

Chapter Three

The Structure of the Federal Election Commission

Section One: Overview

The structure of the Federal Election Commission, as a regulatory agency, is purposeful. When one examines the agency, one notices that its structure is clearly designed to support its primary regulatory activities of disclosure, enforcement, operation of the Presidential Election Campaign Fund, and provider of electoral information. Beyond the four activities named above, the agency's structure also contains the substructure of nearly every other bureaucratic agency. But, how is the agency structured to implement the law? And, how do the parts of the agency relate to the activities and purpose of the regulatory agency? How does the agency's structure enhance the agency, beyond just serving the agency's statutory purpose.

The organizational structure of the Federal Election Commission resembles the pyramid structure prominent in regulatory agencies: it is narrow at the top and wide at the bottom. The pyramid structure prominent in many regulatory agencies, however, is more likely to resemble the flat topped pyramids found in Central America and Mexico, then the ancient Egyptian pyramids. Egyptian pyramids would best describe governmental agencies led by a single agency head, such as a cabinet position in which the Secretary of Agriculture is ultimately responsible for all of the actions of the Department of Agriculture. The flat top associated with the pyramids of Central America and Mexico would represent agencies with multi-member Commissions in which a single head is not found. In the present case, it is the Federal Election

Commission itself, not a single individual, that is charged with final interpretation, implementation, and enforcement of the federal campaign finance law. Broadening out the hierarchical organizational structure of the agency below the level of the Commission are the various sections of the Office of the General Counsel, Office of the Staff Director, and the Office of the Inspector General, that have been deemed necessary for the carrying out of their assigned responsibilities.

Section Two: The Commission and Executive Staff

The Commission:

The Federal Election Commission statutorily is composed of six members. No more than three members of the Commission may be members of the same political party. The practical reality is that the Commission is composed of three members who are affiliated with the Republican Party and three members who are affiliated with the Democratic Party. No member of the Commission has ever been a political independent or member of a "third" political party. Furthermore, the Chair and Vice-Chair of the Commission must have different political party affiliations. Each Commissioner receives both an Executive Assistant (an "EA") and a secretary.

The full term of a member on the Commission is six years. Two seats on the Commission are up for appointment every two years. This means that two thirds of the Commission should not normally be up for appointment in any given two year time period, thus providing the Commission with stable membership. Appointments to the Commission are made by the President of the United States, with the consent of the United States Senate. When the term of a member expires, Commissioners can,

and often do, serve until a replacement is nominated by the President of the United States and receives Senate approval. Beginning on January 1, 1998, term limitations were imposed on Commissioners. Commissioners may no longer be re-appointed to a second term on the Commission. Commissioners nominated for reappointment prior to that date were free to serve another term on the Commission, even if their confirmation took place after that date.

Members of the Federal Election Commission meet twice a week. On Tuesdays, at 10:00am, the Commission meets in a closed session during which the Commission works to establish policy, discuss and vote on compliance Matters Under Review, discuss ongoing litigation and investigations, examine the agency's enforcement prioritization system, and address other matters deemed necessary. The second weekly session, held on Thursdays at 10:00am, is a public session during which testimony may be taken. The topics of the public sessions range from the discussion of issues related to Year 2000 computer problems to reviewing draft Advisory Opinions, the setting of agency priorities, and the handling of routine administrative matters, such as the approval of the minutes of past meetings. Public meetings of the Commission are both audio and video taped. The Secretary of the FEC also takes the official minutes of the meeting.

The General Counsel and the Staff Director regularly attend each meeting. In observing open session meetings of the agency, it is clear that the General Counsel plays an important role in the everyday activities of the Commission. The reason for the constant involvement of the General Counsel at Commission meetings is the nature of items under discussion. By their nature, activities related to rule-making, the issuing of Advisory Opinions, litigation and other

enforcement matters, all involve personnel from the Office of the General Counsel. In contrast, while the General Counsel appears to be an active participant in these meetings, the Staff Director does not. The Staff Director's impact appears more significant when the overall activities of the agency and "housekeeping" matters are being discussed, than when the everyday business of the Commission is being conducted.

