



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RESPONSES TO QUESTIONS FROM THE
COMMITTEE ON HOUSE ADMINISTRATION
September 12, 2022

1. *According to the Office of the Inspector General's ("OIG") Semiannual Report to Congress released in May 2022,¹ there are currently eight outstanding recommendations that are older than six months. Two of these recommendations are more than eight years old and the rest are more than two years old.*
 - a. *How many of these recommendations are still 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 14 outstanding recommendations over the prior two OIG semiannual review periods (April 2021 to September 2021, and October 2021 to March 2022), which led to the closure of three audits—2010 Follow-Up Audit of Privacy and Data Protection, Audit of the FEC's Office of Human Resources, and Audit of the FEC Telework Program.

As of March 31, 2022, there were eight open recommendations across the following three matters:

- Fiscal Year (FY) 2020-21 Financial Statements Audit (3 open recommendations)
- Special Review of Use of TRANServe Benefits during the FY 19 Government Shutdown (3 open recommendations)
- Inspection of the FEC's Disaster Recovery Plan and Continuity of Operations Plan (2 open recommendations)

Since that time, FEC management successfully closed two of the three outstanding recommendations from OIG's TRANServe Special Review, and one of the three outstanding recommendations from the FY 2020-2021 Financial Statements Audit. Attachment A is a document explaining the remaining recommendations for each of the audits 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* at 12 (May 2022), https://www.fec.gov/resources/cms-content/documents/FEC_OIG_SAR_Oct21-Mar22.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 FEC recently suffered an information system breach because of issues pertaining to Personal Identity Verification (PIV) cards.² The OIG has provided various recommendations to the Commission regarding PIV cards and relations with contractors. Have those recommendations been implemented?*

OIG's recommendations concerned an incident in early-June 2021 that involved a potential information systems breach associated with employee identification cards issued by an Agency contractor. The investigation found that the incident was limited to a small number of employees within the FEC and that there was no apparent disclosure of personally identifiable information. In its report of investigation, OIG made five recommendations for the Commission to consider. Management implemented corrective actions earlier this year to address two of the five recommendations. As to the remaining recommendations, Management disagreed with OIG that the recommended corrective actions were necessary due to existence of government-wide standards for identity credential that are incorporated by reference into the Agency's contract with its Personal Identity Verification card provider. By letter dated July 13, 2022, OIG notified Management that it was closing all five recommendations. On the three recommendations as to which OIG and Management disagreed, OIG noted that each recommendation was not a compliance issue and OIG has provided its suggestion for Management's consideration, and therefore considered the recommendation closed.

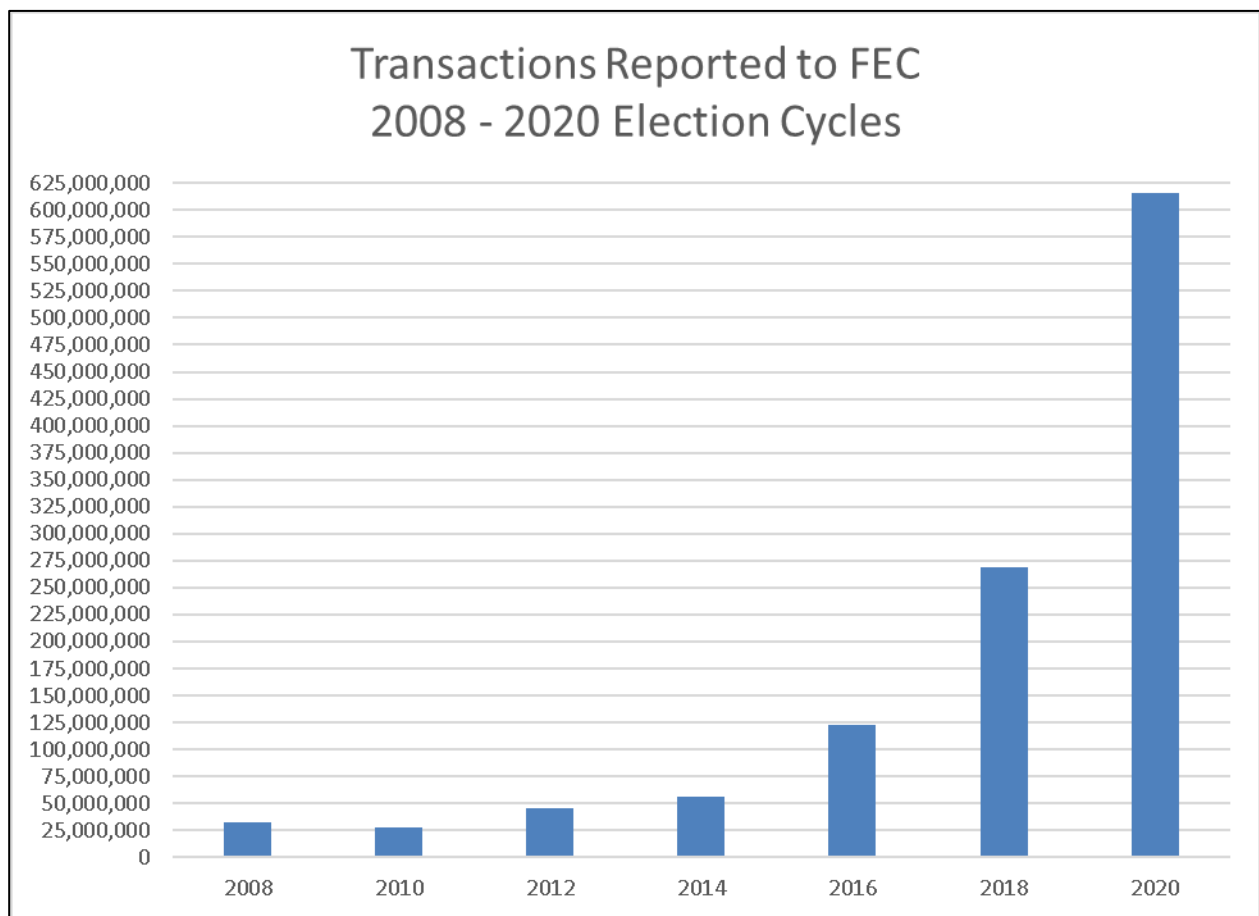
3. *The OIG Semiannual Report also observed that political spending has exploded in recent years, with total spending on federal election campaigns increasing from \$1.6 billion in 1998 to roughly \$14.5 billion in 2020, while the Commission's budget has remained largely static (and has even decreased when adjusting for inflation).*
 - a. *How, if at all, has the tremendous growth in campaign spending affected the Commission's work?*
 - b. *If it has affected the Commission's work, are there specific offices or divisions particularly impacted by such growth?*

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. The 2022 election cycle is not yet completed, and

² Off. of the Inspector Gen., Fed. Election Comm'n, Investigate Summary I211NV00063: HSPD-12 Personal Identity Verification (PIV) Card Incident (Nov. 23, 2021).

data from just a portion of the 2022 election cycle already exceeds the total for the complete 2018 election cycle, which was the last nonpresidential election cycle. As of August 2, 2022, the FEC has already received more than 384 million transactions for the 2022 election cycle, which just for this portion of the 2022 election cycle alone constitutes an approximately 43 percent increase over the entire 2018 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. This ever-growing volume of campaign finance disclosure data must be received, processed, and made available to the public within the agency's tight deadlines for public disclosure, and must be safeguarded to ensure the integrity and accessibility of the information. The chart below illustrates the dramatic growth of data transactions that the FEC needs to process, store, search, and display to support the FEC's disclosure mission.



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 election cycle. 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.

The FEC continues to confront this growing workload alongside relatively flat funding levels that have contributed to the reduced staffing levels the FEC has seen over the past several years. Over the past decade, 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. To name a few examples of the growing workload that has followed the increase in campaign finance activity, and the offices and divisions most affected:

- The Office of the Chief Information Officer (OCIO) has been the office most immediately affected by the rise in reported transactions and increasing public interest in campaign finance data. Over the past seven years, OCIO has devoted significant funds and staff resources toward modernizing the agency's website and databases, and securing these systems, in order to keep up with the rise in activity each election cycle. While these modernization efforts have allowed the Commission to continue to meet the agency's disclosure mission through the past two presidential election cycles, they are far from complete or sufficient to meet continuing increases in reported transactions. Individual projects that continue to require funding are detailed below.
- The number of inquiries handled by Reports Analysis Division (RAD) campaign finance analysts has increased by more than 300 percent between the 2010 and 2020 election cycles, while the number of RAD campaign finance analysts has decreased by 18 percent over the same period.
- The caseload for individual Enforcement Division attorneys has grown from 3.9 to 13.9 cases in just over a decade as a result of the combination of the increase in enforcement matters filed or referred and a 37 percent decrease in the number of Enforcement staff attorneys.
- Although the Office of General Counsel's (OGC's) Litigation Division caseload has remained relatively consistent, the number of staff attorneys has decreased from 11 to 4 over the past decade.
- The number of cases processed by the Enforcement Division as a whole more than doubled in the same time period – from FY 2011 116 cases to a current caseload of 250 cases as of the most recent quarter in FY 2022.
- During FYs 2011 through 2020, the Policy Division averaged 11.17 matters per active attorney. The estimated caseload, at current staffing levels, would be 18 such matters per active attorney in FY 2022.

- c. *How would an increase in FEC funding be used to improve the Commission's fulfillment of its mission?*

Increased funding would allow the FEC to improve the fulfillment of its mission by fully funding a series of initiatives the agency has initiated to meet these workload challenges. These initiatives are primarily Information Technology (IT) modernization, cybersecurity and increased staffing, as described below.

IT Modernization

The Federal Election Campaign Act (FECA) requires that information is not only kept by the FEC but also that it is provided to the public. The Commission is committed to providing the public with robust access to the campaign finance data, compliance information, and legal resources within its statutory mandate in a timely, reliable, and useful fashion.

The FEC is pursuing an IT modernization plan, which requires investment now and over the next several years. The agency is modernizing applications and data pipelines. Data pipelines are a set of automated methods and procedures that process raw data files received from filers into the primary campaign database for internal agency use and for public consumption on FEC.gov. They are essential to processing and reviewing campaign finance disclosure information in compliance with FECA's mandates. The return on this investment will help the agency avoid steep rises in costs for physical data center space and equipment, help minimize potential cybersecurity risks, and help agency staff more effectively perform their duties. These modernized applications and data pipelines will be more secure and will help staff process and review the increasing volume of data.

1. Cloud Migration/Modernizing Applications within a Cloud Environment

The trends in campaign finance activity of increasing spending, increasing transactions, and increasing API hits illustrate how crucial it is for the agency to continue to implement new programs and systems to ensure the timely disclosure of campaign finance data. The migration of campaign finance data to a cloud environment and modernization of applications migrated to the cloud during previous fiscal years are essential components of these efforts. Modernizing the applications and data pipelines will permit users to utilize all the advantages of the cloud fully, which will help the agency to efficiently, fairly and effectively achieve its mission objectives. The move to a cloud-hosted model also provides the Commission with opportunities to retire a number of other legacy systems that are costly to maintain and to continue to reduce the agency's datacenter footprint.³

In recent years, the federal government has put into place an initiative to reduce the reliance on physical data centers. As a result of the FEC's ongoing cloud migration efforts, the

³ The FEC's efforts to reduce spending on operation and maintenance costs is consistent with the Government Accountability Office's May 2016 report, *Federal Agencies Need to Address Aging Legacy Systems*, available at <https://www.gao.gov/assets/680/677454.pdf>, and recent guidance from OMB, *Update to Data Center Optimization Initiative (DCOI)*, "OMB Memo. M-19-19 (June 25, 2019), available at <https://datacenters.cio.gov/policy/> (all linked references last visited Sept. 12, 2022).

agency was able to shut down one of its four physical data centers in FY 2018, reducing its physical data center footprint by 25 percent. The agency plans to reach a 50 percent reduction by the end of FY 2023. At the same time, the agency is focused on reducing the size of its remaining on-premise data center. While the agency is in the process of actively migrating and modernizing these systems and applications it must continue to pay both physical data center and cloud hosting costs for these assets. Migrating the assets currently held in physical data centers to a cloud environment will ultimately result in improved efficiency and effectiveness of these systems and applications and help control the long-term costs of maintaining them.

2. eFiling Platform Upgrade

The FEC provides free electronic filing software, FECFile, to support political committees of federal candidates, political parties, and other filers in reporting their campaign finance activity to the FEC. Efforts to modernize the FEC's eFiling system are also essential components of the efforts to ensure the timely disclosure of this increasing volume of campaign finance data, and the FEC is currently working to upgrade the agency's eFiling platform. In FY 2017, the Commission published a study of its current eFiling platform, including a survey of the existing functionality of the FEC's free filing software and an in-depth investigation of needs expressed by filers.⁴ The study of the FEC's eFiling system showed that 59 percent of electronic filers use the agency's software. The FEC is relying on the recommendations of this study to improve its eFiling platform to allow greater operating system flexibility for users when generating filings for submission to the Commission, and to increase the consistency and accuracy of reporting.

The FEC's new eFiling platform is expected to improve data quality and data validation, provide users with inline feedback and generate modern file outputs that will provide for more flexibility in accessing data. The redesigned eFiling platform will improve ease of filing for users by allowing greater operating system flexibility when generating filings for submission to the Commission. The FEC's new eFiling platform will also improve the process for validating filings prior to acceptance. In addition, the modernization efforts will provide for seamless integration with the data portion of the website and, therefore, more efficient use of the agency's resources.

Cybersecurity

In recent years, the federal government has issued numerous cybersecurity-related initiatives to defend federal government information systems from 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 must improve its security posture to protect equipment and information systems. The FEC continuously develops, maintains and improves its security architecture that mitigates threats. The FEC's security operation center along with continuous diagnostics and mitigation allows the agency to address some identified cybersecurity gaps. In partnership with the Department of

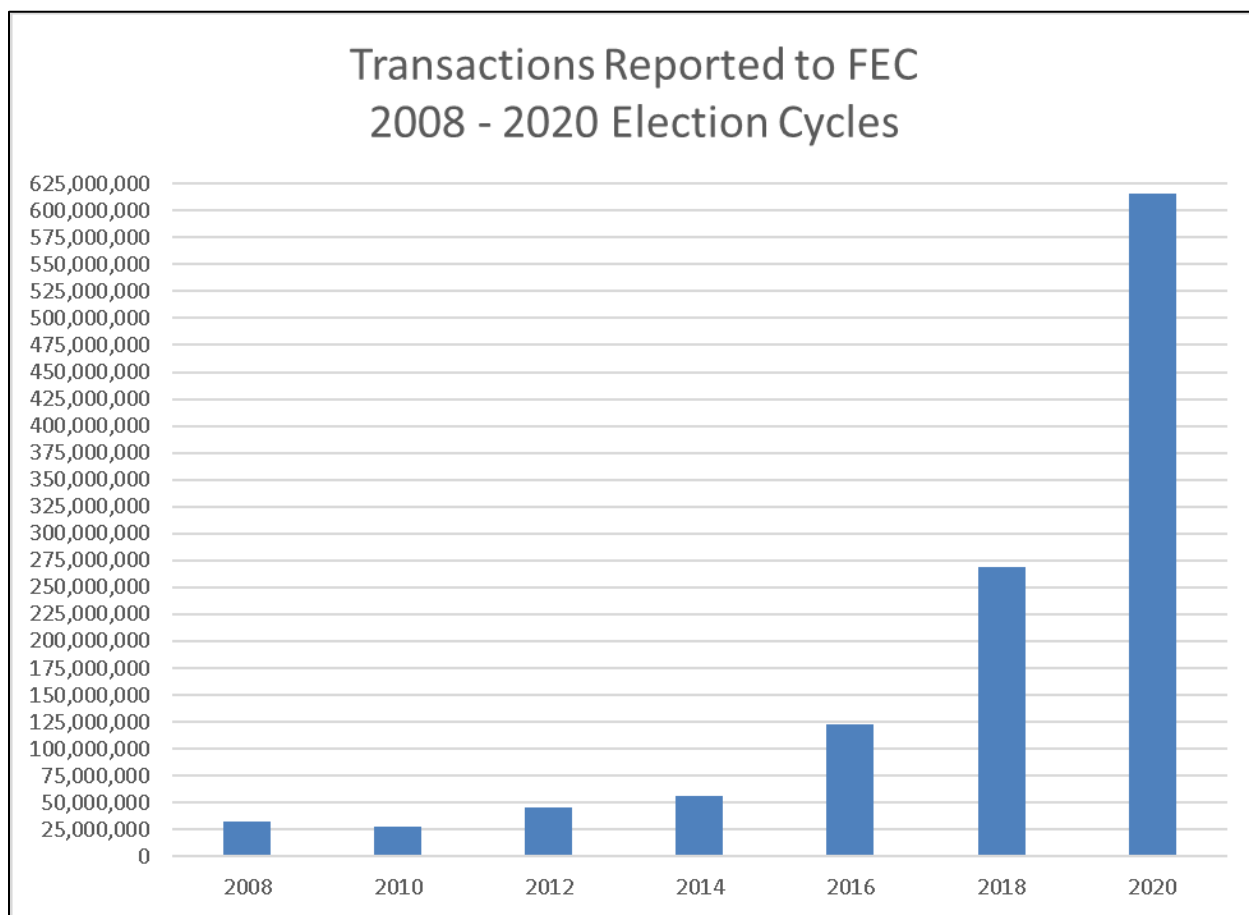
⁴ See 18F, *Modernizing the E-filing Experience and Infrastructure* (2016), available at <https://www.fec.gov/about/reports-about-fec/agency-operations/e-filing-study-2016/>.

