the CTA to authorize Federal agencies to access BOI at all stages of the law enforcement process.”).

⁶¹ *Id.* (“Among the Federal agencies with access to BOI for law enforcement purposes would be Federal functional regulators that investigate civil violations of law.”).

⁶² *Id.* at 77409.

⁶³ *Id.* at 77417; *see also id.* at 77418 (explaining that the proposed rule would allow a federal enforcement agency to disclose BOI to parties to a civil proceeding and would allow a prosecutor to use BOI as evidence in a court proceeding or trial); (“FinCEN would be unlikely to oppose disclosing BOI for use by law enforcement agencies in a civil or criminal proceeding.”).

⁶⁴ *Id.* at 77419; *e.g., id.* at 77420 (requiring each requesting agency, before it would obtain BOI, to enter into a memorandum of understanding with FinCEN specifying the standards, procedures, and systems that the agency would be required to maintain to protect such information).

meeting. The Commission received a comment from a member of Congress requesting that the Commission delay final consideration and provide for additional public comment. The Commission, however, rejected a motion to delay the final vote and provide for a public comment period.

- a. *The relevant changes are not effective until the following election cycle. Given the significant period between potential adoption and implementation of the procedures, what basis was there for rejecting the proposal to authorize a comment period on the final documents?*

Rules of agency procedure are generally exempt from the Administrative Procedure Act (“APA”) notice and comment requirements.⁶⁵ As FEC Chair Lindenbaum stated at the May 4, 2023, open meeting discussion of the proposed audit procedures, the Commission is “not required to solicit public comments or hold a hearing and the Commission often does not do so when they adopt agency procedures or amend directives, but we did so here.”⁶⁶ The Commission sought public comment at three points in the revision process, including on draft documents that were on the public meeting agenda,⁶⁷ and held a public hearing to receive witness testimony. The revised audit procedures that were adopted took into consideration all comments and testimony. Commission approval of final revisions to the audit process with an effective date of the next election cycle provides ample notice to committees of the procedures that will apply and gives them time to adjust to the new procedures. The delayed effective date also provides Commission staff the time to adjust audit practices before that effective date.

- b. *How does the Commission balance between the availability of public comment and the approval of late submitted documents, like the revised audit procedures documents?*

As an agency dedicated to promoting transparency, the Commission is committed to providing notice to the public of its actions, as well as opportunities for public comment on proposed actions, within any relevant practical and legal constraints.⁶⁸ The revised audit procedures do not require public notice and comment under the APA, the FECA, FEC regulations,⁶⁹ or FEC statements of procedure.⁷⁰ The Commission nonetheless provided

⁶⁵ See 5 U.S.C. § 553(b)(A) (APA provisions governing, *inter alia*, notice and comment); U.S. Dep’t of Justice, *Attorney General’s Manual on the Administrative Procedure Act* (1947) at 30 (explaining that “rules of agency organization, procedure or practice” are generally exempt from APA notice and comment requirements).

⁶⁶ Audio Recording of Discussion on Revised Audit Procedures (May 4, 2023) (remarks of Chair Lindenbaum), available at <https://www.fec.gov/updates/may-04-2023-open-meeting/>

⁶⁷ See Weekly Digest: Week of April 24-28, 2023 (Apr. 28, 2023), <https://www.fec.gov/updates/week-of-april-24-28-2023/>; Notice of Public Hearing and Request for Public Comments, 88 Fed. Reg. 1228 (Jan. 9, 2023) (soliciting comments); Notice of Public Hearing, 88 Fed. Reg. 3737 (Jan. 20, 2023) (setting hearing date and referring commenters to prior notice).

⁶⁸ See, e.g., 52 U.S.C. § 30109(a)(12) (providing for confidentiality in enforcement investigations).

⁶⁹ See, e.g., 52 U.S.C. § 30108(d) (requiring a 10-day window for public comment on complete, qualified advisory opinion requests before the Commission issues a formal response); 11 C.F.R. § 112.3 (same).