The Chairman:

The Federal Election Commission elects a Chairman who serves for a term of one year. The position of Chairman of the Federal Election Commission is not a powerful one. Other than the ceremonial aspects involved with the position and the responsibility for presiding over Commission meetings, the position of Chairman is fairly powerless. In October of 1999, then FEC Chairman Thomas described his agency as being different from other agencies where a lot of discretion is left up to the Chairman.¹ At the FEC, the Chairman can not act alone. All actions of the Commission require the concurrence of four or more members of the Commission. The result, then Chairman Thomas said, is a "more collegial atmosphere."² The Chairman of the FEC fits fully into Kenneth Meier's description of agency leadership being fragmented within independent regulatory agencies. Meier states, "the bureau chief must build a coalition, seek resources to placate the coalition, and implement programs that please clientele, other political elites, and agency employees."³ Meier also

¹ Notes from an interview with then FEC Chairman Scott Thomas, October 29, 1999.

² Ibid.

³ Kenneth Meier, Politics and the Bureaucracy: Policymaking in the Fourth Branch of Government, (New York: Harcourt College Publishers, 2000), p. 65.

points out, however, that the result of this "plural executive" is a "procedural slowness."⁴

Commission Level Committees:

The Federal Election Commission's Commissioners have two formal ad hoc committees and one informal task force: the Finance Committee, the Regulations Committee, and a task force on mediation.

The Finance Committee

The Finance Committee consists of two members. The Chairman of the Finance Committee is the Vice Chairman of the Federal Election Commission. The other member who is asked to serve on the Finance Committee will be the next Vice Chairman of the Federal Election Commission. Having the next Vice Chairman serve on the Finance Committee assures that the next Finance Committee Chairman will understand all that is involved with that position. As a result, Commissioners typically serve for two years on the agency's Finance Committee. In addition, because of the statutory requirement that the Commission chair be rotated from one political party to another, the two members of the Finance Committee will be from different political parties. Several other individuals also participate on the Finance Committee: the General Counsel, the Staff Director, and the Director of Planning and Management. The Inspector General and members of Commissioner staffs may also attend the meetings.

The purpose of the Finance Committee is to prepare the agency's budget. The budget consists of the budget, a performance plan, a strategic plan, and justifications for the

⁴ Ibid. p. 78.

funding and spending requests. The budget process, however, does not begin at the level of the Finance Committee. The budget process usually begins when the Assistant Staff Director for Planning and Management creates a preliminary budget based on the previous year's budget. The rationale for basing the preliminary budget for the next year on the present fiscal year's budget is that a significant portion of the agency's budget is made up of staff salaries and fixed overhead. In fact, over seventy-five percent of the FEC's budget is assigned to staff salaries and related expenses. As a result, there is little room for discretionary spending within the agency. And, budgeting within the agency is generally incremental.

This draft budget is then typically sent to the Deputy Staff Director for review. Following the Deputy Staff Director's review of this preliminary budget, a memorandum is then sent out to all of the department heads within the agency for their comments. Upon receiving the comments from the various department heads, the Deputy Staff Director for Planning and Management will then refine his proposal and send the draft budget to the Staff Director. After the Staff Director receives and reviews the draft preliminary budget, the budget proposal is sent to the Finance Committee where the budget, performance plan, strategic plan, and justifications are refined. Once the Finance Committee has prepared its final budget proposal, the package is then sent to the entire Commission for a vote. Upon receiving the affirmative vote of four Commissioners, the agency's budget is sent concurrently to the United States Congress and to the Office of Management and Budget.

On average, the Finance Committee typically meets approximately every two weeks. As the time-line for budget

submissions becomes tighter, however, the committee may meet more frequently – sometimes several times in a given week.

When hearings are held at the congressional level, the Vice Chairman will generally testify on issues relating to aspects of the budgetary process or the appropriations process. All testimony that the Vice Chairman may present to the Congress, and all answers to questions that he or she may give, however, must be approved by a majority of the Commission because no single Commissioner may speak for the entire Commission.

The Regulations Committee

The second Commission level committee is the Regulations Committee. Two Commissioners serve on the Regulations Committee. The Chairman of the Federal Election Commission also serves as an *ex officio* member of the Regulations Committee. The purpose of the Regulations Committee is to suggest regulations that might be worth consideration by the Commission, as a whole. As with the Finance Committee, the two Commissioners who serve on the Regulations Committee come from different political parties. As an informal matter of procedure, each Commissioner who serves on the Regulations Committee is supposed to check with the other Commission members from their party to identify if there is support for a proposed set of regulations. When support is identified, the regulation may be brought to the full Commission for consideration. Staff that serves on the Regulations Committee generally comes the Office of the General Counsel's Policy Division's Regulations Team.