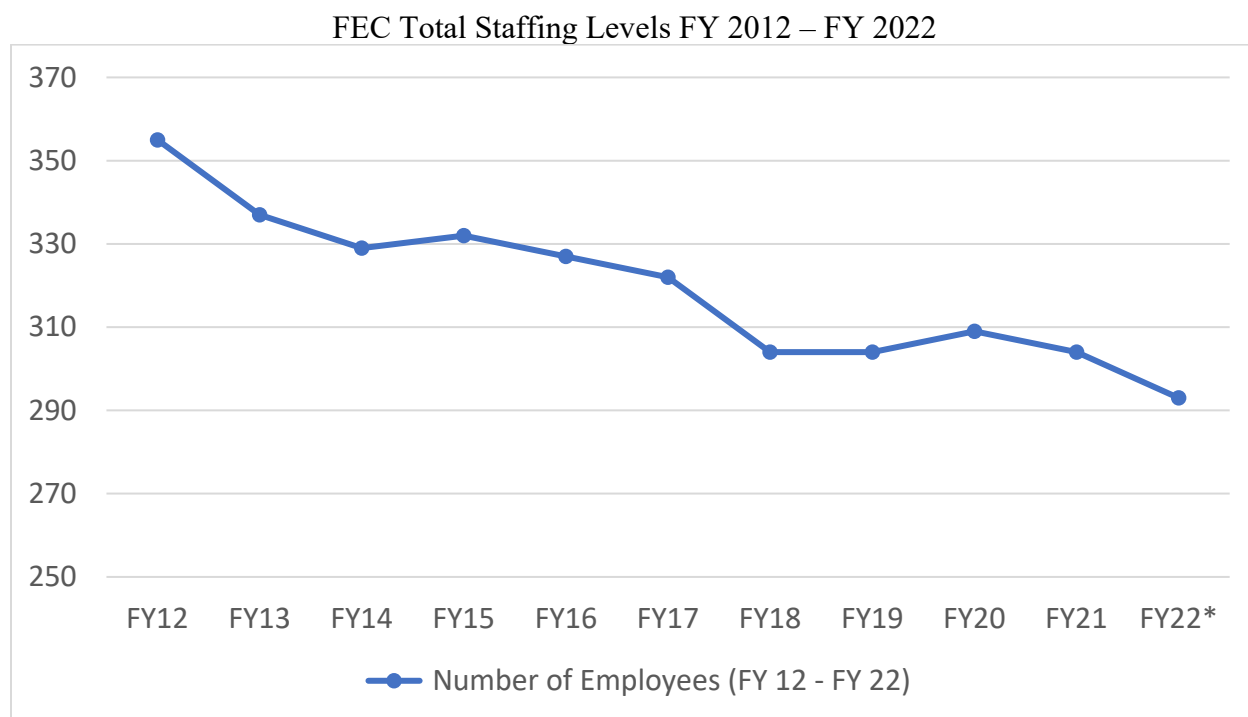
Homeland Security (DHS) and numerous strategic partners, the FEC identifies, protects, detects, responds to and recovers from the impact of known and potential threats.

Operating applications in a cloud environment requires specialized design, development, and security considerations to ensure both the security of the agency's systems and the integrity and accessibility of its data. It is essential that the FEC takes a more comprehensive view of the risk to its information systems, establishes a governance framework, and remediates the vulnerabilities of critical infrastructure. Seeking the expertise to manage the FEC's cybersecurity requirements in a cloud environment and the growing federal mandates is necessary. The Commission's response to Question 6 further addresses the Commission's approach to the area of cybersecurity.

Increased Staffing

The Federal Election Commission has 293 employees as of September 12, 2022, down from 355 employees at the end of FY 2012. As shown on the charts below, the FEC's employment level has contracted substantially during the same period when campaign finance activity reported to the agency has dramatically increased. Indeed, during the period FY 2012 to FY 2022, the number of FEC employees was reduced by 17 percent, while the number of transactions reported to the agency showed a twelve-fold increase.





* FY22 is as of September 12, 2022.

Reported receipts and disbursements are an indicator of overall campaign finance activity. An increase in campaign finance activity directly increases the FEC’s workload. For example, as total reported receipts and disbursements increase, the number of filed reports and statements required to be reviewed increases; similarly, an increase in the number of transactions on reports adds complexity and time to the review process, and also increases the number of transactions subject to audit. The Commission has similarly seen rising numbers of cases handled by the Office of General Counsel’s (OGC’s) Enforcement Division in comparison to historical workloads. Between FYs 2007 and 2011, the average numbers of enforcement cases pending per year was 140. More recently, between FYs 2017 and 2021, the average number of enforcement cases was 304. In the last four and one-half fiscal years, the Enforcement Division has taken an increased amount of time to prepare matters for Commission review. Between FYs 2011 and 2017, setting aside an outlier in FY 2014, the Enforcement Division was able to circulate “First General Counsel Reports” recommending Commission action in 116 days or less. During those years, the cases per attorney was between 3.9 and 11.8. But since FY 2018, the amount of time to circulate First General Counsel Reports rose to 142 to 233 days, and the number of cases per attorney averaged between 12.4 and 16.9. As noted, over the decade since FY 2012, the number of enforcement matters received increased, while the number of enforcement attorneys decreased by 37 percent.

The Commission has approved filling an additional 34 positions. Filling these positions will take some time and would bring the total number of FEC employees to a maximum of 327, subject to any departures in the interim (including current employees vacating their current

positions to fill the additional positions).⁵ The FEC's requested appropriation of \$81,674,000 for FY 2023 would support up to approximately 330 employees on board by the end of that fiscal year.

To fill positions, the Commission has used the following hiring process since 2011. Positions vacated by attrition are not routinely filled. Instead, senior managers make recommendations on which positions are highest priority, and the Commission's Personnel Committee approves each vacant position to be filled.

If left unaddressed, the staffing shortage at the FEC can be expected to negatively impact the agency's performance and employee morale and retention. The challenge in the Enforcement Division is particularly severe: the chart below shows that the Enforcement Division is the agency component with the highest losses, both by number and percentage (other than the smallest offices).

While the agency strives to meet its performance metrics, reduced staffing levels mean that many FEC offices are less resilient in the face of operational challenges. For example, one of the key indicators for an FEC performance goal is the percent of campaign finance reports that are processed within 30 days of receipt. The FEC's long-standing target for processing reports is 95 percent. However, due in large part to continuing staffing constraints, the FEC has missed this target in five out of the last 10 years,⁶ which results in a delay in categorizing the transaction level data disclosed on the reports. Another key indicator for Enforcement Division matters is the percentage of cases resolved within 15 months of receipt. Although the lack of a Commission quorum played a role with respect to recent statistics, the Commission met this goal for only 34 percent of Enforcement Division cases in FY 2021 compared with 68 percent of the cases for FY 2017.

In other areas, the customer service that the agency can provide would be improved with more employees. RAD previously assigned a campaign finance analyst to every authorized committee that reports to the FEC, so that every committee had a single point of contact who was familiar with its campaign finance filings. Instead, recently RAD staffing shortages have resulted in a number of committees not being assigned to a specific analyst. Consequently, senior campaign finance analysts and RAD management review reports and respond to inquiries from unassigned committees as availability permits, without the familiarity or established rapport that exists for committees that have an assigned analyst. With more staff, RAD could return to the practice of assigning a campaign finance analyst to each active committee, providing the effective and efficient customer service that has been the FEC's practice.

⁵ The FEC's FY 2022 Congressional Budget Justification estimated that an appropriation of \$76,500,000 would have supported 328 full time equivalents. The FEC's FY 2022 appropriation was \$74,500,000.

⁶ Processing reports was under 95 percent in FYs 2013, 2014, 2015, 2019 and 2021. Other operational challenges that also played a role include most prominently the dramatic increase in the number of transactions reported to the FEC and to a lesser extent the limited physical presence in the FEC offices during the early days of the pandemic (which slowed processing of paper reports). RAD has made a number of significant adjustments to its process, including technology improvements, data tracking improvements, and an office reorganization, each of which has made a positive contribution to performance, and yet these improvements were outpaced by rising workload and decreasing staff levels.

The reduction of expectations for performance goals provides another sign of the dilemma of increasing workloads and decreasing staff levels. In some cases, the FEC has reduced expectations for performance from preferred levels to lower levels that are achievable with reduced staff. In one such instance, the target for the key indicator of the percent of enforcement matters presented to the Commission for initial review within one year of the date of receipt had a target of 80 percent initially, and it has been twice reduced first to 75 percent and then finally to 50 percent.

The overall reduction in the number of FEC employees has affected almost every office, to varying extents. The chart below shows the changes in the FEC's employment level broken down by major office.

FEC Employment Levels by Office

Office/Division*	FY 2012**	FY 2022***	Number Change from 2012 to 2022	Percent Change from 2012 to 2022
Commissioners' Offices	21	22	+1	+5%
Office of Staff Director	205	177	-28	-13%
Staff Director	2	1	-1	-50%
Office of Compliance	108	90	-18	-17%
Office of Communications	27	23	-4	-15%
Office of Mgt. & Admin.	21	18	-3	-14%
Equal Employment Opportunity	3	3	0	0%
Office of the Chief Information Officer	44	42	-2	-5%
Office of General Counsel	109	75	-34	-31%
General Counsel	3	1	-2	-67%
Administration	10	10	0	0%
Policy Division	21	16	-5	-24%
Enforcement Division	59	37	-22	-37%
Litigation Division	14	9	-5	-36%
Law	2	2	0	0%
Office of the Chief Financial Officer	13	11	-2	-15%
Office of the Inspector General	6	8	+2	+33%
TOTAL	354	293	-61	-17%

* Teams that have been reorganized have been counted where they are found under the 2022 organizational chart.

**As of September 22, 2012, which was the end of the last full pay period in FY 2012.
(Detailed data pulled on a pay period basis may vary slightly from summary-level data pulled as of the end of a fiscal year.)

***As of September 12, 2022.

The 34 positions approved to be filled reflect the areas of greatest need at the FEC. Ten of the positions are in OGC's Enforcement Division, five are in Office of the Chief Information Officer, and four in OSD's Office of Compliance. OGC's Policy Division is filling three positions, and OGC's Litigation Division is filling one position.

4. *Are current policies and procedures for the review of campaign contributions sufficient for the increasing workload the Commission faces? If not, what steps are being taken to update these policies and procedures?*

The Commission adjusts its internal policies and procedures every two years in anticipation of each new election cycle. This effort ensures the Commission's limited resources are used efficiently and allows for any changes in campaign finance laws and regulations to be addressed.

One example is the *Review and Referral Procedures* used by the Reports Analysis Division to review campaign finance reports. These *Review and Referral Procedures* have categories of review with specific thresholds for determining when a request for additional information (RFAI) should be sent to a filer. Generally, the *Review and Referral Procedures* establish review and referral thresholds for non-compliance with FECA and Commission regulations. The *Review and Referral Procedures* establish the policies governing the selection and priority review of reports and the referral of committees to the Audit Division, OGC, the Alternative Dispute Resolution Office (ADRO), or the Administrative Fine Program for potential further action. These procedures are updated and approved by the Commission every two years, with revisions based on input from both staff and Commissioners. Frequently, recommendations for changes are made to address the increase in workload in each of the various offices involved.

Similarly, every two years the Commission reviews the *Materiality Thresholds* used by the Audit Division in the audit of political committees, and conducts a similar review of the *Materiality Thresholds* for those political committees involved in the Presidential public funding programs. *Materiality Thresholds* determine if an issue is significant enough to warrant inclusion as a finding in an audit report and is subsequently referable for possible enforcement action to OGC, ADRO or the Administrative Fine Program. Like the *Review and Referral Procedures* updates to the *Materiality Thresholds* are considered by the Commission, with revisions based on input from staff and Commissioners. Recommendations for changes are likewise frequently made to address the increase in workload in each of the various offices involved.⁷

In terms of technology, the legacy applications used by RAD are outdated and in need of modernization. Realizing this, the Commission has begun a project to develop innovative solutions for refactoring and redesigning these applications. The goal is to craft a proposal for an actionable service to be built in support of RAD's needs for streamlining the review process in the face of rising transactions to review. The Commission is targeting a technology-based service to support this goal and has begun a thorough review of the business needs of RAD to identify all of its customers, opportunities, and challenges facing those customers. In the end, and depending on available funding, the Commission would like to develop a tool to assist analysts in their report review process by consolidating programs into one central location and automating some repetitive tasks, allowing analysts to focus on complex reviews that require their unique subject matter expertise.

⁷ The Commission makes the *Review and Referral Procedures* and the *Materiality Thresholds* available to the public on FEC.gov, subject to limited redactions: <https://www.fec.gov/legal-resources/enforcement/procedural-materials/>.

5. *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.*
- a. *Does the Commission use any other method to identify unlawful foreign contributions?*

Yes. Section 319 of FECA prohibits contributions and donations by foreign nationals in connection with federal, state or local elections,⁸ and the Commission uses several methods to identify prohibited foreign national contributions. The Commission identifies these prohibited contributions in: (i) reviews of campaign finance reports conducted by the Reports Analysis Division; (ii) audits conducted by the Audit Division; and (iii) complaints processed by the Enforcement Division and the Alternative Dispute Resolution Office. The Commission also notes that providing support to these enforcement efforts are the Commission's voluntary compliance efforts, which include the advisory opinion process and providing guidance in website publications, in conferences and webinars, in YouTube videos, and elsewhere.⁹

The Reports Analysis Division of the FEC's Office of Compliance reviews all federal campaign finance reports to track compliance with FECA and to ensure that the public record provides a full and accurate representation of reported campaign finance activity.¹⁰ If the review identifies an apparent violation or raises questions about the information disclosed on a report, RAD sends a request for additional information to the filer, affording an opportunity to take remedial action or correct the public record, if necessary. RFAs sent to filers are made public, as are the filers' responses. If the filer is able to resolve the FEC's concerns, it may avoid an enforcement action. If not, the Commission has several tools available to it, including referring the filer for an audit or to the traditional enforcement program.

The Reports Analysis Division bases its review of reports on Commission-approved *Review and Referral Procedures* that have categories of review with specific thresholds for determining when an RFAI should be sent to a filer. These procedures are updated and approved by the Commission every two years, with content based on input from both staff and Commissioners.¹¹ The *RAD Review and Referral Procedures* include instructions to review reported receipts for contributions that may be excessive, prohibited or otherwise impermissible as Standard 5 of the *RAD Review and Referral Procedures*. FECA's foreign national prohibition is among the prohibitions considered, and the *RAD Review and Referral Procedures* specify that contributions be examined to identify those from contributors with a foreign address on an FEC

⁸ FECA, § 319, codified at 52 U.S.C. § 30121.

⁹ These efforts are fully described in the FEC's *Report to the Committees on Appropriations on Enforcing the Foreign National Prohibition* (Sept. 18, 2018), available at https://www.fec.gov/resources/cms-content/documents/Foreign_National_Report_To_Congress.pdf.

¹⁰ FECA, § 311(b), codified at 52 U.S.C. § 30111(b).

¹¹ See FEC, *RAD Review & Referral Procedures for the 2021-2022 Election Cycle: Unauthorized Committees, Title 52 Authorized Committees and Title 26 Authorized Committees* (2021), available at: https://www.fec.gov/resources/cms-content/documents/2021-2022_RAD_review_and_referral_procedures.pdf.

report. If a RAD analyst identifies contributions with reported foreign addresses on a filer's reports in excess of the dollar amount or percentage threshold, an RFAI will be sent. Depending on the circumstances, a filer that receives such an RFAI might respond by noting that the contributor is a citizen of the United States who has a foreign address. If the filer further responds by indicating that filer routinely obtains copies of current and valid U.S. passports for such contributors pursuant to the safe harbor regulation at 11 C.F.R. § 110.20(a)(7), then no further RFAIs on this issue will be sent for the remainder of the two-year election cycle. For responses to RFAIs that are not sufficient to resolve an issue, the *RAD Review and Referral Procedures* provide thresholds for further Commission action, including assessment of audit points (which could result in a referral for an FEC audit), referral for enforcement action to the Alternative Dispute Resolution Office or to the Office of General Counsel.

The FEC's Audit Division conducts audits of committees that, according to the *RAD Review and Referral Procedures*, have not substantially complied with the law. As required by the public funding statutes, the FEC also audits all Presidential primary and general campaigns that receive public funds. All of these audits include an analysis of receipts that seeks to identify contributions or donations from foreign nationals. This review requires that contributions from contributors with an address outside the U.S. be considered an error if there is no documentation from the contributor attesting to US citizenship. If a committee's errors breach the Commission-approved materiality threshold, a finding for prohibited contributions is included in the audit report, and the finding may be referred to the OGC or ADRO for enforcement if the threshold for referral to the respective office is met. Two audit referrals involving foreign national prohibition issues concluded with enforcement proceedings that resulted in conciliation agreements with substantial civil penalties and agreements to cease and desist from further violations.¹² Earlier audits identified apparently prohibited foreign national contributions, but generally due to the refunded, small dollar amounts at issue, enforcement matters were not pursued against the audited committees. Nonetheless, publicly available FEC Audit Reports documented the Commission's finding and circumstances that resulted in no further action.¹³

¹² See MUR 6129 (American Resort Development Association Resort Owners Coalition PAC), <https://www.fec.gov/data/legal/matter-under-review/6129/>; see also Conciliation Agreement, MUR 6129 (Aug. 4, 2010), <http://eqs.fec.gov/eqsdocsMUR/10044273912.pdf> (committee paid \$300,000 civil penalty for violations of foreign national prohibition and other FECA provisions and agreed to cease and desist provision); & MUR 6919 (Canseco for Congress, *et al.*) Conciliation Agreement, <https://www.fec.gov/data/legal/matter-under-review/6919/>; see also Francisco Canseco and Canseco for Congress Conciliation Agreement, MUR 6919 (Apr. 29, 2016), <https://www.fec.gov/files/legal/murs/6919/16044394800.pdf>; *Inmuebles Caza S.A. de C.V. and Jorge Canseco* Conciliation Agreement, MUR 6919 (Sept. 3, 2016), <https://www.fec.gov/files/legal/murs/6919/16044394789.pdf> (candidate and committee agreed to \$22,500 penalty for violations of foreign national prohibition and other FECA provisions and agreed to cease and desist provision).