⁷⁰ See, e.g., Advisory Opinion Procedures, 74 Fed. Reg. 32160 (July 6, 2009) (setting forth procedures including opportunity to comment on draft responses).

opportunities for public comment throughout the revision process. The Commission sought in a *Federal Register* notice comments on the operation of the audit process since it was last revised and proposals for revision; heard witness testimony at a public hearing, released draft revisions in advance of a Commission vote, and received comments on those drafts.⁷¹

The balance the Commission struck in the process for receiving comments on its revised audit procedure drafts is similar to the process for soliciting and receiving public comments on advisory opinion drafts, though draft advisory opinion comments are governed by a procedure published in the *Federal Register* while the process for adopting agency procedures is not. The balance, as set forth in that *Federal Register* notice regarding advisory opinions, is to adopt a process that “will promote transparency and fairness, while ensuring that advisory opinions continue to be issued in an efficient and timely manner” while providing the public “meaningful opportunity to submit comments ... and for the Commission to properly consider any such comments.”⁷² The Commission explained that in this “spirit,” it would commit to releasing at least one draft a minimum of one week before the meeting at which it will consider an advisory opinion with a 60-day deadline.⁷³

The Commission made a draft available for public comments the week before the meeting at which it was considered.⁷⁴ The Commission made public an additional revised draft with a small number of changes the day before the meeting at which it was considered which is also consistent with its usual practice as drafts are edited and negotiated. In the Commission’s judgment, it struck the appropriate balance between transparency, meaningful opportunity for public input, and efficient and timely decision making.⁷⁵

25. *Since May 1, 2019, how many requests for advisory opinions lacked four affirmative votes to provide an answer? Please provide the numbers and advisory opinion citations by year, if any.*

Between May 1, 2019, and June 16, 2023, the Commission did not approve a response to six requests for advisory opinions as follows:

⁷¹ These opportunities for public comment also included outreach from individual commissioners to the regulated community and other interested parties as well as an email from Chair Lindenbaum to every active committee that has ever been audited seeking their input.

⁷² *Id.* at 32160-61.

⁷³ *Id.* at 32161. The advisory opinion procedures clarify that the Commission may release subsequent drafts and allows advisory opinion requestors to appear at meetings by right in such circumstances. *Id.* at 32161-62. The individualized interests of advisory opinion requestors in “late” draft advisory opinions, however, are not a factor in the release, less than one week prior to vote, of drafts of more generally applicable rules of procedure such as the revised audit procedures documents.

⁷⁴ This timing is consistent with the Commission’s usual practice for the notice and comment periods available for other agency actions such as advisory opinion requests and the approval of petitions for rulemaking.

⁷⁵ Commissioners Broussard and Weintraub supported providing the public with an opportunity to comment on the new draft procedures before adopting them. Attachment P.

2019 (1)

2019-10 (Price for Congress)

2020 (2)⁷⁶

2020-03 (McCutcheon for Freedom)

2020-04 (Joan Farr for U.S. Senate)

2021 (3)

2021-01 (Aluminate)

2021-08 (Fitzgerald)

2021-11 (DSCC and DCCC)

Between May 1, 2019, and June 16, 2023, the Commission answered some questions raised by the advisory opinion requests, but did not approve a response to other questions in two other advisory opinions.

2022 (2)

2022-03 (Democracy Engine)

2022-07 (Swalwell for Congress)

26. *The Committee's Chair submitted two separate statements opining on the substance of the request in Advisory Opinion 2023-01 (Barragán).*⁷⁷ *Communications related to this request were disclosed as ex parte communications on the Commission's website. Other independent agencies, notably the Federal Communications Commission ("FCC"), impose rules governing ex parte communications with FCC Members and employees, and those rules "play an important role in protecting the fairness" of the FCC proceedings. Has the Commission considered crafting similar formal procedures, and if so, what is the status of that effort? Alternatively, what is the Commission's position on a legislative requirement for the Commission to craft formal ex parte procedures?*

The Commission promulgated regulations governing *ex parte* communications in the context of advisory opinions, public funding, audits, litigation, and rulemaking proceedings in

⁷⁶ The Commission was unable to issue advisory opinions in response to the advisory opinion requests listed for 2020 (Advisory Opinions 2020-03 (McCutcheon for Freedom) and 2020-04 (Joan Farr for U.S. Senate)), because the Commission lacked the statutorily required quorum of four Commissioners and the requestors declined to grant an extension of time to allow the Commission to respond once a quorum was restored.