Taskforce on Mediation

Beyond the two formal Commission level committees, at least one informal taskforce exists to examine the idea of establishing a "case mediation system."⁵ This taskforce originated at the suggestion of one Commissioner who was interested in the idea of establishing a program in which low priority cases would be assigned to mediation for settlement. To date, however, the Commission has been supportive of looking at the concept, but has not approved any proposal designed to implement any type of mediation program.⁶

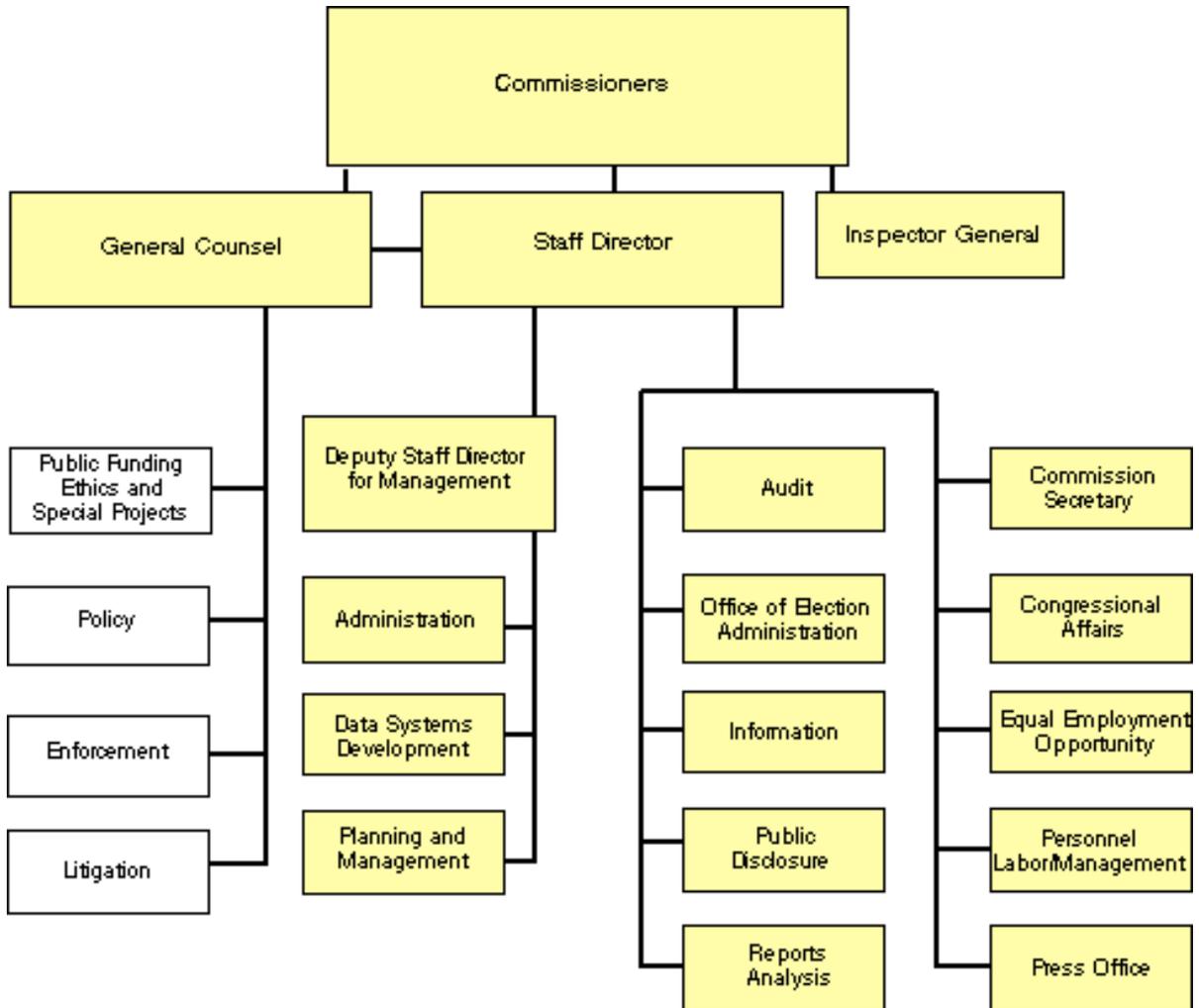
Executive Staff:

Below the level of the Commission are what are probably best described as three high-level managers. This level is composed primarily of the Federal Election Commission's General Counsel, the Staff Director, and the Inspector General assigned to the agency. Both the General Counsel and the Staff Director possess the highest level of agency authority save the Commission itself. All legal authority under the Commission level rests with the General Counsel. All administrative related decisions, subject to the approval of the Commission, are addressed by the Staff Director. And, all matters relating to waste, efficiency, ethics, and fraud, are addressed by the Office of Inspector General. Unlike the General Counsel and the Staff Director, the Inspector General is responsible for reporting findings to the Congress, not the Commission. Chart I on the next page details the organizational structure of the Federal Election Commission.

⁵ Notes from an interview with FEC Commissioner Lee Ann Elliott, October 25, 1999.

⁶ Ibid.

Chart I: Structure of the Federal Election Commission⁷



The General Counsel

The primary functions of the General Counsel include handling the investigation and enforcement functions of the regulatory agency. The General Counsel is responsible for assisting the Commission in interpreting the Federal Election Campaign Act, preparing draft advisory opinions, drafting proposed rule-making, providing the Commission with

⁷ The FEC organizational chart detailing the structure of the FEC is taken from the FEC web site at: www.fec.gov/1996/orgchart.htm

recommendations as to how to proceed on Matters Under Review (MURs), and providing the Commission with general legal advice, as required. The General Counsel also serves as the agency's ethics advisor.

The Staff Director

The Staff Director is responsible for the non-legal related aspects of the Commission's legislative charge. According to the FEC, "[t]he Staff Director oversees the Commission's public disclosure activities, outreach activities, review of reports, and the audit program, as well as the administration of the agency."⁸ The Staff Director works to build consensus within the agency. Ideas are identified by agency staff, the steps involved are defined, and then the concepts are presented to the Commission for consideration.⁹

The Inspector General

Offices of Inspector General were mandated within federal agencies by the Inspector General Act of 1978. The Office of the Inspector General is a high-level statutory position within but, for all intents and purposes, separate from the agency. The purpose of this office is to examine the agency for waste, fraud, and other problems with the intent of improving the operational economy and effectiveness of the agency.¹⁰

Section Three: The Office of the General Counsel

The Office of the General Counsel consists of four separate sections: the Enforcement Section; the Litigation

⁸ www.fec.gov/1996/offices.htm#anchor560369

⁹ Notes from an interview with FEC Staff Director James Pehrkon, November 1, 1999.

¹⁰ www.fec.gov/1996/offices.htm#anchor560369

Section; the Policy Section; and the Public Financing, Ethics, and Special Projects Section. In total, the Office of the General Counsel employs approximately 111 people. The office had a total of 66 attorneys, 20 paralegals, 4 investigators, and 21 other personnel, as of November 1999.¹¹ Each of the four sections of the Office of the General Counsel is headed by an Associate General Counsel who reports to an Assistant General Counsel who is charged with overseeing all enforcement activities.¹² The Assistant General Counsel then reports to the General Counsel. By law, the civil enforcement of federal election campaign finance law is the responsibility of the Commission, and hence the Office of General Counsel.

According to the Office of the General Counsel, "[e]nforcement is the largest single function of the OGC."¹³ As such, the Enforcement Section of the Office of the General Counsel is the backbone of the General Counsel's Office. This section investigates allegations of Matters Under Review. Attorneys assigned to this section interview witnesses, take depositions, conduct negotiations designed to lead to conciliation agreements, and the like.¹⁴ Based upon the investigative activities of this section, the Office of General Counsel makes recommendations to the Commission on each Matter Under Review (MUR). A fuller explanation of the compliance process and single allegation enforcement profiles can be found in Chapter Six of this dissertation which examines compliance matters reviewed by the FEC. It is the intent of attorneys in

¹¹ Data is from the FEC Press Office, November 1999.