¹³ See Friends of Corrine Brown, Final Audit Report (Nov. 17, 1994), *available at*: <https://www.fec.gov/resources/legal-resources/enforcement/audits/1992/Authorized/92CorinneBrownDFL.pdf>; LaRouche Campaign Audit Report (Oct. 29, 1985) (evidence of U.S. citizenship for all contributors at issue), *available at* <https://www.fec.gov/resources/legal-resources/enforcement/audits/1984/Title26/84LyndonLaRouche.pdf>; National Committee for an Effective Congress, Final Audit Report (Dec. 14, 1979), *available at* <https://www.fec.gov/resources/legal-resources/enforcement/audits/1978/Unauthorized/78NCEC.pdf>; Claude Pepper Campaign Committee, Audit Report (June 5, 1978), *available at*: <https://www.fec.gov/resources/legal-resources/enforcement/audits/1976/Authorized/ClaudePepperFLD76.pdf>.

Complaints alleging noncompliance with the foreign national prohibition have been handled primarily as FEC enforcement cases, or Matters Under Review (MURs).¹⁴ The Enforcement Division of OGC handles MURs through the FEC's traditional enforcement program pursuant to the procedures set forth in FECA.¹⁵ The enforcement process begins when a complaint or referral is made alleging that a violation of the federal election campaign laws or FEC regulations has occurred or is about to occur.¹⁶ Professional staff in the Office of General Counsel review and analyze complaints, respondents' responses to them, and publicly available information to formulate a recommended course of action for the Commission. The Commission then reviews the General Counsel's report and recommendations, the complaint, and any respondents' responses.

If the Commission finds reason to believe a violation occurred, it may conduct an investigation to determine if there is probable cause that a violation has occurred or proceed, prior to a finding of probable cause, to negotiations to reach a conciliation agreement, which may include a monetary civil penalty. If the Commission finds probable cause to believe a violation occurred and if the matter is not resolved through conciliation with a respondent,¹⁷ the Commission may file a civil lawsuit in U.S. District Court. In certain circumstances, the Commission may also refer a matter to the U.S. Department of Justice (DOJ) for potential criminal prosecution under FECA. While the Federal Election Commission has exclusive civil enforcement authority over the Federal Election Campaign Act, the U.S. Department of Justice has criminal enforcement authority over knowing and willful violations of FECA.¹⁸

b. How does the Commission plan to address this risk and ensure that the Commission is adequately enforcing the federal ban on foreign contributions?

The Commission has undertaken a number of actions over the last several years to prioritize enforcement of the foreign national prohibition. As discussed in our answer to

¹⁴ Another Commission enforcement and compliance program is the Alternative Dispute Resolution Program, which seeks to resolve less complex matters more swiftly by encouraging settlement using a streamlined process that focuses on remedial measures for candidates and political committees.

¹⁵ FECA, § 309, *codified at* 52 U.S.C. § 30109.

¹⁶ Any person can file a complaint, including individuals who make a voluntary submission indicating they themselves may have violated campaign finance laws, which are known as *sua sponte* submissions. Internal referrals for enforcement are made by the Commission's Reports Analysis Division and Audit Division in the normal course of exercising their supervisory responsibilities. External referrals come from another government agency.

¹⁷ Following a finding of probable cause to believe that FECA was violated, FECA requires the Commission to attempt to conciliate the enforcement matter. FECA, § 309(a)(4)(A); *codified at* 52 U.S.C. § 30109(a)(4)(A). In addition, the Commission has promulgated regulations that provide for an earlier opportunity to resolve enforcement matters, which is known as pre-probable cause to believe conciliation. 11 C.F.R. § 111.18(d). The Commission provides an incentive to settle an enforcement matter earlier in the process by considering lower civil penalties at the pre-probable cause stage compared to the post-probable cause stage. *See Request for Comment on Enforcement Process*, 78 Fed. Reg. 4081 at 4086 (Jan. 18, 2013). All of the conciliation agreements described in this report were reached prior to a Commission finding of probable cause to believe a violation occurred.

¹⁸ *See* FECA, § 309(d)(1); *codified at* 52 U.S.C. § 30109(d)(1); *Fieger v. U.S. Attorney General*, 542 F.3d 1111, 1116-17 (6th Cir. 2008).

Question 22 below, foreign national prohibition cases are assigned to OGC staff attorneys before any other class of cases except those that are already statute-of-limitations-imperiled when OGC receives them, which receive an equal priority to foreign national cases. OGC has also modified its Status of Enforcement reports to the Commission so that the Commission is provided with complete data on every foreign national prohibition case on a quarterly basis. Further, OGC has revised its procedures so that it may more efficiently track the progress of all foreign national prohibition matters through the enforcement process. OGC has also modified its case management software to make it easier to run reports for the Commission concerning all foreign national prohibition matters.

Moreover, the Commission has imposed extensive regulatory requirements for committee actions to prevent the receipt of foreign national (or other illegal) contributions. All committee treasurers are required by regulation to examine all contributions received for evidence of illegality. Contributions that present genuine questions as to whether they were made by foreign nationals, such as by coming from a foreign address or being drawn on a non-U.S. bank, may be, within ten days of receipt, either deposited in the campaign depository or returned to the contributor. If deposited, the treasurer must make his or her best efforts to determine the legality of the contribution, including at least one written or oral request for evidence of legality. If the contribution cannot be determined to be legal, the treasurer must refund the contribution within 30 days of receipt. If the treasurer determines that the contribution did not appear to be made by a foreign national, but later discovers that it is illegal based on new evidence not available at the time of deposit, the treasurer must refund the contribution within 30 days of discovering the illegality. Any contribution that appears to be illegal but is deposited in a campaign depository may not be used for any disbursements until the contribution has been determined to be legal, and the receiving committee must either establish a separate account for such contributions or maintain sufficient funds to make any required refunds. The treasurer must keep a written record noting the basis for the appearance of illegality of any such contribution, and if a committee's disclosure report is due while resolution of a contribution's legality is still pending, a statement to that effect must be included in the disclosure report. For contributions from contributors using foreign addresses or foreign banks, a regulatory safe harbor provides that a treasurer is deemed to have made a reasonable inquiry into the contribution's legality if he or she obtains from the contributor a copy of a current and valid U.S. passport for the contributor.¹⁹

Some have suggested additional requirements for disclosure of potential foreign national contributions, such as disclosure to the Commission, and not just to the reporting committee, of U.S. passport numbers for any contributor with a foreign address or where other circumstances raise questions as to whether the contribution is from a foreign national. However, such additional requirements may well require a legislative change. Moreover, given that all disclosure reports must be made available to the public, 52 U.S.C. 30111(a)(4), reporting of information such as contributors' U.S. passport numbers would potentially raise serious privacy concerns unless such information was legislatively exempted from public disclosure.

¹⁹ 11 C.F.R. §§ 103.3(b), (b)(1), (b)(2), (b)(4), (b)(5) & 110.20(a)(7).

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

In recent years, the federal government has issued 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 as well as its Disaster Recovery Plan. 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.²⁰ 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, 2018.²¹ 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 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

²⁰ See DHS Binding Operational Directive 18-02; available at: <https://www.cisa.gov/binding-operational-directive-18-02>.

²¹ 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>.

timeline initially proposed. As of this writing, the agency is in the process of selecting an HVA vendor to help the agency comply with this mandate.

c. What proactive steps are being taken by the Commission to ensure the integrity of its systems in a dynamic cybersecurity environment?

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. These engagements with DHS enable the FEC to identify and address cybersecurity gaps and thus improve its overall security posture. The Commission recently renewed its general systems Authority to Operate after a thorough review and audit conducted by the Department of the Interior. Also, the FEC successfully maintained its cybersecurity posture throughout the mandatory evacuation order related to the COVID-19 pandemic and FEC.gov achieved 99.99 percent uptime during the 2020 election season.

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 Plan²², 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 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.

²² FEC OCIO, *IT Strategic Plan, 2020-2024*, available at: https://www.fec.gov/resources/cms-content/documents/IT_strategic_plan_2020-2024.pdf.

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 Plan²³ is to define a robust, innovative and holistic security architecture that mitigates modern threats.

Through rigorous assessment and authorization methods, such as ATOs, and 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 many 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 will allow 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 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.

²³ *Id.*

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. 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. However, with a two-year limit on the fellowship, and in the hopes of retaining employees with cybersecurity expertise, the Commission has recently created a permanent position to replace this fellowship position. As of this writing, the hiring process is underway for the new position. Hiring this new staff member will bring 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.

7. *The OIG recently released a report on an incident in which a Commission employee lost control of a laptop for an extended period.²⁴ Has the Commission updated FEC Policy Number 58-4.3 in the manner recommended by the OIG's report?*

Yes, this update has been completed. The OIG's report recommended that the Commission update Policy Number 58-4.3 to contemplate missing and lost computing devices (in addition to stolen devices), to clarify timelines in which FEC personnel should report missing, lost, and stolen devices, and to clarify the meaning of "unattended" for purposes of transporting devices. The Commission updated the policy in June 2022 to require notification within 24 hours of discovering that a device is stolen, missing, or lost. The newly updated policy also clarifies that "unattended" means "not supervised."

²⁴ Off. of the Inspector Gen., Fed. Election Comm'n, Investigative Summary I22INV00010: Lost FEC Laptop Reported by an Agency Employee (June 13, 2022).

8. *Is there a Memorandum of Understanding between the Commission and the OIG? If no, why not?*

The Commission and its OIG have one Memorandum of Understanding (MOU) currently in effect. It is between the Federal Election Commission's FOIA Requestor Service Center and the OIG and is dated March 29, 2021. The FOIA Requestor Service Center is organized as part of OGC and is charged with processing Freedom of Information Act (FOIA) requests on behalf of the Agency, under the direction of the Chief FOIA Officer. The OIG is responsible for processing FOIA requests seeking its records. Through this MOU, the FOIA Requestor Service Center agrees to assist the OIG with handling FOIA requests seeking information regarding OIG records, activities, or personnel.

9. *The budget for the Office of the Inspector General is currently included within the larger budget of the Commission. The OIG has pointed to this as a potential independence concern for their office. Do you agree with this assessment? If so, do you have any recommendations on how to address this concern?*

Like many small agencies, the Commission declined to include an earmark for OIG funding in its recommended appropriations language in FYs 2022 or 2023.²⁵ The Commission viewed the OIG's potential concern about its independence as an insufficient basis to recommend a legislative provision. The FY 2022 appropriations bill introduced in the House of Representatives included an earmark of \$1,962,000 for FEC's OIG out of a total appropriation for the agency of \$76,500,000.²⁶ The bill in the Senate, however, did not include the earmark, and this bill's text was included in the Consolidated Appropriations Act, 2022, which was enacted.²⁷ Similarly, for FY 2023, the bill in the House of Representatives includes an earmark for the OIG in the appropriation for the FEC, and the Senate bill does not.²⁸ Both bills are currently pending. The Commission also notes that OIG's funding has been sufficient to permit its staffing levels to grow by 33 percent during a period when agency staffing levels were contracting, as explained in more detail in response to Question 3, above.

²⁵ See FEC, Fiscal Year 2022, Congressional Budget Justification, 17 (2021), *available at*: https://www.fec.gov/resources/cms-content/documents/FEC_FY22_CBJ_May_28_2021.pdf & FEC, Fiscal Year 2023, Congressional Budget Justification, 18 (2021), *available at*: https://www.fec.gov/resources/cms-content/documents/FEC_FY23_CBJ_March_28_2022.pdf.

²⁶ Financial Services and General Government Appropriations Act, 2022, H.R. 4345, 117th Cong. at 75 (2021).

²⁷ See Financial Services and General Government Appropriations Act, 2022, S. 3179, 117th Cong. at 75 (2021); & Consolidated Appropriations Act, 2022, Pub. L. No. 117-103, Div. E, 136 Stat. 49, 269 (2022).

²⁸ Compare Financial Services and General Government Appropriations Act, 2023, H.R. 8254, 117th Cong. at 76 (2022) (including an earmark of \$2,211,000 for the FEC OIG in FEC's \$81,674,000 appropriation) and Transportation, Housing and Urban Development, Agriculture, Rural Development, Energy and Water Development, Financial Services and General Government, Interior, Environment, Military Construction, and Veterans Affairs Appropriations Act, 2023, H.R. 8294, 117th Cong. at 497 (2022) (same) with Financial Services and General Government Appropriations Act, 2023, S. 4685, 117th Cong. at 75 (2022) (FEC's appropriation of \$78,225,000, without earmark).

10. *The General Counsel position has been vacant or filled in an “acting” capacity since July 2013. According to the OIG’s most recent Semiannual Report, this vacancy “has the potential to put the agency at risk and inhibit the agency to effectively and efficiently meet its mission requirements.”*
- a. *Do you agree with this assessment?*
 - b. *What effect has the lack of a permanent General Counsel had on the Commission?*

As stated in May 2019, the Commission continues to have a General Counsel in all but title. The General Counsel’s position has been filled on an acting basis since 2013, and since 2016 by the Deputy General Counsel. She commands the respect of OGC staff and enjoys the support of the Commission.

This interim solution of an acting general counsel has permitted the Commission to maintain needed stability in this key leadership position. Moreover, the Commission has been able to continue to receive the services of agency leaders who were selected for this position after substantial experience working in positions of significant responsibility for the FEC.

Having an Acting General Counsel has not inhibited the agency from meeting its mission requirements effectively and efficiently.

- c. *Earlier this year, the Commission posted for the position of General Counsel. What is the status of that job posting? Is the Commission still looking to fill the role on a permanent basis? Why or why not?*

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.

11. *The Chief Information Office (“CIO”) and Staff Director positions have been occupied by the same individual for over a decade. According to the OIG’s most recent Semiannual Report, “without a fully dedicated CIO to focus on technological issues to ensure resources are properly allocated and adequate processes are in place for the protection and safeguards of the agency, the agency will remain at risk.” This is particularly concerning considering the cybersecurity risks that the Commission currently faces. Do you agree with the OIG’s assessment?*

Please see the response to questions 11 and 12 combined below.

12. *What effect has the lack of a permanent CIO had on the Commission, including on the Commission's ability to protect its information systems from cybersecurity threats?*

The Commissioners agree that the Commission should have separate individuals filling the senior leadership roles of Staff Director and CIO. When the Commission promoted the CIO to Staff Director, it allowed him to continue to serve as CIO and be compensated at that level rather than absorb a substantial pay cut in order to accept the position. This has allowed the Commission to maintain consistency in its most senior staff leadership. The Commission has consistently recommended to Congress that it pass legislation to remove the statutory references to the Executive Schedule in FECA with respect to the Staff Director, so that the position would be compensated under the same schedule as the Commission's other senior managers. This revision would remedy the current situation where the Commission's top managers are compensated at a lower rate than many of their direct reports and would 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 filling the current vacancy or when further vacancies arise.

The role of a CIO is to provide advice and other assistance to the head of the agency and other senior management personnel to ensure that IT is acquired and that information resources are managed in a manner that achieves the agency's strategic goals.²⁹ The Commission's CIO, through a proactive leadership, has developed and implemented an innovative, multi-year IT modernization plan that has allowed the agency to continue to meet its disclosure mission despite a dramatic rise in the levels of data reported and relatively flat budget levels.³⁰

For example, in FY 2015, when the number of transactions reported to the FEC each election cycle was less than one sixth of what it is today, the FEC proactively undertook a full-scale modernization of its website and campaign finance data base. The FEC partnered with the then newly created 18F group within the General Services Association. During this collaboration, the FEC wholly transformed its OCIO, transitioning to agile development processes, user-centered design models and a cloud-first and Open Source operation.

The benefits of this have allowed the FEC to continue to meet its disclosure mission despite the steep rise in campaign finance activity, and to protect these data assets during the past two presidential election cycles. In July 2015, the FEC released its first ever campaign finance API to the public. This API provides structured campaign finance data in a machine-readable format that allows any member of the public to easily create customized visualizations and displays of campaign finance information. During the 2020 election cycle, this API received

²⁹ See U.S. CIO Council, CIO Handbook, available at: <https://www.cio.gov/handbook/cio-role-at-glance/>.

³⁰ The challenge of rising campaign finance activity and flat funding levels has also been identified by the FEC's Office of the Inspector General. See FEC OIG, Management and Performance Challenges facing the FEC FY 2022 (Oct. 26, 2021), available at: https://www.fec.gov/resources/cms-content/documents/FY_2022_Mgmt_Challenges.pdf

over 407 million hits, providing the public with quick, comprehensive and customizable access to campaign finance data.

As part of this engagement, the FEC also began migrating its database holdings to a cloud environment. Moving to the cloud will ultimately result in improved efficiency and effectiveness of migrated systems and applications and help control the long-term costs of maintaining them.

Under the leadership of the CIO, by FY 2018, the agency's early adoption of cloud hosting had already allowed it to reduce reliance on physical data centers by 25 percent. Continued focus on IT modernization is expected to allow the agency to reach a 60 percent reduction by FY 2024. By following the shared security model (where the cloud provider and the agency share responsibility for the security of the cloud architecture), the agency is able to offload protecting lower-level infrastructure and focus on protecting the applications and data. In addition, the model allows the FEC to access the provider's cybersecurity expertise and adopt well-designed cloud architecture framework that includes monitoring tools.

