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FEDERAL ELECTION COMMISSION  
Washington, DC 20463

**AGENDA DOCUMENT NO.** 17-53-B

**AGENDA ITEM**

**For meeting of** November 16, 2017

**SUBMITTED LATE**

MEMORANDUM

TO: The Commission

FROM: Steven T. Walther *STW*  
Chairman

RE: Motion to Amend Directive 68

DATE: November 15, 2017

I intend to move, at the November 16, 2017 open meeting, that the Commission amend Directive 68 to include additional information in quarterly status of enforcement reports provided to the Commission, and to make those reports available to the public. Please see the attached motion.

Attachment

## MOTION TO AMEND DIRECTIVE 68 TO INCLUDE ADDITIONAL INFORMATION IN QUARTERLY STATUS REPORTS TO COMMISSION

I hereby move that the Commission amend Directive No. 68 – which addresses “Enforcement Procedures” – as follows:

*Section II.B shall include a new subsection 2 that states:*

For all enforcement matters for which there is a pending First General Counsel’s Report (FGCR) before the Commission, a list that includes, for each matter:

- a. the date of receipt of a complaint or referral;
- b. the date of assignment of an enforcement matter to the staff attorney;
- c. the date of OGC’s recommendations to the Commission;
- d. the number of days between the date of receipt of a complaint or referral and date of submission of the FGCR to the Commission;
- e. the number of days between date of assignment to staff and date of submission of the FGCR to the Commission;
- f. the number of days between date of receipt of a complaint or referral and Commission inaction calculated by the close of the quarter;
- g. the number of days between date of assignment to staff and Commission inaction calculated by the close of the quarter;
- h. the number of days between the date of submission of the FGCR and Commission inaction calculated by the close of the quarter;
- i. all dates that a matter was requested to be held over; and
- j. the name(s) of the requestor(s).

The enforcement matters identified in this subsection shall be listed according the date of submission of the FGCR.

*In sub-section II.B.3, formerly sub-section II.B.2, the first sentence shall be revised as follows:*

A list of all enforcement matters that have been pending for more than twelve (12) months from *the date of receipt of a complaint or referral* without a Commission vote on whether to find reason to believe, no reason to believe, or to dismiss the matter, and the date the recommendations of the Office of General Counsel circulated or are expected to circulate to the Commission.

*In sub-section II.B.3, formerly sub-section II.B.2, the second sentence shall be revised as follows:*

*This list shall also indicate the date of receipt of the complaint or referral, the number of days between the date of receipt of the complaint or referral and Commission action calculated by the close of the quarter, and the date upon which each respondent was sent a status report in accordance with Section I, above.*

*Sub-section II.B.3, formerly sub-section II.B.2, shall include the following sentence at the end of the sub-section, as follows:*

The enforcement matters identified in this subsection shall be listed according to the date of receipt of the complaint or referral.

*Current subsections II.B.3 and II.B.4 shall be re-numbered II.B.4 and II.B.5, respectively.*

*Section II.C shall include the following sentence at the end of the section, as follows:*

An appropriately redacted version of the quarterly report shall be publicly disclosed in an easily accessible manner on the Commission's website within fifteen (15) days of circulation of the unredacted report to the Commission.

<b>FEDERAL ELECTION COMMISSION</b>		
<b>MANUAL OF DIRECTIVES</b>	<b>COMMISSION DIRECTIVE:</b>	
	<b>REVOKES:</b> <u>(revises Section II.B)</u>	NO. 68
	<b>EFFECTIVE DATE:</b> <del>December 31, 2009</del> <u>November , 2017</u>	
<b>SUBJECT:</b>  <b>Enforcement Procedures</b>		

The purpose of this directive is to provide written guidelines on providing status reports to respondents and the Commission in enforcement matters, providing the Status of Enforcement to the Commission, and accelerating the processing of enforcement matters and compliance matters that have the potential of not being completed before the expiration of the statute of limitations.