¹² www.fec.gov/pdf/recruit.pdf. p. 5.

¹³ Ibid.

¹⁴ Ibid.

this section to reach conciliation agreements, thereby avoiding litigation. According to the agency, "[t]he FEC is primarily an investigative agency and settles most cases by negotiation and conciliation rather than through litigation."¹⁵ However, if attorneys from the enforcement section are unable to reach a conciliation agreement with the parties involved, then the Commission is legally authorized to enter into litigation in federal district court.

The Litigation Section of the Office of the General Counsel is responsible for all litigation related to the Federal Election Commission. The Commission initiates litigation to enforce compliance with the Federal Election Campaign Act in federal district court when conciliation efforts fail. This jurisdiction extends to all United States District Courts, the United States Courts of Appeal, and the United States Supreme Court.¹⁶

The Litigation Section of the Office of the General Counsel is divided into two parts: the District Court Litigation Team, and the Appellate Litigation Team.¹⁷ Each District Court Litigation Team is led by an Assistant General Counsel.¹⁸ The Assistant General Counsels for each section report to the Associate General Counsel for the Litigation Section.¹⁹

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Ibid.

The Policy Section of the General Counsel's Office consists of three policy teams: the Advisory Opinion Team, the Regulations Team, and the Administrative Law Team.²⁰ The Advisory Opinion Team prepares draft advisory opinions interpreting provisions of the Federal Election Campaign Act. Individuals and campaign committees can submit requests to have portions of the Act interpreted in order to assist them in complying with the provisions of the Act. Advisory Opinions are fact specific. This means that the Federal Election Commission will not address hypothetical situations in Advisory Opinions. As a part of this, the Advisory Opinion Team will draft opinions that the Commission can debate and issue during their public meetings.²¹ When individuals and campaign committees comply with the provisions of Advisory Opinions, they are generally accorded legal protections. In addition, in some instances, Advisory Opinions have led the Commission to undertake formal rule-making.

The Regulations Team is responsible for assisting the Commission with rule-making by working with the Commission level Regulations Committee. The Regulations Team drafts rules on a wide array of issues relating to the role campaign committees, corporate contributions, the role of free speech, and other aspects of the Federal Election Campaign Act, and the Presidential election campaign financing program.²²

The Administrative Law Team is the portion of the Office of General Counsel that addresses portions of the law that are not related to the Federal Election Campaign Act. Some of the

²⁰ Ibid.

²¹ Ibid.

²² Ibid.

issues that the Administrative Law Team might address are employment issues within the Agency, and the like.²³

The Public Financing, Ethics, and Special Projects (PFESP) Section of the General Counsel's Office advises the Commission on matters related to the public financing of presidential candidates. This section assists the Commission in administering the public funding for primary and general election presidential candidates, and political party conventions.²⁴ This section also investigates enforcement matters relating to the public funding of presidential candidates. Based upon these investigations, the PFESP section makes recommendations to the Commission relating to federal funding of presidential campaigns, enforcement actions against presidential candidates, and other activities.

Section Four:

The Office of the Staff Director

Similar to the General Counsel, the Staff Director is responsible for overseeing a number of widely divergent responsibilities. The following offices are placed under the auspices of the Staff Director: the Deputy Staff Director for Management, the Office of Administration, the Data Systems Development Division, the Office of Planning and Management, the Office of Election Administration, the Information Division, the Public Disclosure Division, the Report Analysis Division, the Audit Division, the Office of the Committee Secretary, the Office of Congressional Affairs, the Office for Equal Employment Opportunity, and the Personnel Labor

²³ Ibid.

²⁴ Ibid., pp. 8-9.

Management Office. What follows is a brief examination of each of these individual offices.

The Deputy Staff Director for Management is the chief aide to the Staff Director. The Deputy Staff Director is responsible for assisting the Staff Director in overseeing the operations of the agency's non-legal and non-Inspector General related functions. The Deputy Staff Director assists the Staff Director in supervising agency operations. Primary among the Deputy Staff Director's activities are management functions related to the agency's budget, administration, and technology related issues.²⁵ At present, this position is vacant.