The FEC's current IT Strategic Plan, 2020-2024,³¹ despite limited resources, focuses on aligning IT activities with the FEC's strategic objectives and the government-wide Digital Government Strategy, including IT modernization outlined for federal agencies by the Office of Management and Budget. The goals and objectives identified in this IT Strategic Plan focus on modernizing the FEC's systems and practices to ensure the agency meets the public's expectations for information availability and customer service in the most efficient, effective and cost-effective way.

In short, the Commission and its CIO have been proactive in creatively and successfully maintaining the agency's cybersecurity posture in the face of challenges posed by the dramatic rise in the levels of data reported and relatively flat budget levels. .

13. Has the Commission posted, or will it post, an opening to hire a CIO? If no, why not?

The position of Chief Information Officer at the FEC is currently occupied. Without a vacancy, or increased salary level to attract additional interest from high-performance candidates, and under the circumstances described above in response to questions 11 and 12, the Commission has no plans to post vacancy announcements for either the Staff Director or the Chief Information Officer positions.

³¹ FEC OCIO, *IT Strategic Plan 2020-2024*, available at: https://www.fec.gov/resources/cms-content/documents/IT_strategic_plan_2020-2024.pdf.

14. *What are the Commission's current vacancies in staffing, and what, if anything, is being done to fill those vacancies?*

In addition to the General Counsel vacancy, the following 6 positions are currently vacant and filled on an acting basis:

- Assistant General Counsel for Enforcement- Office of Complaints Examination and Legal Administration (CELA)
- Deputy Commission Secretary
- Supervisory Accountant
- IT Specialist (Helpdesk)
- Administrative Services Assistant
- Attorney (CELA)

The Personnel Committee has approved the requests to fill five of these current vacancies on a permanent basis and the hiring process is underway. (The remaining position filled on an acting basis is due to a cascading effect from another acting position.) The competitive appointment of qualified staff into acting positions can be an opportunity for employees to develop new skills and demonstrate that they are ready for increased responsibilities.

The following positions have been approved to hire or are currently pending with the Personnel Committee for approval:

Approved to Hire	
1	General Counsel
2	Special Counsel for Enforcement
3	Records Management Analyst
4	Human Resources Specialist
5	Budget Director
6-8	Policy Attorney (3)
9-13	Enforcement Attorney (5)
14-15	Administrative Law Attorney (2)
16	RAD Coding Clerk
17	Accountant
18	Litigation Attorney
19	Financial Analyst
20	Assistant General Counsel for Enf. – CELA
21	Senior Accountant
22-23	Auditor (2)
23-25	Campaign Finance Analyst (3)
26-29	IT Specialist (4)
30	Contracting Specialist
31	Administrative Services Assistant
32	Public Affairs Specialist
33	Attorney (Enforcement - CELA)

Approved to Hire	
34	Deputy Commission Secretary
35	CELA Docket Technician II
36	Special Assistant to General Counsel
37-38	Paralegal (2)

Pending Approval	
1	Human Resources Specialist
2-3	Campaign Finance Analyst (2)
4-5	Enforcement Attorney (2)
6	Litigation Attorney
7	Public Affairs Specialist
8	Legal Researcher
9-10	RAD Coding Clerk (2)

The Commission has posted vacancy announcements for 27 of the positions approved to hire and expects several additional vacancy announcements to be posted by the end of the month.

As noted above, positions vacated by attrition are not routinely filled. Instead, senior managers make recommendations on which positions are highest priority, and the Commission's Personnel Committee approves each vacant position to be filled.

15. *What effects, if any, has the prevalence of “acting” officers within positions of leadership in the agency had on morale? What effects has it had on organizational decision-making?*

The FEC does not have specific data to show whether a higher rate of “acting” officers within leadership positions has led to decreased agency morale or impeded organizational decision-making. For a broader perspective, the Commission takes seriously the levels of engagement and satisfaction of FEC employees, particularly as reflected in the annual Federal Employee Viewpoint Survey (FEVS). In considering recent FEVS results, the Commission is challenged to isolate the effects of having certain leadership roles staffed in an “acting” capacity from the effects of operational disruptions, including the FEC's loss of a quorum between September 2019 and May 2020 and again between July and December 2020, and the COVID-19 pandemic.

16. *In 2019, it was reported that the Commission had five vacancies and various officials serving in “acting” capacities among the leadership-level staff.³² Many of these openings had apparently gone unfilled for years. Since then, all but one has been filled. How was this accomplished in such a short period of time after such a long delay?*

In recent years, the FEC has been challenged to recruit 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 this period. Indeed, as described in greater detail in the Commission’s response to Question 3, between FY 2012 and FY 2022, the FEC’s overall staffing levels were reduced by over 17 percent. In order to ensure continuity of leadership, the Commission has generally moved quickly to fill vacant leadership roles in an “acting” capacity while the FEC worked to recruit for and fill those positions permanently. This, however, also results in a cascading effect where another temporary vacancy is created in the position originally held by the incumbent of an acting position.

In recent years, the agency’s challenges in filling leadership positions on a permanent basis were compounded by the lapse in appropriations from December 22, 2018 to January 25, 2019 and the FEC’s loss of a quorum between September 2019 and May 2020 and again between July and December 2020. An affirmative vote of four FEC Commissioners is required to permanently fill any position at the GS 15-level or higher.³³

Upon resumption of operations following the lapse in appropriations in FY 2019, the Commission prioritized filling several critical senior management positions. Leveraging the FEC’s partnership with OPM HR Solutions, the agency was able to move efficiently through the hiring process and in the summer of 2019 filled the positions of Inspector General, Associate General Counsel for Policy, and Assistant General Counsel for Administrative Law. However, upon losing quorum in September 2019, the Commission could not approve selections at the GS-15 or Senior Level. During the brief period in FY 2020 when the Commission had a quorum, the position of Director of Human Resources was filled. Following the resumption of a quorum in December 2020, led by its Personnel Committee, the Commission again prioritized filling critical management vacancies and since that time eight GS-15 management vacancies and one Senior Level vacancy, the Associate General Counsel for Enforcement, were filled.³⁴ The Commission and its senior managers continue to prioritize hiring, particularly management positions that result in cascading details and vacancies. Indeed, in this fiscal year alone, the agency permanently filled eight management positions that were previously filled in an “acting” capacity. Currently, only two supervisory positions are filled in an “acting” capacity.

³² Dave Levinthal, *At the Federal Election Commission, No Watchdog for the Watchdogs*, CTR. FOR PUB. INTEGRITY (Apr. 3, 2019), <https://publicintegrity.org/politics/fec-elections-watchdog/>.

³³ See FEC, *Rules of Procedure under of the FEC Pursuant to 2 U.S.C. § 437c(e), Dir. 10*, 73 Fed. Reg. 5568 (Jan. 30, 2008).

³⁴ In FY 2021, the FEC’s average number of days to hire was 91 days, as compared to 130 days in FY 2020 and 132 days in FY 2019. See FEC, *Fiscal Year 2023 Congressional Budget Justification*, at 47, n.47 (Mar. 28, 2022), available at: https://www.fec.gov/resources/cms-content/documents/FEC_FY23_CBJ_March_28_2022.pdf.

17. *How many attorneys are currently serving in the Office of General Counsel (“OGC”), and in the Litigation, Enforcement, Policy, and Administrative Law divisions, respectively? How do those numbers compare to the size of each of those Divisions 10 years ago?*

OGC Division	Attorneys in 2022	Attorneys in 2012
GC	3	5
Administrative Law	6	5
Litigation	7	11
Enforcement ³⁵	26	39
Policy ³⁶	13	19
Total	55	79

* as of June 30, 2022 and June 30, 2012

18. *If given the authority to create Senior Executive Service (“SES”) Positions as recommended in the 2021 Legislative Recommendations, how would the Commission utilize this authority? How would this help fulfill the mission of the Commission? How would the Commission ensure that requiring approval from the Office of Personnel Management for the Commission’s SES placements does not compromise the Commission’s independence?*

In the Commission’s 2021 Legislative Recommendations, the Commission recommended that Congress (1) delete the exclusion of the Federal Election Commission from eligibility for the Senior Executive Service under the Civil Service Reform Act of 1978³⁷ and (2) revise section 306 of FECA, to delink the salaries of the Staff Director and the General Counsel from Level IV and Level V of the Executive Schedule. The Commission recommended both of these statutory changes in order to bring the Commission’s personnel structure in line with that of other comparable Federal agencies. 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 eight most recent Agency Financial Reports covering 2014 through 2021 and in previous Performance and Accountability Reports. Steps to make the FEC’s personnel structure commensurate with that of other Federal agencies would help fulfill the

³⁵ As organized in 2022, the Enforcement Division includes the Office of Complaints Examination and Legal Administration. For comparison, the 2012 Enforcement Division data also include the CELA attorneys, which were not part of the Enforcement Division at that time. In 2012, one attorney included in the Enforcement Division count was in a paralegal position.

³⁶ As organized in 2022, the Policy Division includes the Public Financing and Audit Advice team. For comparison, the 2012 Policy Division data also include similar data for the Public Financing and Audit Advice team, which were not part of the Policy Division at that time. In 2012, two attorneys included in the Policy Division count were in paralegal positions.

³⁷ The Civil Service Reform Act was amended by the Federal Election Campaign Act Amendments of 1979. See Pub. L. No. 96-187, § 203, 93 Stat. 1339, 1368 (1980), *codified at* 5 U.S.C. § 3132(a)(1)(C).

mission of the Commission by allowing the FEC to better compete with other government agencies in recruiting and retaining key management personnel.

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, as further explained in the Commission's responses to Questions 10 through 13, above. The Commission proposes removing the statutory references to the Executive Schedule, which would permit the Staff Director and General Counsel to be compensated under the same schedule as the Commission's other senior managers. This revision would remedy the current situation where the Commission's top managers are compensated at a lower rate than many of their direct reports, and it would 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 filling vacancies.

In addition, the Commission has recommended that the positions of Staff Director and General Counsel, as well as the current Senior Level positions within the agency, could be more appropriately categorized as SES positions. The current Senior Level positions (the Chief Financial Officer, the Inspector General, the Deputy Inspector General, four Deputy Staff Directors, two Deputy General Counsels, and three Associate General Counsels) oversee major programmatic areas and supervise not only staff, but other managers as well. Although these twelve top management positions are designated as Senior Level, because supervisory and executive responsibilities occupy 100 percent of the time of the employees filling these positions, the positions would be more appropriately designated as SES.³⁸

Creating SES positions at the FEC would not increase the agency's direct costs for these Senior Level employees. In 2008, legislation brought the salary ranges for Senior Level employees into parity with Senior Executive Service employees.³⁹ Like SES employees, Senior Level employees may now carry over 720 hours of annual leave into the next year, rather than the previous Senior Level limit of 240. However, in light of the agency's current budget and staffing constraints, the Commission has begun to study the administrative costs associated with meeting current governmentwide requirements for maintaining an SES program. This inquiry, which is part of the agency's development of a staffing plan, seeks to determine the overall costs to the FEC if it were to be included in the SES program. As an additional part of this inquiry, the FEC is researching the implications of requiring approval from the Office of Personnel Management for the Commission's SES placements and whether that would pose a risk to the FEC's independence.

³⁸ In fact, OPM's guidance on the Senior Level positions indicates that the Senior Level system is generally for positions in which supervisory duties occupy less than 25% of the employee's time. *See* <http://www.opm.gov/policy-data-oversight/senior-executive-service/scientific-senior-level-positions/>. OPM's guidance does note, however, that "in a few agencies [such as the Federal Election Commission] that are statutorily exempt from inclusion in the Senior Executive Service (SES), executive positions are staffed with SL employees."

³⁹ *See* Senior Professional Performance Act of 2008, Pub. L. No. 110-372, 122 Stat. 4043 (2008).

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

The Commission has instituted up to five committees: Finance, Regulations, Press, Personnel and Litigation 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 Finance, Regulations, Press, Personnel, or Litigation 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 review all agency press releases, including Weekly Digests, prior to publication and approve all official statements to the press made on behalf of the 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.

20. *For each committee listed in Question 19, 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: 4⁴⁰
2020: 3
2021: 3
2022: 2

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

Since the Commission last provided data to the Committee on this issue in May 2019, the Regulations Committee has held at least the following number of formal meetings:

2021: 3
2022: 2 (as of September 12, 2022)

Agendas were located and provided for two 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 as well. A copy of the agenda for that meeting is Attachment D; minutes were not taken for that meeting. 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.

21. *According to the “Status of Enforcement – Fiscal Year 2022, First Quarter” memorandum from the Office of General Counsel, as of February 8, 2022, there was a caseload of 289 enforcement cases, 119 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?*

As of September 12, 2022, OGC-Enforcement’s docket includes 215 cases, including 126 active matters and 89 inactive matters.

⁴⁰ The 2019 meetings were included in the FEC’s responses dated May 1, 2019 and January 13, 2020 to questions from the Committee on House Administration.

b. *How many of those cases are awaiting Commission action?*

As of September 12, 2022, 25 pending matters are the subjects of reports or memoranda pending before the Commission.

c. *How would the Commission characterize its progress in reducing its enforcement backlog since May 2019?*

Since May 2019, the Commission has made substantial progress in reducing its enforcement backlog, despite significant challenges. As of May 1, 2019, the Commission's enforcement's docket included 289 cases. As of September 12, 2022, it has 215 cases, as indicated in response to Question 21.a., above. However, the extent of the Commission's progress might be obscured without consideration of the important context described below.

Following the Commission's May 1, 2019 prior response, the Commission lost a quorum when Commissioner Petersen departed the agency as of September 1, 2019. The Commission did not fully regain a quorum (except for a period of 4 weeks during June and July 2020 when Commissioner Trainor joined, but before Commissioner Hunter resigned) until December 2020, with the arrival of Commissioners Broussard, Cooksey, and Dickerson. During that period without a quorum of Commissioners, OGC's Enforcement Division made progress on enforcement matters to the best of its ability, but the Commission lacked the necessary number of Commissioners to take important actions, such as finding reason to believe, finding probable cause, accepting negotiated conciliation agreements, or authorizing affirmative litigation, all of which require four affirmative votes by Commissioners.⁴¹ Due to these circumstances, according to the Status of Enforcement report for the First Quarter of Fiscal Year 2021, the enforcement caseload rose from the 289 matters mentioned above to 452 matters as of December 31, 2020. Thus, since May 2019 the Commission's enforcement caseload first grew dramatically before declining to the current level following the restoration of a quorum of Commissioners. The Commission's progress in reducing its enforcement backlog is due to the work done to advance and systematically identify cases for prioritization during the no-quorum period, followed by concerted effort to address matters while continuously re-prioritizing matters starting immediately in January 2021 and persisting to the present. This hard work was done by the Commissioners themselves, their staffs, and the staff of OGC's Enforcement Division.

Reduced staffing levels in OGC's Enforcement Division have also posed a challenge for the Commission. Between 2012 and 2022, the staffing in the Enforcement Division declined from 59 FTEs to 37 FTEs, a decline of 37 percent. Since Fiscal Year 2018, the number of cases per Enforcement Division staff attorney averaged between 12.4 and 16.9, whereas previously between Fiscal Years 2011 and 2017, the number of cases per Enforcement Division staff attorney was between 3.9 and 11.8. The reduced staffing levels in the Enforcement Division has led to longer times to circulate recommendations for Commission action and high workloads for staff, among other issues. The Commission has recently approved hiring ten positions in the Enforcement Division.

⁴¹ FECA, §§ 306(c), 307(a)(6), 309(a)(2), & (4)(a)(i), *codified at* 52 U.S.C. §§ 30106(c), 30107(a)(6), 30109(a)(2), & (4)(a)(i), respectively.

Finally, as discussed in the May 1, 2019 response, the Commission continues to realize efficiencies due to revisions to its referral standards and Enforcement Priority System. These changes have allowed more low-priority matters to be handled through Alternative Dispute Resolution, educational programs, or streamlined Enforcement Priority System Dismissals. Shifting these matters away from the Enforcement Division's "active" docket has allowed more Enforcement Division resources to be devoted to complex, high-priority Matters Under Review. Additionally, in order to increase the efficiency of the EPS Dismissal process, the Commission also in December 2018 instructed the Enforcement Division to use "short-form" reports (two to three page summaries) exclusively in the EPS Dismissal process rather than preparing more expansive analyses. These adjustments to the referral standards and EPS Dismissal process have yielded efficiency gains and enhanced resource allocation.

d. How does the Commission plan to address its remaining enforcement backlog?

The Commission plans to address its remaining enforcement caseload by continuing the effort undertaken by the Commission beginning in January 2021 that is described in answer to Question 21.c., above. Historically, the Commission has met in Executive Session on Tuesdays, sometimes with a continuation on Thursdays after the conclusion of the Public Session. Since regaining the quorum, the Commission has very frequently continued its Executive Sessions on Thursdays. The Commission remains committed to adopting an aggressive schedule for the rest of the year to address the cases on the enforcement docket, and it has already scheduled Executive Session meetings on the following dates:

September 13, 15, 28 & 29
October 18 & 20
November 15, 17 & 29
December 1, 13 & 15

In addition, the Commission has approved additional hiring to increase staffing levels in the Enforcement Division, as mentioned in response to Question 21.c. It will continue to take steps to see that supervisory positions in the Division can be filled on a permanent basis promptly when possible, and seek the funding needed to increase staffing levels in the agency and meet other increasing non-personnel costs.