**I. STATUS REPORTS TO RESPONDENTS**

A. General.

1. Before the Commission Finds Reason to Believe (“RTB”) or Otherwise Closes a Matter. The Office of General Counsel and the Office of Alternative Dispute Resolution will provide a status report to respondents and the Commission if the Commission has not voted to find reason to believe, no reason to believe, or to dismiss the matter within twelve (12) months from receipt of the complaint, referral from another government agency, referral to the Office of General Counsel or the Office of Alternative Dispute Resolution from the Reports Analysis Division or the Audit Division, or *sua sponte* submission, and at every twelve (12) month interval thereafter.
2. After the Commission Finds RTB. The Office of General Counsel and the Office of Alternative Dispute Resolution will provide respondents and the Commission with a status report if the Commission has not voted on the matter within twelve (12) months of the reason to believe finding and at every twelve (12) month interval thereafter.

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

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

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

months from a reason to believe finding. The Office of General Counsel will also circulate the status report to the Commission on an informational basis.

## II. STATUS OF ENFORCEMENT REPORTS TO THE COMMISSION

A. General. The Office of General Counsel will circulate the Status of Enforcement on a quarterly basis to the Commission as an automatic agenda item for the next regularly scheduled Executive Session. The Status of Enforcement shall be based on information that shall be made readily accessible to the Commissioners electronically.

B. Content. The Status of Enforcement shall include the following information:

1) ~~4)~~ Statistical information measuring the enforcement program's performance with respect to critical stages of the enforcement process (initial case processing, First General Counsel's Reports, pre-probable cause conciliation, post-probable cause conciliation, investigation, and case closings) and statistical information on civil penalties;

2) ~~2) For all enforcement matters for which there is a pending First General Counsel's Report ("FGCR") before the Commission, a list that includes, for each matter:~~

- ~~a. the date of receipt of a complaint or referral;~~
- ~~b. the date of assignment of an enforcement matter to the staff attorney;~~
- ~~c. the date of OGC's recommendations to the Commission;~~
- ~~d. the number of days between the date of receipt of a complaint or referral and date of submission of the FGCR to the Commission;~~
- ~~e. the number of days between date of assignment to staff and date of submission of the FGCR to the Commission;~~
- ~~f. the number of days between date of receipt of a complaint or referral and Commission inaction calculated by the close of the quarter;~~
- ~~g. the number of days between date of assignment to staff and Commission inaction calculated by the close of the quarter;~~
- ~~h. the number of days between the date of submission of the FGCR and Commission inaction calculated by the close of the quarter;~~
- ~~i. all dates that a matter was requested to be held over; and~~
- ~~j. the name(s) of the requestor(s).~~

~~The enforcement matters identified in this subsection shall be listed according the date of submission of the FGCR.~~

3) A list of all enforcement matters that have been pending for more than twelve (12) months from the date of receipt of a complaint or referral without a Commission vote on whether to find reason to believe, no reason to believe, or to dismiss the matter, and the date the recommendations of the Office of General Counsel circulated or are expected to circulate to the Commission. ~~This list~~ Status of Enforcement shall also indicate the date of receipt of the complaint or referral, the number of days between the date of receipt of the complaint or referral and Commission action calculated by the close of the quarter, and the date ~~the date~~ upon which each respondent was sent a status

report in accordance with Section I, above. The enforcement matters identified in this subsection shall be listed according to the date of receipt of the complaint or referral.

- 34) A list of all enforcement matters that are statute of limitations-sensitive, which includes all enforcement matters for which part or all of the violations will fall outside the five year statute of limitations within the next twelve (12) months, and as to each matter, the date a matter was received by OGC, the date(s) upon which violation(s) will fall outside the statute of limitations, whether the respondent has signed an agreement to toll the statute of limitations, and the Office of General Counsel's proposed plan for completing each remaining enforcement stage, including a proposed schedule and plan for bringing the matter to the Commission for a vote on probable cause at least six (6) months prior to any violation falling outside the statute of limitations.
- 45) A list of all open enforcement matters that are beyond the "reason to believe" stage (investigation, pre-probable cause conciliation, probable cause, and post-probable cause conciliation) with a brief update as to the status of each matter and a reasonable estimate as to the date upon which the matter will next circulate to the Commission.