The Office of Administration provides basic administrative, logistical, and accounting support for the agency. This office also is responsible for record management.²⁶

The Data Systems Development Division is responsible for placing all data contained in campaign finance statements into the agency's computer database system. Campaign reports, scanned by the Public Records Division, are placed on computers by the Data Systems Division. The Data Systems Development Division also codes information contained on campaign filings, such that it can be indexed on the computers and made available to the public in the Public Records Division. In addition, the Data Systems Development Division also produces publications detailing campaign finance related statistics.²⁷ By processing

²⁵ www.fec.gov/1996/offices.htm#anchor560369

²⁶ Ibid.

²⁷ Ibid.

campaign finance statements, this division serves both the disclosure and press/public information function of the agency's legislative charge.

The Office of Planning and Management is the part of the regulatory agency's bureaucratic structure that is responsible for the agency's budget. As was outlined in the section about the Commission level Finance Committee, this office drafts budget recommendations that are sent to the Commission. Included among the office's responsibilities are the division of agency allocations within the agency and monthly reports to the Commission.²⁸ Budgets for the agency are sent concurrently to both the Office of Management and Budget, and the United States Congress.

The current director of Planning and Management has assumed some of the Deputy Staff Director's responsibilities because that position is vacant. This means that the director has assumed some administrative, as well as accounting functions. The administrative functions that the director has assumed involve procurement and the obligating of monies to be spent. The accounting functions generally relate to the tracking of agency spending and funds. The director of Planning and Management also serves as the backup certification officer responsible for paying agency bills.

The Office of Election Administration primarily serves state governments and the public. This office provides information on the conducting of elections, sponsors election workshops and conferences, and answers questions related to the American electoral system.²⁹ It also serves as a public

²⁸ Ibid.

²⁹ Ibid.

information agency serving citizens and state offices of elections, thus serving the agency's legislative charge to serve as an election information clearinghouse.

The Public Information Division conducts campaign finance compliance conferences/workshops that are designed to assist individuals in better understanding and following the federal campaign finance laws of the United States. As a part of its activities, the division also develops and publishes a number of pamphlets and other materials explaining how individuals and political entities can comply with federal campaign finance law.³⁰ In all instances, however, the Public Information Division works with the agency's Commissioners to insure that the products and publications produced by the division represent the Commission. The reason being, once again, that the Commission possesses final approval over the contents and presentation of all publications produced by the division. The Public Information Division also responds to public inquiries about the federal campaign finance system. Having observed the agency, it appears that other divisions within the Federal Election Commission are readily willing to defer questions to the Public Information Division.

Another important section of the agency is the Public Records Division, seen on the agency chart as "Public Disclosure." The Public Records Division is responsible for handling all campaign finance filings that are received by the agency from campaign committees. The division consists of two sections: the Processing Section, and the Public Records Section. Each of these two sections is headed by a section

³⁰ Ibid.

chief. In total, there are fourteen people working in this division.

The Processing Section consists of the section chief and three staff. Each individual in the processing division receives cross training, such that each individual is capable of handling multiple tasks, such as splicing tape.³¹ The processing section scans campaign finance filings into a computer database.

The Public Records Section is headed by the Assistant Staff Director for Public Records. In addition, the section has a division chief, and a deputy director. Most of the individuals in the public records section are "generalists."³² Staff in the public records section handle routine requests for information from both walk in and telephone inquires. The public records section possesses a library detailing the agency's rule-making actions, Advisory Opinions issued by the agency, and compliance Matters Under Review that have been closed.³³

Data in this division is contained on several media: computers, microfilm, and paper. The facilities are readily accessible to researchers. Typically, nine microfilm readers and fifteen computer viewing terminals are available for use. These computers contain contribution databases that researchers can sort to find the information that they need. For instance, researchers can use the computers found in this division to search for the contributions made to a specific candidate, political action committee, or political party. The computer

³¹ Interview with FEC Assistant Staff Director for Public Records, Patricia Young, October 29, 1999.

³² Ibid.

³³ www.fec.gov/1996/offices.htm#anchor560369

system also allows researchers to sort contributions by time period and contribution size.