22. *In the Minutes of an Open Meeting from Sept. 15, 2016, then-Chair Petersen stated that, without objection, the OGC was "directed to prioritize cases involving allegations of foreign influence." What is the status of this direction to the OGC? Does the Commission have other enforcement priorities?*

The Commission continues to direct OGC to prioritize matters involving alleged violations of FECA's foreign national prohibition, as discussed in the agency's May 1, 2019

response.⁴² In addition to directing OGC to prioritize foreign national matters, the Commission also continues to direct OGC to prioritize cases imperiled by the statute of limitations and to deprioritize cases eligible for dismissal via EPS Dismissal or resolution through transfer to the Office of Alternative Dispute Resolution, as discussed above in response to Question 21.c. On top of these guidelines, each Commission Chair has worked closely with OGC's Enforcement Division to implement agency priorities through the agenda-setting process, ensuring, for example, that time-sensitive matters are taken up appropriately or that efficiencies through contemporaneous consideration of multiple cases raising the same or similar issues can be realized.

23. *How many Matters Under Review ("MURs") are considered in a typical Executive Session?*

During the period January 1, 2021 through July 31, 2022, the Commission considered an average of approximately 25 enforcement cases per Executive Session. This average includes several categories of enforcement cases, including Matters Under Review, RAD Referrals, Audit Referrals, and Pre-MURs, as discussed in more detail in response to Question 28, note 48.⁴³ This average does not include matters that were designated on the agenda as held over at the request of the Commissioner, nor does it include matters that were designated on the agenda as status inquiries.

Please provide an estimate of the percentage of matters that are held over between Executive Sessions.

For the Executive Sessions held during the period January 1, 2022 through July 31, 2022, an average of approximately 57 percent of the enforcement cases scheduled for an Executive Session were held over to a later Executive Session. For the Executive Sessions held during 2021, an average of approximately 51 percent of the enforcement cases scheduled for an Executive Session were held over to a later Executive Session. Like the previous averages, these averages include several categories of enforcement cases, and do not include matters that were designated on the agenda as status inquiries. These calculations include all cases held over to another meeting, without regard to whether that information appeared on the agenda.

⁴² See FECA § 319, codified at 52 U.S.C. § 30121; FEC, *Minutes of Open Meeting: Sept. 15, 2016*, 13 (Dec. 1, 2016) (directing OGC to prioritize cases "involving allegations of foreign influence"), available at: http://www.fec.gov/agenda/2016/documents/approved_16-63-a.pdf; see also Explanatory Statement to Consolidated Appropriations Act, 2018, 164 Cong. Rec. H2045, H2520 (Mar. 22, 2018) ("Preserving the integrity of elections, and protecting them from undue foreign influence, is an important function of government at all levels.").

⁴³ For purposes of calculating the average number of cases considered in an Executive Session, each enforcement matter on the agenda was counted separately regardless of whether it was presented collectively in one General Counsel Report. For example, if a single First General Counsel's report placed on the agenda collectively analyzed complaints in two Matters Under Review and one RAD Referral, that report represented three cases on the agenda.

24. *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 such matter, provide the MUR number and the amount of the civil penalty imposed.*

Since May 1, 2019, the Commission has closed 34 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. The following chart includes the requested information about these MURs.

Please note that while the Commission is authorized to impose civil penalties in administrative fine proceedings,⁴⁴ and to order repayments in the public funding context,⁴⁵ 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.⁴⁶ Under Commission regulations, such negotiations are also very frequently conducted prior to a finding of probable cause to believe a violation has occurred.⁴⁷ 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.⁴⁸

	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

⁴⁴ FECA, § 309(a)(4)(C)(i)(II), *codified at* 52 U.S.C. § 30109(a)(4)(C)(i)(II).

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

⁴⁶ 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).

⁴⁷ 11 C.F.R. § 111.18(d).

⁴⁸ 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
11	7409	Mason Tenders District Council of Greater NY & LI PAC	\$15,000
12	7599	Nevada State Democratic Party	\$34,000
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
		Total	\$1,133,947

* as of September 12, 2022

25. *From May 1, 2019 to the present, how many enforcement actions were initiated as a result of:*

- a. *Complaint-generated matters?*
- b. *Internally-generated matters?*
- c. *External referrals?*
- d. *Sua sponte submissions?*

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**	88	11	1	6	106

* The data for 2019 is from the Commission's January 13, 2020 response to questions from the Committee on House Administration. It covers a full calendar year for comparison purposes.

** The data for 2022 covers January 1 to September 12, 2022.

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

Election Cycle	Total
2016	6
2018	27
2020	94
2022	84
2024	4
Total	215

* as of September 12, 2022.

27. *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 July 31, 2022, the Commission closed 843 Administrative Fine cases with civil penalties totaling \$2,746,639.

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

Between April 1, 2019 and July 31, 2022,⁴⁹ the Commission closed 506 Matters Under Review through the ordinary enforcement process described in section 309 of FECA.⁵⁰ It also closed an additional nine MURs on OGC's docket by referring them to the Alternative Dispute Resolution Office for resolution.

29. *How many and what percentage of the MURs in Question 28 were resolved exclusively on a tally vote?*

Of the 506 Matters Under Review identified in response to Question 28, 143 MURs (or 28 percent) were resolved exclusively on tally. Some cases are resolved on tally after they are scheduled for an Executive Session.

30. *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.*

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 MURs (as defined in response to Question 28 at note 48 above) that were considered by the Commission in Executive Session after April 1, 2019, and that were closed as of July 31, 2022, were examined. 359 such MURs were identified. 227 of these MURs, or 63 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." (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.)

⁴⁹ April 1, 2019 was chosen as the data submitted in May 2019 ended on that date.

⁵⁰ 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).

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.⁵¹ However, the question seeks information about votes where there were not four *affirmative* votes.⁵² Under this view, Commission votes of 1-4 or 1-5, for example, are viewed as "deadlocked" votes. As a result of conferring with House Administration Committee staff, FEC staff agreed to compile the data related to cases with votes without four affirmative votes and present it separately in footnotes in response to Questions 30 and 31.⁵³

The following chart 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.

⁵¹ 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).

⁵² 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 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.

⁵³ If additional cases with votes that lack four affirmative votes are also considered responsive to Question 30, an additional 12 MURs would be responsive for the entire period, for a total of 239 MURs or 67 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.)
4/1-12/31 2019 ⁵⁴	69	82	84%
2020 ⁵⁵	4	7	57%
2021 ⁵⁶	117	182	64%
1/1-7/31 2022 ⁵⁷	52	107	49%
Total for Entire Period ⁵⁸	227	359	63%

Attachments E and F include additional information about the 227 MURs described above.

Additionally, in Attachment G, Chairman Dickerson and Commissioners Cooksey and Trainor respond to this question in a separate statement.

31. *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 359 MURs that were considered by the Commission in Executive Session after April 1, 2019, and that were closed as of July 31, 2022, 54 of these MURs, or 15 percent, had

⁵⁴ 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.

⁵⁵ During 2020, the Commission had a quorum from June 5 to July 3 and from December 15 to 31, 2020.

⁵⁶ If additional cases with votes that lack four affirmative votes are also considered responsive to Question 30, an additional nine MURs would be responsive for 2021, for a total of 126 MURs or 69 percent.

⁵⁷ If additional cases with votes that lack four affirmative votes are also considered responsive to Question 30, an additional three MURs would be responsive for 2022, for a total of 55 MURs or 51 percent.

⁵⁸ If additional cases with votes that lack four affirmative votes are also considered responsive to Question 30, an additional 12 MURs would be responsive for the entire period, for a total of 239 MURs or 67 percent.

split votes (as defined in response to Question 30) on all votes taken during the Executive Session, other than a vote to close the file.⁵⁹

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 ⁶⁰	18	82	22%
2020 ⁶¹	0	7	0%
2021 ⁶²	23	182	13%
1/1-7/31 2022 ⁶³	13	107	12%
Total for Entire Period ⁶⁴	54	359	15%

The MURs responsive to Question 31 consist of matters where the votes on all substantive issues were split votes, other than votes to close the files. These 54 “all split” MURs were also responsive to Question 30, as MURs with at least one split vote. Attachment F includes additional information about the 54 “all split” MURs described above.

Additionally, in Attachment G, Chairman Dickerson and Commissioners Cooksey and Trainor respond to this question in a separate statement.

⁵⁹ If additional cases with votes that lack four affirmative votes are also considered responsive to Question 31, an additional 10 MURs would be responsive for the entire period, for a total of 64 MURs or 18 percent.

⁶⁰ The period from April 1, 2019 to December 31, 2019 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.

⁶¹ During 2020, the Commission had a quorum from June 5 to July 3 and from December 15 to 31, 2020.

⁶² If additional cases with votes that lack four affirmative votes are also considered responsive to Question 31, an additional five MURs would be responsive for 2021, for a total of 28 MURs or 12 percent.

⁶³ If additional cases with votes that lack four affirmative votes are also considered responsive to Question 31, an additional five MURs would be responsive for 2022, for a total of 18 MURs or 14 percent.

⁶⁴ If additional cases with votes that lack four affirmative votes are also considered responsive to Question 31, an additional 10 MURs would be responsive for the entire period, for a total of 64 MURs or 18 percent.

32. *Once the Commission deadlocks on a recommendation from the Office of General Counsel, is it the Commission's position that the Office of General Counsel should not make the same recommendation in an analogous case?*

Under FECA's framework, the General Counsel recommends to the Commission whether or not it should find reason to believe or probable cause to believe that a respondent has committed, or is about to commit, a violation.⁶⁵ In making these recommendations, the General Counsel will state its position on the factual and legal issues of the case. When analyzing the legal issues of a case, the General Counsel considers, *inter alia*, FECA and Commission regulations, case law, MUR precedent, and Commission Advisory Opinions.

The General Counsel has not considered Commission split votes, that is where there are neither four or more votes for or four or more against a recommendation, to be binding MUR precedent. Therefore, after a split vote, the Office of General Counsel takes the position that it may make the same recommendation, either to find a violation or to find no violation, in an analogous case.⁶⁶ Commissioners' views are divided on whether such split votes should be considered binding MUR precedent.

Consistent with the explanation given in our answers to Questions 30 and 31, the Commission generally does not consider a proposition that is rejected by four or more Commissioners to be a "deadlock vote." Thus, if the Commission rejects a recommendation by, say, a vote of 2 to 4 or 1 to 5, that will likely affect the General Counsel's recommendation in an analogous case.

33. *Since the Supreme Court's decision in Citizens United, how many times has the Commission found a violation of the coordination regulations? Please provide the MUR numbers.*

Since the Supreme Court's decision in *Citizens United*, the Commission has found reason to believe that a respondent violated the coordination regulations in three instances. More precisely, 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. In one such matter, the Commission successfully conciliated with the respondent.

In MUR 6721 (Beth Steele/Mark Long), the Commission found reason to believe that candidate Todd Long and his committee, Todd Long for Congress, coordinated automated telephone calls with Beth Steele and Women Advocating Respect resulting in Long and the

⁶⁵ FECA, § 309(a)(3), codified at 52 U.S.C. § 30109(a)(3); see also 11 C.F.R. §§ 111.7, 111.8, 111.9 & 111.16.

⁶⁶ See *Common Cause v. FEC*, 842 F.2d 436, 449 at n.32 (D.C. Cir. 1998) (noting that a split-vote decision "is not binding legal precedent or authority in future cases").

Committee knowingly accepting an excessive in-kind contribution in violation of 52 U.S.C. § 30116.⁶⁷ After an investigation, the Office of General Counsel was unable to conclusively determine whether the robocalls were coordinated and also determined that any amount in violation was likely no more than \$700 and therefore of a *de minimis* amount; the Office therefore recommended taking no further action.⁶⁸ The Commission approved the recommendation and closed the file on November 26, 2018.⁶⁹

In MURs 6955 and 6983, the Commission found reason to believe, *inter alia*, that New Day for America, an Ohio non-profit corporation which later registered as an independent expenditure-only political committee, made and John R. Kasich and his authorized committee, Kasich for America, accepted, prohibited and excessive in-kind contributions in the form of coordinated communications arising out of television advertisements, in violation of 52 U.S.C. §§ 30116 and 30118(a).⁷⁰ The Office of General Counsel conducted an investigation and recommended that the Commission find probable cause to believe.⁷¹ The Commission voted to dismiss the allegations as a matter of prosecutorial discretion under *Heckler v. Chaney* and closed the file on March 23, 2021.⁷² This enforcement matter was referenced as pending before the Commission in our response to the same question in May 2019.

In MURs 7324, 7332, and 7366, the Commission found reason to believe that A360 Media, LLC, formerly American Media, Inc., (AMI) and its former Chief Executive Officer David J. Pecker knowingly and willfully violated 52 U.S.C. § 30118(a) by making and consenting to a prohibited corporate in-kind contribution regarding a \$150,000 payment to Karen McDougal to suppress a negative story about then-presidential candidate Donald J. Trump.⁷³ The Commission specifically found that the payment to McDougal was a coordinated expenditure with the Trump campaign and therefore an in-kind contribution.⁷⁴ The Commission considered allegations that Trump and the Trump campaign accepted the prohibited in-kind contribution but there were an insufficient number of votes to find reason to believe.⁷⁵ On May 17, 2021, the Commission approved a conciliation agreement with AMI for \$187,500 that did not include a knowing and willful admission and removed Pecker as a party to the agreement

⁶⁷ <https://www.fec.gov/files/legal/murs/6721/18044454714.pdf>.

⁶⁸ <https://www.fec.gov/files/legal/murs/6721/18044454725.pdf>.

⁶⁹ <https://www.fec.gov/files/legal/murs/6721/18044454732.pdf>.

⁷⁰ https://www.fec.gov/files/legal/murs/6955/6955_14.pdf;
https://www.fec.gov/files/legal/murs/6955/6955_15.pdf.

⁷¹ https://www.fec.gov/files/legal/murs/6955/6955_22.pdf;
https://www.fec.gov/files/legal/murs/6955/6955_23.pdf.

⁷² https://www.fec.gov/files/legal/murs/6955/6955_28.pdf. Commissioners Broussard and Weintraub dissented, and instead supported a motion to enter into conciliation with Respondent. *Id.*

⁷³ https://www.fec.gov/files/legal/murs/7324/7324_22.pdf.

⁷⁴ *Id.*

⁷⁵ https://www.fec.gov/files/legal/murs/7324/7324_20.pdf.

(the Commission took no further action as to Pecker).⁷⁶ On May 20, 2021, the Commission closed the file.⁷⁷

34. *Since May 1, 2019, how many enforcement cases has the Commission pursued through litigation after attempting conciliation?*

Since May 1, 2019, the Commission has continued to pursue two previous cases filed under 52 U.S.C. § 30109(a)(6) after attempting conciliation and filed two new cases.

- 1) *FEC v. Rivera*, Civ. No. 17-22643 (S.D. Fla. Filed July 14, 2017) (MUR 6655)
- 2) *FEC v. Johnson*, Civ. No. 15-439 (D. Utah filed Jun. 19, 2015) (MUR 6850)
- 3) *FEC v. Defend Louisiana PAC*, Civ. No. 21-346 (M.D. La. filed Jun. 14, 2021) (MUR 7610); and
- 4) *FEC v. LatPAC, et al.*, Civ. No. 21-6095 (S.D.N.Y. filed July 15, 2021) (MUR 7318)

35. *What is the current relationship between the Commission and the Department of Justice regarding enforcement matters? Do Commission enforcement staff have the ability to consult with Department of Justice staff where appropriate?*

The current relationship between the Commission and the Department of Justice is constructive and reflects each agency's mutual respect for the independent mission of the other agency. In recent years, the Commission and DOJ have successfully worked through issues of mutual concern such as providing time-limited abatements and two-way information sharing as appropriate. Both agencies have referred or otherwise brought relevant matters to the attention of the other agency, and Commission witnesses continue to testify in criminal actions brought by DOJ. As discussed below in answer to Question 36, the Commission and DOJ are currently working towards negotiating an updated Memorandum of Understanding.

FECA provides that the Commission "shall have exclusive jurisdiction with respect to the civil enforcement" of FECA and the presidential public funding provisions of Chapters 95 and 96 of Title 26. Jurisdiction for criminal enforcement of the Act and Chapter 95 and 96 of Title 26 resides in DOJ. The Commission and DOJ have concurrent jurisdiction over knowing and willful violations of the Act.⁷⁸

⁷⁶ https://www.fec.gov/files/legal/murs/7324/7324_26.pdf.

⁷⁷ https://www.fec.gov/files/legal/murs/7324/7324_25.pdf.

⁷⁸ FECA, §§ 306(b)(1) & 309(a)(5)(C), codified at 52 U.S.C. §§ 30106(b)(1) & 30109(a)(5)(C).

In 1977, the Commission and DOJ entered into an MOU relating to their respective law enforcement jurisdiction and responsibilities.⁷⁹ The MOU remains the primary guidance/procedural agreement used by the Commission to assist in collaboration and consultation efforts (including referrals) between the Commission and DOJ.

As mentioned earlier, the FEC and DOJ consult in a number of ways, but most frequently through the sharing of investigative materials and DOJ requests that the Commission abate enforcement proceedings pending a parallel criminal matter. For instance, upon written request and subject to Commission approval, the FEC will share with DOJ documents from its enforcement files. In turn, following abatement DOJ will (subject to Grand Jury secrecy rules and other applicable laws) seek to provide the FEC investigative materials from parallel matters, *e.g.*, FBI 302s. DOJ typically shares such information at the end of a DOJ prosecution or after DOJ determines not to prosecute a case. The initial point of contact for consultation on parallel matters between the FEC and DOJ is usually through the General Counsel or Associate General Counsel for Enforcement and DOJ's Public Integrity Section.