⁷⁷ The Commission, by a 6-0 vote, did not adopt the legal position advanced by the Chair. *See* Vote, Advisory Opinion 2023-01 (Barragán) (Apr. 20, 2023).

⁷⁸ *Ex Parte*, FED. COMMUNICATIONS COMM'N, <https://www.fcc.gov/proceedings-actions/ex-parte> (last accessed May 18, 2023).

1992.⁷⁹ The Commission promulgated regulations governing *ex parte* communications in the context of enforcement proceedings in 1980⁸⁰ and 1986.⁸¹

These regulations permit *ex parte* communications concerning pending advisory opinions, subject to certain disclosure requirements.⁸² Any Commissioner or member of a Commissioner's staff who receives a written or oral *ex parte* communication concerning a pending advisory opinion must provide a copy of the written communication or a summary of the oral communication to the Commission Secretary for placement in the public file as soon as is reasonably possible but no later than three business days after the communication (unless special circumstances render this impracticable), or prior to the next Commission discussion of the matter, whichever is earlier.⁸³ The same rules apply to *ex parte* communications in the context of rulemaking proceedings.⁸⁴ Commission regulations prohibit *ex parte* communications concerning eligibility for or entitlement to public funding, ongoing audits, pending or prospective decisions regarding litigation to which the Commission is a party, and communications relative to the factual or legal merits of any enforcement action.⁸⁵

The Commission disclosed the *ex parte* communications it received concerning Advisory Opinion 2023-01 (Barragán) in compliance with the procedures set out in Commission regulations.

Finally, in response to the footnote on this question (which is n. 71 in this document), the Commission would like to clarify that its 6-0 vote to approve Advisory Opinion 2023-01 (Barragán) in no way reflected its views on the legal position advanced by Chairman Steil of the House Administration Committee in his *ex parte* communications to the Commission. Indeed, as the Commission emphasized both in the draft advisory opinion and orally at the meeting at which the draft was approved, Advisory Opinion 2023-01 (Barragán) addressed only the application of FECA and Commission regulations, which was the only question within the Commission's jurisdiction. The Commission expressed no views about the Rules of the U.S. House of Representatives or the Committee on House Administration, which were the subject of the communications from Chairman Steil.

⁷⁹ *Ex Parte* Communications, 57 Fed. Reg. 58133 (Dec. 9, 1992); *see also Ex Parte* Communications, 58 Fed. Reg. 59645 (Nov. 10, 1993).

⁸⁰ Amendments to Federal Election Campaign Act of 1971; Regulations Transmitted to Congress, 45 Fed. Reg. 15080, 15089 (Mar. 7, 1980).

⁸¹ Standards of Conduct for Agency Employees, 51 Fed. Reg. 34440, 34443 (Sept. 29, 1986).

⁸² 11 C.F.R. § 201.4(a).

⁸³ *Id.*

⁸⁴ *Id.* § 201.4(b)(1).

⁸⁵ *Id.* §§ 7.8(a), 111.22, 201.3.