- C. Timing. The Office of General Counsel will circulate the Status of Enforcement, including a proposed plan for each matter that is statute of limitations-sensitive, by the end of the month following the end of each quarter in the fiscal year, namely January 31, April 30, July 31, and October 31. An appropriately redacted version of the quarterly report shall be publicly disclosed in an easily accessible manner on the Commission's website within fifteen (15) days of circulation of the unredacted report to the Commission.

### **III. REPORT TO THE COMMISSION ON STATUTE OF LIMITATIONS-SENSITIVE COMPLIANCE MATTERS**

- A. General. Representatives of the Office of General Counsel, the Alternative Dispute Resolution Office, the Reports Analysis Division and the Audit Division will work cooperatively as a committee (the "Case Management Committee") to prepare and circulate to the Commission on a quarterly basis a report of all statute of limitations-sensitive compliance matters. The report shall be based on information that shall be made readily accessible to the Commissioners electronically.
- B. Content. The report of all statute of limitations-sensitive compliance matters shall include the following information:
  - 1) A list of all compliance matters that are statute of limitations-sensitive, which includes all compliance matters for which part or all of any reasonably foreseen violation that is eligible for referral to the Office of General Counsel for enforcement will fall outside the five year statute of limitations within the next twenty-four (24) months), and as to each matter, the date(s) upon which the reasonably foreseen and referable violation(s) will fall outside the statute of limitations; and

- 2) the proposed plan for completing the remaining compliance and enforcement stages, including a proposed schedule and plan for bringing the matter to the Commission for a vote on probable cause at least six (6) months prior to any reasonably foreseen violation falling outside the statute of limitations.

- C. Timing. The Office of General Counsel, the Alternative Dispute Resolution Office, the Reports Analysis Division and the Audit Division will jointly circulate the report of all statute of limitations-sensitive compliance matters, including a proposed plan for each matter that is statute of limitations-sensitive, by the end of the month following the end of each quarter in the fiscal year, namely January 31, April 30, July 31, and October 31.

#### **IV. ACCELERATED PROCESSING OF STATUTE OF LIMITATIONS-SENSITIVE ENFORCEMENT MATTERS**

- A. General. In accordance with the procedures outlined in sections II.B.3, above, the Office of General Counsel and Commission will accelerate the processing of all open enforcement matters that are statute of limitations-sensitive. For enforcement matters, “statute of limitations-sensitive” includes all matters in which part or all of the violations will fall outside the five year statute of limitations within twelve (12) months. All accelerated processing under this section must include a plan for bringing each matter to the Commission for a vote on probable cause at least six (6) months prior to any violation falling outside the statute of limitations
- B. Initial Case Processing. The Office of General Counsel will activate (assign to an Enforcement attorney) statute of limitations-sensitive matters within fifteen (15) days of the last response to the complaint or referral or within fifteen (15) days of receipt of a *sua sponte* submission.
- C. First General Counsel’s Reports. In statute of limitations-sensitive matters, the Office of General Counsel will assign 30-day deadlines to the circulation of the First General Counsel’s Report to the Commission, and the Office of General Counsel will submit the First General Counsel’s Report to the Commission’s Secretary for circulation consistent with Section II of Commission Directive 52 (Circulation Vote Procedures).

#### **V. AGREEMENTS TO TOLL THE STATUTE OF LIMITATIONS**

Any agreement to toll the statute of limitations must be in writing and must be signed either by the party entering into the agreement with the Commission or by the party’s legal representative.

The Commission approved Directive Number 68 on ~~December 17, 2009~~November \_\_\_\_\_, 2017.

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Alec Palmer  
~~Acting~~ Staff Director