The Commission also routinely makes witnesses available to assist in DOJ prosecutions. Typically, the FEC witness provides testimony concerning the contents of disclosure reports filed with the Commission.

As noted above, DOJ sometimes requests that the Commission hold particular Matters Under Review in abeyance pending the conclusion of a related DOJ investigation. These requests are submitted in writing to the General Counsel or the Associate General Counsel, OGC prepares a recommendation for the Commission's consideration, and the Commission votes to decide whether to grant the request. In deciding whether to grant the request, the Commission considers the amount of time remaining on the relevant statute of limitations, whether the Commission's investigation would benefit from accessing the DOJ file at the end of the DOJ investigation, and whether a parallel civil investigation may harm the criminal investigation. Typically, such requests are granted for a set term, and then DOJ is asked to resubmit the abeyance request if it seeks continued abatement. The extension request is analyzed under the same factors as the original request.

Currently, Commission enforcement staff consult and confer with DOJ staff frequently through the points of contact mentioned above. These conferrals are usually in reference to the topics discussed above, particularly abatement and information sharing. In addition, Commission enforcement staff and DOJ staff consult in the context of information sharing, such as when a Commission matter is in the investigative phase or DOJ information has been provided to the Commission.

⁷⁹ See 43 Fed. Reg. 5441 (Feb. 8, 1978).

36. *The Memorandum of Understanding (“MOU”) between the Department of Justice and Commission was executed in 1977. Following passage of the Bipartisan Campaign Reform Act, according to a GAO report, Department of Justice officials “abrogated” the MOU, but have continued to follow the “spirit of the agreement.”⁸⁰ There have been efforts to update the MOU in 2003, 2007, and 2012, but the agencies were not able to agree on proposed revisions.⁸¹ What is the status of negotiations with the Department of Justice on an updated MOU, if any?*

Following the reciprocal recommendations to the Commission and DOJ set forth in the 2020 GAO report, the Commission and DOJ have made steady, careful progress towards agreement on an updated MOU, while balancing the numerous other priorities of both agencies. Initially, during the period in which the Commission largely lacked a quorum to approve such an agreement, these efforts consisted of discussions at the staff level. After the quorum was regained, the Commission has continued to partner with DOJ to take constructive steps. In addition to increased staff-level discussions, this work has included a meeting of two FEC Commissioners representing the Commission and senior DOJ leadership that took place on March 15, 2022. This meeting was specifically for the purpose of high-level discussion of relevant principles for the MOU and agreeing on a framework for further progress towards an updated agreement. Following that meeting, DOJ has prepared and shared an updated MOU draft with the Commission, which the Commission is currently reviewing.

As the question indicates, previous attempts to reach a new MOU have not been successful. Throughout the current effort, the Commission has focused on process improvements and increased inclusion based on lessons learned from prior experience, which to date has yielded steady and constructive progress. It is the Commission’s view that both agencies are committed to the effort of reaching an updated MOU, as is reflected in the significant staff time the Commission has invested in the effort at the Commissioner and senior staff level (and which it appears DOJ has similarly invested), and the Commission intends to continue those investments and the pursuit of the goal of executing an updated agreement.

37. *Excluding civil monetary penalty adjustments for inflation, how many rulemakings has the Commission completed since May 1, 2019?*

The Commission published Final Rules in one rulemaking since May 1, 2019.

REG 2020-03 (Technical Corrections): The Commission published technical corrections to various sections of Title 11 of the Code of Federal Regulations. 86 Fed. Reg. 72,783 (Dec. 23, 2020).

⁸⁰ Gov’t Accountability Off., *Campaign Finance: Federal Framework, Agency Roles and Responsibilities, and Perspectives* 38, GAO-20-66R Campaign Finance (Feb. 3, 2020), available at <https://www.gao.gov/assets/gao-20-66r.pdf>.

⁸¹ *Id.*

The Commission published Interim Final Rules in three rulemakings since May 1, 2019.

1. REG 2018-04 (Point of Entry for Senate Filing): The Commission published an Interim Final Rule requiring all mandated reports, designations, and notices to be filed with the Commission. 84 Fed. Reg. 18,697 (May 2, 2019). The Commission also published a correction to the Interim Final Rule, which had inadvertently removed a portion of 11 C.F.R. § 102.2(a)(1) regarding filing a Statement of Organization (FEC Form 1). 84 Fed. Reg. 35,007 (July 22, 2019).
2. REG 2020-05 (Independent Expenditure Reporting): The Commission issued an Interim Final Rule removing 11 C.F.R. § 109.10(e)(1)(vi) from Commission regulations. The Interim Final Rule also added a note citing to the court decisions in *CREW v. FEC*⁸² and stating that the statutory provision at 52 U.S.C. § 30104(c) remains in force. The District Court and Court of Appeals decisions vacated the Commission's regulation at 11 C.F.R. § 109.10(e)(1)(vi) that required persons other than political committees who make independent expenditures to report certain information about each person who made a contribution to the reporting entity in excess of \$200 for the purpose of furthering "the reported independent expenditure." 87 Fed. Reg. 35,863 (June 14, 2022). For further information about this rulemaking, please see the responses to Questions 38 and 51, below.
3. REG 2022-03 (Repayment of Candidate Loans): On August 31, 2022, the Commission approved Interim Final Rules that remove 11 C.F.R. §§ 116.11 and 116.12, which are regulatory restrictions on authorized committees' repayment of candidate personal loans. The Commission took this action in light of the Supreme Court's recent decision in *FEC v. Ted Cruz for Senate*, 142 S. Ct. 1638 (2022), which held that the statutory provision implemented by those regulations is unconstitutional. 87 Fed. Reg. 54,862 (Sept. 8, 2022).

The Commission published three Notices of Disposition since May 1, 2019.

1. REG 2012-01 (Electioneering Communications Reporting): The Commission issued a Notice of Disposition announcing its decision not to open a rulemaking in response to a 2012 petition for rulemaking because the requested regulatory revisions had been addressed in a separate rulemaking.⁸³ 87 Fed. Reg. 17,954 (Mar. 29, 2022). This action followed the Commission's 2012 publication of a Notice of Availability and 2013

⁸² *CREW v. FEC*, 316 F. Supp. 3d 349 (D.D.C. 2018), *aff'd*, 971 F.3d 340 (D.C.Cir. 2020).

⁸³ See Final Rule: Independent Expenditures and Electioneering Communications by Corporations and Labor Organizations, 79 Fed. Reg. 62,797, 62,816 (Oct. 21, 2014). See Independent Expenditures and Electioneering Communications by Corporations and Labor Organizations, 80 Fed. Reg. 12,079 (Mar. 6, 2015).

vote on motions to open a rulemaking or to dismiss the petition. Neither motion was approved.

2. REG 2014-09 (Amendment of 11 C.F.R. § 115): The Commission issued a Notice of Disposition announcing its decision not to open a rulemaking in response to a 2015 petition for rulemaking submitted by Public Citizen. 87 Fed. Reg. 19,026 (Apr. 1, 2022). This action followed the Commission's publication of a 2015 Notice of Availability and vote on a motion to open a rulemaking. The motion was not approved.⁸⁴
3. REG 2015-04 (Independent Expenditures by Corporations, Labor Organizations, Foreign Nationals, and Certain Political Committees): The Commission issued a Notice of Disposition announcing its decision not to open a rulemaking in response to 2015 petitions for rulemaking submitted by Make Your Laws PAC, Inc. and Make Your Laws Advocacy, Inc., and Craig Holman and Public Citizen. 87 Fed. Reg. 19,024 (Apr. 1, 2022). This action followed the Commission's 2015 publication of a Notice of Availability and vote on a motion to open a rulemaking. The motion was not approved.⁸⁵

38. *REG 2020-05 regarding Independent Expenditure Reporting currently has an Interim Final Rule in place. Comments were being accepted on this proposal until July 14, 2022. When will the Commission announce the changes (if any) being made to the Interim Final Rule in light of those comments?*

The Interim Final Rule will take effect on September 30, 2022. An interim final rule requires no further action after it takes effect unless modification is necessary due to post-promulgation comments received.⁸⁶ The Commission received one comment on the Interim Final Rule and has not announced an intention to take further action on this rulemaking at this time. For further information about this rulemaking, please see the responses to Questions 37 and 51.

⁸⁴ See FEC, Agenda Doc. 15-60-A, Certification (Nov. 13, 2015) available at: <https://sers.fec.gov/fosers/showpdf.htm?docid=346292>.

⁸⁵ See FEC, Agenda Doc. 15-65-A, Certification (Dec. 18, 2015) available at: <https://sers.fec.gov/fosers/showpdf.htm?docid=346628>.

⁸⁶ See Jeffrey S. Lubbers, A GUIDE TO FEDERAL AGENCY RULEMAKING 114 (6th ed. 2018).

39. *What further action does the Commission anticipate taking on REG 2011-02 concerning internet communication disclaimers? When does it anticipate taking this further action, if any?*

Following the Commission's 2018 publication of a Notice of Proposed Rulemaking and public hearing, in June 2019 the Commission made two alternative rulemaking proposals available for public comment.⁸⁷ It received ten comments on the proposals. The Commission, through its Regulations Committee, has prioritized completion of this rulemaking. Commissioners have engaged in substantial negotiations over the past several months and are close to agreement on final rules.

40. *Campaign advertising on streaming television (including but not limited to connected television and over-the-top television services) is increasing dramatically. What steps are the Commission taking to ensure transparency of paid campaign advertising on these forms of television, particularly in the 2022 and 2024 election cycles?*

The Commission's regulations require disclaimers to appear on all "public communications" made by political committees, and on all "public communications" made by any person if the communications expressly advocate the election or defeat of a clearly identified candidate or solicit a contribution. Among other requirements, the disclaimer must identify who paid for the public communication and any candidate who authorized it,⁸⁸ and "must be presented in a clear and conspicuous manner."⁸⁹

The term "public communication" includes "communications placed for a fee on another person's Web site."⁹⁰ The Commission has stated that the term "Web site" is "meant to encompass a wide range of existing and developing technology."⁹¹

REG 2011-02 (Internet Communication Disclaimers) concerns potential updates to the Commission's regulations on internet communication disclaimers. As noted in response to Question 39, in REG 2011-02 (Internet Communication Disclaimers), the Commission published a Notice of Proposed Rulemaking, held a public hearing, and made two alternative rulemaking proposals available for public comment.⁹² In both REG 2011-02 (Internet Communication Disclaimers) and REG 2013-01 (Technological Modernization), the Commission proposed to

⁸⁷ See FEC Agenda Doc. 19-26-A (June 13, 2019) available at: <https://sers.fec.gov/fosers/showpdf.htm?docid=402921>; FEC Agenda Doc. 19-26-B (June 18, 2019) available at: <https://sers.fec.gov/fosers/showpdf.htm?docid=403127>.

⁸⁸ 11 C.F.R. § 110.11(a).

⁸⁹ 11 C.F.R. § 110.11(c)(1).

⁹⁰ 11 C.F.R. § 100.26.

⁹¹ Internet Communications, 71 Fed. Reg. 18,589, 18,608 n.52 (Apr. 12, 2006).

⁹² See FEC Agenda Doc. 19-26-A (June 13, 2019) available at: <https://sers.fec.gov/fosers/showpdf.htm?docid=402921>; FEC Agenda Doc. 19-26-B (June 18, 2019) available at: <https://sers.fec.gov/fosers/showpdf.htm?docid=403127>.

replace the current regulatory language concerning “communications placed for a fee on another person’s Web site” with “communications placed for a fee on another person’s internet-enabled device or application.”⁹³ The Commission explained that the purpose of the proposal was “to reflect post-2006 changes in internet technology,” including “mobile applications” and “smart TV devices.”⁹⁴

Pending the issuance of new regulations, the Commission provides guidance on the application of the existing disclaimer regulations to internet communications in advisory opinions. For example, in Advisory Opinion 2017-12 (Take Back Action Fund), the Commission concluded that a 501(c)(4) nonprofit organization was required to include disclaimers on its paid political Facebook image and video advertisements. Four Commissioners issued statements explaining their rationales for supporting the conclusion.⁹⁵ The Commission also publishes guidance in the *FEC Record*, *Campaign Guides*, and press releases regarding the application of the disclaimer requirements to internet communications.⁹⁶

41. *What steps are the Commission taking to provide clarity regarding the receipt and spending of cryptocurrency by federal committees?*

The Commission has addressed issues concerning the receipt and spending of cryptocurrency by political committees in advisory opinions,⁹⁷ *Campaign Guides*, and *Record* articles, as described below. This guidance is also available on the Commission’s website.

In Advisory Opinion 2014-02 (Make Your Laws PAC, Inc.), the Commission provided guidance to the requestor, a political committee, about its proposed receipt, purchase, sale, and

⁹³ Internet Communication Disclaimers and Definition of “Public Communication,” 83 Fed. Reg. 12,864, 12,864 (Mar. 26, 2018); *see also* Technological Modernization, 81 Fed. Reg. 76,416, 76,434 (Nov. 2, 2016).

⁹⁴ Internet Communication Disclaimers and Definition of “Public Communication,” 83 Fed. Reg. at 12,864-65, 12,868.

⁹⁵ *See* Concurring Statement of Commissioner Ellen L. Weintraub (Dec. 21, 2017), Concurring Statement of Vice-Chair Caroline C. Hunter and Commissioners Lee E. Goodman and Matthew S. Petersen (Dec. 14, 2017) *both available at* <https://www.fec.gov/data/legal/advisory-opinions/2017-12/>.

⁹⁶ *See e.g.* Press Release, *FEC Approves Advisory Opinion* (June 28, 2022), available at <https://www.fec.gov/updates/fec-approves-advisory-opinion-06-28-22/>; Campaign Guide for Congressional Candidates and Committees at 170-73 (Sept. 2021), available at <https://www.fec.gov/resources/cms-content/documents/candgui.pdf>; *FEC Record*, *AO 2019-18: Advertising by online political forum I* (June 19, 2020), available at <https://www.fec.gov/updates/ao-2019-18/>.

⁹⁷ All advisory opinions are available at <https://www.fec.gov/data/legal/advisory-opinions/>. Pursuant to FECA, any person involved in any specific activity that is indistinguishable in all its material aspects from the circumstances addressed in an advisory opinion may rely on it. FECA, § 308(c)(1)(B), *codified at* 52 U.S.C. § 30108(c)(1)(B).

disbursement of bitcoins, a type of cryptocurrency. The Commission also provided guidance to the requestor on how to report bitcoin receipts and transactions.⁹⁸

To provide further clarity on these issues, the advisory opinion included as attachments three completed FEC reporting forms. The forms illustrated the reporting guidance provided in the advisory opinion. The Commission later updated its guidance on how to report bitcoin transactions in response to public comments and added a link to the updated information to the attachments to Advisory Opinion 2014-02 (Make Your Laws PAC, Inc.) posted on the Commission's website.

In addition, four Commissioners issued two Statements in conjunction with Advisory Opinion 2014-02 (Make Your Laws PAC, Inc.). These Statements provide further information about the Commissioners' analyses and conclusions.⁹⁹

In Advisory Opinion 2018-13 (OsiaNetworks LLC), the Commission provided guidance to the requestor, a limited liability company, on its proposal to provide services to political committees by enabling individuals to use internet-enabled devices to mine cryptocurrencies to benefit the political committees. The Commission concluded that the requestor's proposal was permissible under FECA and Commission regulations. The Commission explained, however, that the proposed activity would not fall within the volunteer internet activities exemption and would result in contributions from the individuals mining cryptocurrency to the participating political committees. The Commission further concluded that the requestor, as a commercial vendor providing a service to the recipient political committees for a commercially reasonable fee, would not make any contributions to those political committees.

In Advisory Opinion 2019-08 (Omar2020), the Commission provided guidance to the requestor, a candidate's authorized committee, on its proposal to distribute digital blockchain tokens with no monetary value to volunteers and supporters as an incentive for them to host events, register to vote, and engage in other activities in support of the campaign. The requestor proposed to distribute the tokens using the Ethereum blockchain network, an online platform that uses blockchain encryption technology to track the distribution and ownership of digital information publicly. The Commission concluded that the requestor's proposal was permissible under FECA and Commission regulations because the tokens were indistinguishable from traditional forms of campaign souvenirs, and nothing in FECA or Commission regulations prohibits a campaign committee from distributing free campaign souvenirs to volunteers or supporters.

During the Commission's consideration of advisory opinion requests, including requests that raise issues about cryptocurrency, the Commission posts both the requests and draft advisory opinions on its website and invites public comment on them. The Commission received

⁹⁸ The Commission voted 6-0 to approve one of three draft advisory opinions but did not approve a response on the question of whether the requester could acquire goods and services with bitcoins it receives as contributions. See Advisory Opinion 2014-02 (Make Your Laws PAC, Inc.) at 1, 14.

⁹⁹ Statement of Chairman Lee E. Goodman on Advisory Opinion 2014-02 (Make Your Laws Pac) (May 8, 2014); Statement of Vice Chair Ann M. Ravel and Commissioners Steven T. Walther and Ellen L. Weintraub (May 8, 2014) available at <https://www.fec.gov/data/legal/advisory-opinions/2014-02/>.

comments from a number of different commenters in connection with the above-referenced advisory opinions, including from the Bitcoin Foundation.

The Commission has also published guidance on its website regarding bitcoins,¹⁰⁰ including guidance on how to report bitcoins as contributions, liquidating bitcoins, and bitcoins as investments.¹⁰¹ The guidance includes displays of completed FEC forms that illustrate the reporting requirements for bitcoins.