27. *The Committee's July 18, 2022, letter referenced 22 cases where the Office of General Counsel recommended that the Commission find reason to believe that former President Trump, his committee, or his family members violated federal election laws.⁸⁶ In each instance, three commissioners voted against finding reason to believe that a violation occurred, demonstrating a significant disconnect between the Commission's non-partisan staff and those three commissioners. The Committee is interested in additional information related to those earlier questions.*

a. *How many enforcement matters filed with the Commission involve former President Trump, his committees, or his family members?*

Former President Trump declared his candidacy for the Presidency in 2016 on June 16, 2015. Since then, the Commission has closed 56 MURs involving former President Trump, his committees, or his family members.

b. *Please list each MUR number, name, identify OGC's recommendations, and how the Commission voted. Please provide votes by commissioner name.*

Attachment Q provides for each of those MURs, the MUR number and name and OGC's recommendations. The related FEC vote certifications are Attachment R, which include the remainder of the requested information.

28. *The Commission included permanently extending the Administrative Fines program as a top legislative recommendation.⁸⁷ What is the consequence of failing to extend this program?*

The Administrative Fine Program provides a streamlined process for the Commission to enforce late and nonfiled campaign finance reports and has become an integral part of the Commission's mission to administer and enforce the Act. Through the Administrative Fine Program, the Commission has processed and made public over 4,000 cases, with more than \$9.5 million assessed during the period from the implementation of the program in 2000 through May 31, 2023. Since its implementation in 2000, Congress has enacted six temporary extensions of the Administrative Fine program. The Commission's current Administrative Fine Program covers violations that relate to reporting periods through December 31, 2023 only. The Commission has recommended Congress make permanent the Commission's authority to assess administrative fines for violations of the law requiring timely reporting of receipts and disbursements. Without Congressional action – either to make the program permanent or grant

⁸⁶ See Matters Under Review 6961, 6992, 7037, 7094, 7096, 7098, 7100, 7111, 7119, 7135, 7147, 7151, 7159, 7207, 7220, 7255, 7265, 7266, 7268, 7313, 7319, 7324, 7332, 7339, 7340, 7350, 7351, 7364, 7366, 7379, 7390, 7407, 7425, 7540, 7571, 7609, 7623, 7637, 7736, 7737, 7758, 7784, Pre-MUR 611. See also Roger Sollenberger, *How the Hell Is Trump 43-0 vs. Campaign Finance Watchdogs?*, DAILY BEAST (Mar. 2, 2022), <https://www.thedailybeast.com/donald-trump-isnow-miraculously-43-0-against-partisan-fec>.

⁸⁷ *Legislative Recommendations of the Fed. Election Comm'n 2022*, FED. ELECTION COMM'N (Dec. 15, 2022), <https://www.fec.gov/resources/cms-content/documents/legrec2022.pdf>.

another temporary extension – the program would not apply to reporting periods in 2024 and thereafter.

The Administrative Fine Program enables the Commission to enforce straightforward late and nonfiled reporting violations outside of the typical enforcement process and allows resources to be reallocated to more significant and complex violations. If Congress were to not extend the Administrative Fine Program, the Commission would need to revise its policies to capture these violations through other existing enforcement channels. Ultimately, enforcement of these basic reporting violations would require lengthy procedural steps and obligate significant FEC resources that should be reserved for more complex disclosure and enforcement efforts.

Further, the Administrative Fine Program has been remarkably successful and cost-effective in promoting compliance with reporting requirements and has drastically reduced the number of late and nonfiled reports. If Congress were to not extend the program, the Commission anticipates political committees may not be as inclined to timely file campaign finance reports. An increase in late and nonfiled reports would negatively impact the public's access to information about how funds are raised and spent to influence federal elections.

29. The Commission included increasing the rate of pay for the Staff Director and General Counsel as a top legislative recommendation.⁸⁸ Please explain why this is critical. Additionally, Commissioner compensation is set at Executive Schedule IV. While the 2023 ES-IV official rate is \$183,500, the payable rate for certain officials, including FEC Commissioners, is frozen at the 2013 compensation level of \$158,500. Should Congress also consider increasing Commissioner compensation?

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 for the following reasons:

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. 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 proposes removing the statutory references to the Executive

⁸⁸ *Id.*

Schedule, and amending 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 will 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.

The Commission has not adopted a legislative recommendation that pertains to Commissioner compensation. However, as a response to this question, the Commission notes 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, as the question notes, 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.