The Commission has also published guidance on cryptocurrency issues in its *Campaign Guides*. These *Guides* are available to the public in both paper form and on the Commission's website.¹⁰²

Finally, the Commission publishes *Record* articles explaining its advisory opinions shortly after their issuance, including the advisory opinions addressing cryptocurrency.¹⁰³ *Record* articles are written in plain language to make it easier for political committees to understand and comply with the Commission's interpretations of campaign finance law.

42. *In the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283, 134 Stat. 3388, Congress directed that certain beneficial ownership information be reported to the Treasury Department and be made available through appropriate requests to federal agencies engaged in law enforcement. 134 Stat. at 4614. Given the use of shell companies and other corporate pass-throughs by their beneficial owners to engage in serious violations of campaign finance law,¹⁰⁴ how is the Commission collaborating with the Treasury Department to utilize the beneficial ownership information reported under this provision?*

¹⁰⁰ FEC, *Types of Contributions: Bitcoins*, available at: <https://www.fec.gov/help-candidates-and-committees/candidate-taking-receipts/types-contributions/>.

¹⁰¹ FEC, *How to Report: Bitcoin Contributions*, available at: <https://www.fec.gov/help-candidates-and-committees/reporting-examples/bitcoin-contributions/>; FEC, *How to Report: Liquidating Bitcoins*, available at: <https://www.fec.gov/help-candidates-and-committees/reporting-examples/liquidating-bitcoins/>; & FEC, *How to Report: Bitcoins as Investments*, available at: <https://www.fec.gov/help-candidates-and-committees/reporting-examples/bitcoins-investment/>.

¹⁰² FEC, *Campaign Guide: Congressional Candidates and Committees*, 14, 107, 123-24 & 128 (Oct. 2021), available at: <https://www.fec.gov/resources/cms-content/documents/candgui.pdf>.

¹⁰³ See, e.g., FEC, *AO 2014-02: Campaigns May Accept Bitcoins as Contributions*, *Record* (May 13, 2014), available at: <https://www.fec.gov/updates/ao-2014-02-campaign-may-accept-bitcoins-as-contributions/>; FEC, *AO 2018-13: Commercial Vendor May Provide Cryptocurrency Mining Services to Benefit Political Committees* (May 2, 2019), available at <https://www.fec.gov/updates/ao-2018-13/>.

¹⁰⁴ See, e.g., Press Release, Dep't of Justice, *Former Government Contractor Executives Indicted for Unlawful Campaign Contributions* (Feb. 10, 2022), <https://www.justice.gov/opa/pr/former-government-contractor-executives-indicted-unlawful-campaign-contributions>; Press Release, Dep't of Justice, *Lev Parnas And Igor Fruman Charged With Conspiring To Violate Straw And Foreign Donor Bans* (Oct. 10, 2019), <https://www.justice.gov/usao-sdny/pr/lev-parnas-and-igor-fruman-charged-conspiring-violate-straw-and-foreign-donor-bans>; Liam Stack, *Fugees-Rapper Pras Michel and Financier Charged in Illegal Scheme to Raise Money for Obama*, N.Y. TIMES (May 10, 2019), <https://www.nytimes.com/2019/05/10/us/pras-michel-igo-low-campaign-finance.html>.

The Corporate Transparency Act (CTA)¹⁰⁵ provides for sharing of beneficial ownership information 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.”¹⁰⁶ 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.

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.¹⁰⁷ Although the Commission did not comment on the ANPRM, Commissioners Broussard and Weintraub, in their capacities as individual commissioners, did.¹⁰⁸ 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.¹⁰⁹ 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.¹¹⁰ The Commission did not submit comments on this NPRM. FinCEN has indicated that future rulemakings will 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.¹¹¹ 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’), which FinCEN anticipates publishing

¹⁰⁵ Pub. L. 116-283 §§ 6401-6403, 134 Stat. 3388, 4604-4625 (2021).

¹⁰⁶ *Id.* at § 6403, 134 Stat. at 4614 (creating new 31 U.S.C. § 5336(c)(2)(B)(i)(I)).

¹⁰⁷ Treasury Dept., *Beneficial Ownership Information Reporting Requirements*, 86 Fed. Reg. 17,557 (Apr. 1, 2021).

¹⁰⁸ 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>.

¹⁰⁹ Treasury Dept., *Beneficial Ownership Information Reporting Requirements*, 86 Fed. Reg. 69,920 (Dec. 8, 2021).

¹¹⁰ *Id.* at 69,921.

¹¹¹ *Id.*

later this year.”¹¹² The “Access NPRM” will presumably address whether agencies like the Commission are “engaged in . . . law enforcement activity” and thus able to access beneficial ownership information. The Commission will continue to monitor the progress of the Treasury Department’s rulemaking process to implement the CTA.

43. *Since 2019, eight different proposed rulemakings have been opened for public comment and received comments, only for the Commission to take no further action.*¹¹³

a. *What is the status of these and other similar proposed rulemakings?*

The list below identifies open rulemakings in which the Commission received public comments after Jan. 1, 2019.¹¹⁴ Open rulemakings in which the Commission received public comments prior to Jan. 1, 2019 are not included. In some of the rulemakings listed below, the comments were received after the comment deadline.

1. REG 2011-02 (Internet Communication Disclaimers)
Please see the response to Question 39.
2. REG 2016-01 (Procedures for Public Comments on Draft Advisory Opinions)
The Commission published a Notification of Availability in response to a petition for rulemaking to promulgate new rules establishing specific time periods for the submission of comments on draft advisory opinions.
NOA published: 83 Fed. Reg. 62,283 (Dec. 3, 2018)
Comment deadline: Feb. 1, 2019
Comment period extended: 84 Fed. Reg. 2071 (Feb. 6, 2019)
Extended comment deadline: Mar. 4, 2019
3. REG 2018-01 (Former Candidates’ Personal Use)
The Commission published a Notification of Availability in response to a petition for rulemaking to revise the regulations regarding personal use of campaign funds, to clarify their application to former candidates and officeholders.
NOA published: 83 Fed. Reg. 12,283 (Mar. 21, 2018)
Comment deadline: May 21, 2018

¹¹² 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>.

¹¹³ See, e.g., REG 2021-01; REG 2020-02; REG 2019-01.

¹¹⁴ Since regaining a quorum, the Commission has resolved the following petitions for rulemaking: REG 2012-01 (Electioneering Communications Reporting) (Notice of disposition of petition for rulemaking, 87 Fed. Reg. 17954 (Mar. 29, 2022)); REG 2014-09 (Amendment of 11 C.F.R. 115, Federal Contractors) (Notice of disposition of petition for rulemaking, 87 Fed. Reg. 19026 (Apr. 01, 2022)); REG 2015-04 (Independent Spending by Corporations, Labor Organizations, Foreign Nationals, and Certain Political Committees (*Citizens United*)) (Notice of disposition of petition for rulemaking, 87 Fed. Reg. 19024 (Apr. 01, 2022)).

4. REG 2018-02 (Personal Use of Leadership PAC Funds)
The Commission published a Notification of Availability in response to a petition for rulemaking to revise the regulations regarding personal use of campaign funds to specify that these rules apply to Leadership PAC funds.
NOA published: 83 Fed. Reg. 46,888 (Sept. 17, 2018)
Comment deadline: Nov. 16, 2018
5. REG 2018-03 (Definition of Contribution)
The Commission published a Notification of Availability in response to a petition for rulemaking to revise the definition of “contribution” in light of the U.S. district court’s decision in *Citizens for Responsibility & Ethics in Washington v. FEC*.¹¹⁵
NOA published: 83 Fed. Reg. 62,282 (Dec. 3, 2018)
Comment deadline: Feb. 1, 2019
Comment period extended: 84 Fed. Reg. 2070 (Feb. 6, 2019)
Extended comment deadline: Mar. 4, 2019
6. REG 2018-05 (Size of Letters in Television Disclaimers)
The Commission published a Notification of Availability in response to a petition for rulemaking to revise the regulations pertaining to the size of the letters on disclaimers on television advertisements.
NOA published: 84 Fed. Reg. 3344 (Feb. 12, 2019)
Comment deadline: Apr. 15, 2019
7. REG 2019-01 (Amending the Definition of Contribution to Include “Valuable Information”)
The Commission published a Notification of Availability in response to a petition for rulemaking to revise the regulations to add to the definition of “contribution” certain “valuable information.”
NOA published: 84 Fed. Reg. 37,154 (July 31, 2019)
Comment deadline: Sept. 30, 2019
8. REG 2019-02 (Rulemaking on 11 C.F.R. § 104.5(c), Filing Dates for Unauthorized Political Committees)
The Commission published a Notification of Availability in response to a petition for rulemaking to revise the regulations to require any unauthorized committee that files reports with the Commission on a quarterly basis at the beginning of an election year to remain a quarterly filer through any primary elections in which it may be involved.
NOA published: 84 Fed. Reg. 45,116 (Aug. 28, 2019)
Comment deadline: Oct. 28, 2019

¹¹⁵ 316 F. Supp. 3d 349 (D.D.C. 2018), *aff’d*, 971 F.3d 340 (D.C. Cir. 2020).

9. REG 2019-03 (Requiring Reporting of Exchanges of Email Lists)
The Commission published a Notification of Availability in response to a petition for rulemaking to revise the regulations to require political committees to report receipts and disbursements of mailing lists and other valuable lists, even if the lists are received or disbursed as part of an equal-value exchange.
NOA published: 84 Fed. Reg. 45,116 (Aug. 28, 2019)
Comment deadline: Oct. 28, 2019
10. REG 2019-04 (Requiring Reporting of Segregated Party Accounts)
The Commission published a Notification of Availability in response to a petition for rulemaking to promulgate rules to specifically require the reporting of money received and spent by national party committees through special-purpose accounts maintained pursuant to the Consolidated and Further Continuing Appropriations Act of 2015.¹¹⁶
NOA published: 84 Fed. Reg. 45,117 (Aug. 28, 2019)
Comments due: Oct. 28, 2019
11. REG 2020-02 (Transfers from Candidate's Authorized Committee)
The Commission published a Notification of Availability in response to a petition for rulemaking to revise the regulations to limit the amount of contributions derived from a candidate's personal funds that the candidate's authorized committee may transfer to a national party committee.
NOA published: 85 Fed. Reg. 39098 (June 30, 2020)
Comments due: Aug. 31, 2020
12. REG 2021-01 (Candidate Salaries)
The Commission published a Notification of Availability in response to a petition for rulemaking to revise the regulations regarding the use of campaign funds to pay candidates' salaries; and to designate the payment of certain healthcare costs as permissible uses of campaign funds.
NOA published: 86 Fed. Reg. 23,300 (May 3, 2021)
Comments due: July 2, 2021
13. REG 2021-02 (Subvendor Reporting)
The Commission published a Notification of Availability in response to a petition for rulemaking to revise the regulations to require political committees and persons who make independent expenditures and electioneering communications to itemize certain payments made by vendors to others on behalf of the reporting entities.
NOA published: 86 Fed. Reg. 42,753 (Aug. 5, 2021)
Comments due: Oct. 4, 2021

¹¹⁶ Pub. L. No. 113–235, 128 Stat. 2130, 2772 (2014).

b. *Does the Commission anticipate taking any further action on these matters?*

The Commission, through its Regulations Committee, has prioritized completion of REG 2011-02 (Internet Communication Disclaimers). Commissioners have engaged in substantial negotiations over the past several months and are close to agreement on final rules. *See* Question 39. Also through the Regulations Committee, the Commission is anticipating issuing a Notice of Proposed Rulemaking in REG 2021-01 (Candidate Salaries) before the end of the calendar year.

44. *The Commission recently failed to approve an interim final rule implementing the Supreme Court's recent decision in Federal Election Commission v. Cruz. Why did the Commission fail to approve what appears to be a straightforward vote to implement a Supreme Court ruling?*

On August 31, 2022, the Commission unanimously approved an interim final rule for candidate loan repayment to remove regulatory restrictions on authorized committees' repayment of candidate personal loans in light of the Supreme Court decision in *FEC v. Ted Cruz for Senate*, which held that the statutory provision implemented by those regulations is unconstitutional. In the document, the Commission requests public comment on the proposed revisions within 30 days after the interim final rule is published in the *Federal Register*. A video of the discussion and vote has been posted online by the Commission.¹¹⁷ Commissioner Cooksey also issued a Statement.¹¹⁸

Commissioners had earlier discussed the proposed interim final rules at the May 26, 2022, Open Meeting¹¹⁹ after which the issue was referred to the Regulations Committee in the ordinary course.

45. *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 July 31, 2022, the Commission did not approve a response to six requests for advisory opinions as follows:

¹¹⁷ Discussion of Agenda Document No. 22-41-A1, Open Meeting of Aug. 31, 2022 at 8:20, <https://youtu.be/VQ0sCzAaKcU?t=491>.

¹¹⁸ See [Statement on the Commission's Interim Final Rule and Advisory Opinion on the Repayment of Candidate Loans](https://www.fec.gov/documents/4084/Statement-re-Candidate-Loan-IFR-and-AO-Vote-Cooksey.pdf), available at: <https://www.fec.gov/documents/4084/Statement-re-Candidate-Loan-IFR-and-AO-Vote-Cooksey.pdf>.

¹¹⁹ Sunshine Act Meeting, 87 Fed. Reg. 31,235 (May 23, 2022), [2022-11176.pdf \(govinfo.gov\)](https://www.govinfo.gov/2022-11176.pdf); see also May 26, 2022 Open Meeting, <https://www.fec.gov/updates/may-26-2022-open-meeting/>.

2019 (1)

2019-10 (Price for Congress)

2020 (2)¹²⁰

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 July 31, 2022, 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)

46. *Why does the Commission permit advisory opinion requesters to appear before the Commission but does not permit advisory opinion commenters to do so?*

Members of the public have two distinct opportunities to participate in the advisory opinion process. FECA requires the Commission to make complete advisory opinion requests available for public comment for a period of 10 days.¹²¹ Although not required by FECA, the Commission also provides requestors and members of the public a second opportunity to comment when the Commission releases draft advisory opinions. The Commission generally aims to release draft advisory opinions one week before the open meeting at which they will be considered, to provide the public with ample opportunity to submit comments.

In 2009, the Commission established its current procedure, which allows persons requesting advisory opinions, or their counsel, a limited opportunity to appear before the Commission.¹²² The purpose of a requestor's (or counsel's) appearance "is to answer questions from the Commission at the open meeting during consideration of requestor's draft advisory

¹²⁰ 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.

¹²¹ FECA § 308(d), *codified at* 52 U.S.C. § 30108(d); 11 C.F.R. § 112.3(b).

¹²² FEC, *Notice of New Advisory Opinion Procedures and Explanation of Existing Procedures*, 74 Fed. Reg. 32,160, 32,160 (July 7, 2009).

opinion.”¹²³ The Commission explained that it believed the procedure would “promote transparency and fairness, while ensuring that advisory opinions continue to be issued in an efficient and timely manner.”¹²⁴ Allowing the Requestors to appear and answer Commissioners’ questions directly, the Commission stated, “may clear up ambiguous or conflicting statements in the Requestors’ written submissions”; “allow the Commission to obtain additional information where the Requestor’s previous discussions with Office of General Counsel . . . attorneys did not provide an answer;” “help ensure that the Commission fully considers all significant aspects of the proposed transaction or activity before voting on the advisory opinion;” and “help some Requestors to understand better the basis for the Commission’s decision.”¹²⁵

At the time it adopted its current procedure, the Commission responded to a commenter who “suggested that third-party commenters in the advisory opinion process should be allowed to appear before the Commission.”¹²⁶ The Commission explained its decision not to permit commenters to appear at open meetings as follows: “The Act specifically provides that the Commission shall issue an advisory opinion ‘with respect to a specific transaction or activity by the person’ who submitted the request,” and that “Requestors would be permitted to appear only for the limited purpose of addressing questions raised by the Commission.”¹²⁷ Further, the Commission noted that “[c]ommenters already have an opportunity to submit written comments on the request, as well as on the draft advisory opinion,” and it would be “inefficient and impractical” to “arrang[e] an oral hearing within the 60- or 20-day statutory deadlines for all interested parties who wish to testify.”¹²⁸

The Commission considers rules of general application not in advisory opinions, which are specifically tailored to “a specific transaction or activity” proposed by the requestor,¹²⁹ but in the rulemaking context. During its rulemaking proceedings, the Commission often holds public hearings and invites interested members of the public to testify before the Commission, in addition to providing them an opportunity to submit comments on proposed rules, consistent with the Administrative Procedure Act.¹³⁰ Some commissioners have favored allowing third-party commenters to appear and answer questions when Advisory Opinions are considered by the Commission, as Advisory Opinions, while limited to the specific transactions at issue, may also be relied upon by others engaging in indistinguishable transactions.¹³¹

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.* at 32,161.

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ FECA, § 308(a)(1), *codified at* 52 U.S.C. § 30108(a)(1).

¹³⁰ 5 U.S.C. § 553(c); *see, e.g.*, FEC Public Hearing on the *McCutcheon v. FEC* Advance Notice of Proposed Rulemaking, February 11, 2015, Schedule of Witnesses, *available at* <https://sers.fec.gov/fosers/showpdf.htm?docid=324489>.

¹³¹ *See* 52 U.S.C. § 30108(c)(1). A proposal to revise Commission procedures so as to allow third-party appearances before the Commission to discuss advisory opinions was considered in July 2015. *See* Open Meeting, FED. ELECTION COMM’N, *available at* <https://www.fec.gov/updates/july-16-2015-open-meeting/> (July 16, 2015). A

47. *In Advisory Opinion 2017-07 (Sergeant at Arms), the Commission considered information from the House Sergeant at Arms about the threats faced by Members of Congress due to their status as federal officeholders, and the recommendation of the Capitol Police that Members of Congress install or upgrade residential security systems to protect themselves and their families. In light of that information, the Commission concluded that certain costs of installing or upgrading home security systems would constitute ordinary and necessary expenses incurred in connection with Members' duties as federal officeholders, and that therefore Members of Congress may use campaign funds to pay for reasonable costs associated with home security systems.¹³² More recently, the Commission has evaluated both the heightened threat environment faced by Members of Congress collectively, and specific incidents of threats to members individually, to determine that other security-related expenses could be paid for with campaign funds.¹³³ Is it an accurate summary of the Commission's advisory opinion guidance that the use of campaign funds for certain security-related expenses is permissible under the Act and Commission regulations and would not constitute a prohibited conversion of campaign funds to personal use?*

Your summary is accurate. To elaborate on the “certain security-related expenses” that the Commission has considered, please note that the expenses were those of Members of Congress who faced specific and ongoing threats to the safety of themselves and their families. The facts presented in those advisory opinions suggested that the threats were motivated by the requestors’ public roles as federal officeholders, candidates, or both.¹³⁴ In other situations, the Members of Congress faced a “heightened threat environment” due to their duties or status as officeholders as determined by law enforcement.¹³⁵ In Advisory Opinion 2021-03 (NRSC & NRCC), the Commission expressly relied on the information provided about security threats that exist due to the Members’ duties as federal officeholders in previous advisory opinions.¹³⁶

Where law enforcement agencies, including the House Sergeant at Arms, the United States Capitol Police and other national or local law enforcement agencies, recommended specific security related measures due to the continuing threats, the Commission determined that

motion to adopt Agenda Doc. 15-37-A, *Policy on Third-Party Appearances before the Commission to Discuss Advisory Opinions* failed 2-4, with Commissioners Weintraub and Ravel voting in favor. Commissioners Hunter, Goodman, Petersen, and Walther voted against.

¹³² See Advisory Opinion 2017-07 (Sergeant at Arms) at 3.

¹³³ See Advisory Opinions 2022-02 (W. Gregory Steube); 2021-03 (NRSC & NRCC).

¹³⁴ Advisory Opinions 2022-02 (Steube), 2020-06 (Escobar), 2011-17 (Giffords), 2011-05 (Terry) and 2009-08 (Gallegly).

¹³⁵ Advisory Opinions 2017-07 (Sergeant at Arms), 2021-03 (NRSC & NRCC), and 2018-15 (Wyden).

¹³⁶ See Advisory Opinion 2021-03 (NRSC & NRCC) at 3 (citing Advisory Opinions 2017-07 (Sergeant at Arms) & 2011-17 (Giffords) at 3).

the use of campaign funds for the specific security-related expenses under these circumstances would be permissible under FECA.¹³⁷

As it typically does when advisory opinions are issued, the Commission published *Record* articles about these advisory opinions,¹³⁸ updated articles on FEC.gov that discuss the issue,¹³⁹ and included those materials in revisions to the Commission's *Campaign Guide* as well.¹⁴⁰

48. *Several Commissioners have cited looming statutes of limitations as a justification to vote against finding a reason to believe that a violation has occurred.*¹⁴¹

a. *How many cases on the Commission's enforcement docket are imperiled by a looming statute of limitations?*

Of the 215 cases on the enforcement docket, 56 have at least some activity that is beyond the statute of limitations or will be before September 30, 2023. Please note that, according to the Enforcement Division, some of the 56 cases include later activity that will remain within the statute of limitations and that some of the 56 cases are subjects of tolling agreements.

b. *Does the Commission support extending the applicable statute of limitations?*

c. *If so, what does the Commission believe a reasonable statute of limitations would be?*

The Commission does not take a position on this matter and defers to Congress on the appropriate length of the statute of limitations. As an initial matter, the Commission notes that these questions raise significant issues about the goals of civil enforcement, to be balanced against the fairness and finality interests that underlie limitation periods. To date, for civil enforcement of campaign finance laws, Congress has not seen fit to depart from the generally applicable five-year statute of limitations on civil penalty actions set forth in 28 U.S.C. § 2462. (FECA does contain a specific criminal statute of limitations, 52 U.S.C. § 30145, which is also five years.)

¹³⁷ See Advisory Opinions 2022-02 (Steube); 2020-06 (Escobar); 2017-07 (Sergeant at Arms); 2011-17 (Giffords); 2011-05 (Terry) and 2009-08 (Gallegly).

¹³⁸ See *Record* summaries of Advisory Opinions [2022-02](#), [2021-03](#), [2020-06](#), [2018-15](#), [2017-07](#), [2011-17](#), [2011-05](#) and [2009-08](#).

¹³⁹ FEC, *Personal Use: Mortgages, Rent and Utility Payments*, available at: <https://www.fec.gov/help-candidates-and-committees/making-disbursements/personal-use/>.

¹⁴⁰ FEC, *Campaign Guide: Congressional Candidates and Committees*, 65 (Oct. 2021), available at: <https://www.fec.gov/resources/cms-content/documents/candgui.pdf>.

¹⁴¹ 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).

It is true that the Commission has been challenged by imperilment of the statute of limitations in certain enforcement matters it has evaluated since regaining a quorum, because the statute continued to run throughout the period there was no quorum. It is also true that Commissioners have taken statute of limitations considerations into account when deciding whether to proceed on certain matters, and that Commissioners do not always agree on the application of the statute of limitations or how it should affect prudential considerations in a particular case. The Commission acknowledges that those difficulties and concerns could perhaps have been reduced with a longer statute of limitations period. That said, the Commission attributes its challenges with limitation periods more directly to the lack of quorum period, as well as caseload and staffing issues, as discussed above in answer to Question 21.c. We further note that, as the Commission has worked through its cases since regaining a quorum, issues caused by imperilment of the statute of limitations are becoming less frequent and problematic. As the Commission continues to process cases and increases hiring, those positive trends are likely to continue.

49. *In at least 22 cases, the Commission's 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.¹⁴² In each instance, three commissioners voted against finding reason to believe that a violation occurred. This indicates a significant disconnect between the Commission's non-partisan staff and those three commissioners. To what does the Commission attribute these repeated disagreements between the Office of General Counsel and its commissioners?*

In Attachment G, Chairman Dickerson and Commissioners Cooksey and Trainor respond to this question in a separate statement.

50. *These 22 cases create the appearance that the three commissioners are voting with partisan considerations in mind. For example, the Commission did not find reason to believe a violation occurred in a case alleging misreported vendor payments by former President Trump's committee, with all three commissioners voting against the Office of General Counsel's recommendation to proceed.¹⁴³ The Commission did, however, find reason to believe that a violation occurred in an apparently analogous fact pattern*

¹⁴² 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>.

¹⁴³ Certification ¶ 1, MUR 7784 (Make Am. Great Again PAC) (May 10, 2022).

involving Hillary Clinton’s presidential campaign committee.¹⁴⁴ How does the Commission plan to combat the perception that it selectively enforces (or fails to enforce) the law based on partisan considerations?

In Attachment G, Chairman Dickerson and Commissioners Cooksey and Trainor respond to this question in a separate statement.

51. *Citizens for Responsibility and Ethics in Washington v. FEC invalidated and vacated a longstanding Commission regulation governing disclosure of contributions received by persons, other than political committees, which make independent expenditures.¹⁴⁵ Vacatur of the rule became effective on September 18, 2018. The Commission released public guidance shortly after the District Court’s vacatur became effective on October 4, 2018.¹⁴⁶ On June 8, 2022, Chairman Dickerson and Commissioners Cooksey and Trainor released a “Policy Statement” expressing the position that the statute is “effectively unenforceable” without the Commission pursuing “clear direction” in the form of new regulation and an intent to exercise prosecutorial discretion to dismiss matters involving conduct preceding or contemporaneous with the June 8, 2022 Statement.¹⁴⁷*
- a. Both the District Court and D.C. Circuit reviewed the now-vacated rule under the two-step framework of Chevron U.S.A. Inc. v. Nat. Res. Def. Council, Inc., 467 U.S. 837 (1984), which provides that a court will accept an agency’s reasonable construction of an ambiguous statutory provision, but “[i]f the intent of Congress is clear, that is the end of the matter.” Chevron, 467 U.S. at 842. Both the District Court and D.C. Circuit held that the statutory text was “unambiguous” and that the now-vacated rule conflicted with that clear statutory text. If the statute is unambiguously clear, is the position of the Policy Statement, which finds such ambiguity that the statute is “effectively unenforceable,” in conflict with the determinations of CREW v. FEC?*

¹⁴⁴ See Certification, MURs 7291 & 7449 (DNC Servs. Corp., *et al.*) (Feb. 17, 2022); Conciliation Agreement, MURs 7291 & 7449 (DNC Servs. Corp., *et al.*) (Feb. 22, 2022).

¹⁴⁵ See 316 F. Supp. 3d 349 (D.D.C. 2018), *aff’d*, 971 F.3d 340 (D.C. Cir. 2020).

¹⁴⁶ Press Release, Fed. Election Comm’n, *FEC provides guidance following U.S. District Court decision in CREW v. FEC*, 316 F. Supp. 3d 349 (D.D.C. 2018) (Oct. 4, 2018), <https://www.fec.gov/updates/fec-provides-guidance-following-us-district-court-decision-crew-v-fec-316-f-supp-3d-349-ddc-2018/>.

¹⁴⁷ POL’Y STMT. OF CHAIRMAN ALLEN DICKERSON, & COMM’RS SEAN J. COOKSEY & JAMES E. “TREY” TRAINOR, III CONCERNING THE APPLICATION of 52 U.S.C. § 30104(c) at 5, 6 (June 8, 2022), https://www.fec.gov/resources/cms-content/documents/CREW_contributions_earmarked_political_purposes_Dickerson_Cooksey_Trainor_06082022.pdf.

- b. *Is the Policy Statement an indication to the regulated community that the Commission will not enforce the requirements of 52 U.S.C. §§ 30104(c)(1), (c)(2)(C)?*
- c. *The June 8, 2022 Statement was released 1,343 days after the October 4, 2018 Commission guidance following the vacatur of the prior regulation. Are the interests of “due process” and “fair notice” advanced by providing conflicting guidance so long after the Commission has made public its position on the impact of the ruling?*

The June 8, 2022, Policy Statement reflects the views of three Commissioners. The Commission did not vote on it or publish it in the *Federal Register*. The Commission’s action in response to the vacatur of the regulation was to issue the Interim Final Rule referenced in the responses to Questions 37 and 38, which will take effect on September 30, 2022.

Additionally, in Attachment G, Chairman Dickerson and Commissioners Cooksey and Trainor respond to this question in a separate statement. In Attachment H, Vice Chair Lindenbaum and Commissioners Broussard and Weintraub also respond to this question in a separate statement.

52. *A recent news article discussed an appearance by Commissioner Trainor at a local county Republican party event where he was billed as a member of the “Trump Elections Team” before speaking at an “election integrity” event in November 2021.¹⁴⁸ Commissioner Trainor has not recused himself from considering matters involving former President Trump’s campaign or related entities.*
- a. *What interests are served by recusal rules?*

Recusal 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.¹⁴⁹ To this end, consistent with principles of ethical conduct, the recusal rules seek to ensure that employees: do not hold financial interests that conflict with the conscientious performance of duty; act impartially in performing official duties and do not give preferential treatment to any private organization or individual; and avoid any actions that create the appearance that they are violating the law or the ethical standards of conduct for federal employees.¹⁵⁰

¹⁴⁸ Madison Hall, *A Trump-appointed official who gets an important vote on whether Trump broke election laws spoke at a Texas GOP event where he was billed as a part of the 'Trump Elections Team'*, BUSINESSINSIDER (June 30, 2022, 5:44 P.M.), <https://www.businessinsider.com/trump-election-integrity-trey-trainor-federal-election-commission-fec-2022-6>.

¹⁴⁹ 5 C.F.R. § 2635.101(a).

¹⁵⁰ See 5 C.F.R. § 2635.101(b)(2), (8), (14).

- b. *Do new commissioners receive training on their recusal obligations, including weighing the appearance of a conflict?*

Yes, each new commissioner is required to complete an ethics briefing not later than 15 days after their appointment, or not to exceed 30 days after appointment, if an extension is granted.¹⁵¹ The Ethics Office combines the ethics briefing for commissioners with the initial ethics training. This comprehensive ethics orientation addresses the commissioner's recusal obligations, including delineated circumstances that would cause a *per se* recusal obligation under recusal rules, as well as instruction regarding what to do when other circumstances exist in a matter that would raise a question regarding the commissioner's impartiality, *i.e.*, circumstances in which we strongly recommend that commissioners and all other employees contact the Ethics Office before participating in the matter.

- c. *Are there any annual ethical training requirements imposed on commissioners that would include recusal obligations?*

Yes, commissioners are required to complete at least one hour of ethics training each calendar year.¹⁵² This mandatory annual ethics training addresses, among other things, concepts related to financial conflicts of interest and impartiality, including associated recusal obligations.

- d. *What internal procedures or mechanisms are in place to ensure recusal? Please direct the Committee to any relevant ethical rules, Directives, or procedures.*

There are several internal mechanisms in place to ensure recusal, when appropriate. First, as part of each commissioner's onboarding process, the Ethics Office prepares a draft screening arrangement – *i.e.*, a memorandum from the commissioner to the agency ethics official that establishes procedures to ensure that the commissioner will comply with an Ethics Agreement they signed during the confirmation process, as well as an Ethics Pledge signed upon confirmation pursuant to an executive order issued by the President. Commissioners complete the screening arrangement in consultation with the Ethics Office. The screening arrangement requires the commissioner to provide a copy of the finalized arrangement to his or her Executive Assistants and instruct them to screen all agency matters to ensure that the commissioner does not participate in any matter that involves an individual or organization identified in the screening arrangement, during the specified timeframe, by immediately notifying the commissioner and the Secretary of the Commission that the commissioner is recused from any such matter.

Also, pursuant to the Stop Trading on Congressional Knowledge Act of 2012, a commissioner (or other public filer) who is negotiating for or has an agreement of future employment or compensation with a non-Federal entity must file a statement notifying an agency ethics official of such negotiation or agreement within three business days after commencement of the negotiation or agreement.¹⁵³ A Commissioner who files the notification statement must

¹⁵¹ 5 C.F.R. § 2638.305(b)(1).

¹⁵² 5 C.F.R. § 2638.308.

¹⁵³ Pub. L. No. 112-105, § 17, 126 Stat. 291, 303-04 (2012); 5. C.F.R. § 2635.607(a).

also file with an agency ethics official a recusal whenever there is a conflict of interest with the non-Federal entity identified in the notification statement. The notification statement and the recusal statement may be contained in a single document or in separate documents.¹⁵⁴

e. Do the commissioners take advantage of any such procedures or mechanisms?

Yes, every current FEC commissioner has executed a screening arrangement, and departing commissioners leaving the Commission for non-federal employment ordinarily submit the notification statement, as required.

f. Should the recusal obligations of commissioners be strengthened?

There is a diversity of viewpoints among Commissioners as to whether the recusal obligations of commissioners should be strengthened. All employees of the Executive Branch, including FEC Commissioners, are subject to both a criminal statute that requires recusal to avoid a financial conflict of interest, and a regulation that requires recusal to avoid the appearance of a loss of impartiality. Specifically, to avoid a financial conflict of interest, a commissioner (and any other employee) may not participate personally and substantially in an official capacity in any particular matter in which, to their knowledge, he or she or any person whose interests are imputed to them has a financial interest, if the particular matter will have a direct and predictable effect on that interest.¹⁵⁵

To avoid the appearance of a loss of impartiality, a commissioner (and 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 rules, 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" is a party or represents a party. Among other things, an employee has a covered relationship with a former employer or former client and may not participate in a matter in which such person is or represents a party for one year following the end of that relationship.¹⁵⁶ (For commissioners and their executive assistants, ethics pledges issued by Presidents Obama, Trump, and Biden extend the recusal period to two years from the date of the commissioner's or executive assistant's appointment – with respect to a person for whom the commissioner or executive assistant served as an employee or attorney within two years of his or her appointment.¹⁵⁷)

¹⁵⁴ 5 C.F.R. § 2635.607(b).

¹⁵⁵ 18 U.S.C. § 208(a); 5 C.F.R. § 2635.402(a).

¹⁵⁶ 5 C.F.R. § 2635.502(b)(1)(iv).

¹⁵⁷ See Exec. Order No. 13,490 (Jan. 21, 2009), 74 Fed. Reg. 4,673 (Jan. 26, 2009); Exec. Order No. 13,770 (Jan. 28, 2017), 82 Fed. Reg. 9,333 (Feb. 3, 2017), *revoked by* Exec. Order No. 13,983 (Jan. 19, 2021), 86 Fed. Reg. 6,835 (Jan. 25, 2021); and Exec. Order No. 13,989 (Jan. 20, 2021), 86 Fed. Reg. 7,029 (Jan. 25, 2021).

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 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.

Some commissioners believe these recusal rules are sufficient to ensure that commissioners and other employees fulfill their duties on behalf of the Government in a manner that both is and appears to be impartial. Other commissioners believe that further steps could be taken to implement enhanced standards that could buttress public confidence in the work of the Commission.

53. *What are the greatest challenges to the Commission’s ability to fulfill its mission and mandate?*

On July 29, 2022, the FEC submitted a report on the management challenges it faces to the Committees on Appropriations of the U.S. House of Representatives and U.S. Senate. This document was prepared as a briefing for those committees, as directed in the Explanatory Materials that accompanied the FEC’s FY 2022 appropriation. It was prepared by staff and approved by the Commissioners. It is Attachment I.