A small computer terminal in the back of this division contains an index to closed Matters Under Review. This index allows individuals to conduct searches based on the number of the Matter Under Review. Summary information can then be found detailing the names of the respondents, the names of the complainants, and the code citation(s) for any alleged violations. The date when each Matter Under Review was opened and closed can also be identified through this database. Lastly, this index lists the number of the microfilm tapes where the legal records of each closed Matter Under Review can be found. From a practical point of view, it is much easier to utilize the MUR index, than it is to use the microfilm tapes containing the actual MUR files. Microfilm tapes containing press releases, Commission meeting agendas, agency audits, and past filings by candidates for the House of Representatives and Senate, are also available.

A series of long shelves located on the wall near by, behind the MUR computer index terminal, contain numerous black binders filled with advisory opinions and testimony from past agency rule-making. The binders on these shelves are sorted and indexed by subject. In many instances, a single rule-making action by the Commission has resulted in several binders filled with written public comments and formal testimony, and a transcript of Commission's hearings.

Many of the written public comments are apparently offered by attorneys in the Washington, D.C. area who have vested interests in the issues being examined by the Commission. Other comments do, however, come from individuals around the country who hear about a topic being examined by the Commission and want to have their voices heard. Public comments come to the

Commission in several forms: e-mail messages sent from a computer, facsimiles, letters, and formal reports examining the topic of a rule-making action. Each of these comments is placed into the public record of the Commission's rule-making action, and can be found in the black binders here.

In observing the individuals assigned to the Public Records Section, I found that most of the staff was knowledgeable about the operations of the entire section. For instance, most of the individuals appeared to be knowledgeable about the MUR index, the microfilm tapes containing MUR data, and the black binders containing the Advisory Opinions and rule-making testimony. These same individuals appear to be readily accessible, and fully knowledgeable, as to the operations that can be performed on the dozen, or so, publicly accessible computer terminals found in the division.

In speaking with an individual handling the MUR index, it was clear that the agency does not receive significant public attention, save when major campaign filings are due into the agency. As a result, I found agency staff to be open and candid as to the manner in which the work of this division was conducted.

The Reports Analysis Division consists of three branches: the Authorized Committee Branch, the Non-Party/Party Branch, and the Compliance Branch. The division is headed by an Assistant Staff Director for Reports Analysis. Because one of the primary functions of the Federal Election Commission relates to disclosure, the principal function of the division is to review campaign finance disclosure statements for accuracy. This division also applies an Audit Point Assessment System to campaign finance disclosures, requests additional information, as necessary, and refers possible allegations to

the Office of the General Counsel for further compliance action. This division fully fits into the agency's focus on public disclosure and enforcement compliance.

The disclosure process begins when the agency receives statements from candidate campaign committees, political action committees, party committees, and other committees required by law to report their financial activities to the agency. Disclosure is designed to allow the tracking of contributions and expenditures by candidates, individuals, and committees. Disclosure provides access for individuals into the inner workings of political campaigns by allowing them to track the flow of money. Committees are required to file reports throughout the electoral process. Reports are required to be filed semi-annually on up to forty-eight hours before an election. Further reports are filed after an election.

Disclosure reports are first reviewed by the Reports Analysis Division (RAD) of the agency. The Reports Analysis Division examines campaign finance reports for accuracy. The division examines reports for, "mathematical accuracy; the correct submission of forms and schedules; and adherence to FECA's disclosure requirements and limitations on the amounts, sources and uses of funds."³⁴

The Reports Analysis Division uses an Audit Point Assessment System developed by the Commission to determine when enforcement action needs to be taken against campaign committees. According to a recent study completed by PriceWaterhouse Coopers, the agency utilizes a scoring system consisting of approximately twenty factors. These factors are deemed confidential, but generally relate to: the report

³⁴ PriceWaterhouse Coopers, "Technology and Performance Audit and Management Review of the Federal Election Commission," (Arlington, Virginia: January 29, 1999), p. 4-41.

preparation, omitted information and missing supporting schedules, timeliness of report submission, and transactions inconsistent with FECA prohibitions and limitations.³⁵ The standards appear to vary depending on whether the committee under examination is authorized or un-authorized.³⁶ An authorized committee is defined by the Code of Federal Regulation as, "the principal campaign committee or any other political committee authorized by a candidate under 11 CFR 102.13 to receive contributions or make expenditures on behalf of such candidate, or which has not been disavowed pursuant to 11 CFR 100.3(a)(3)."³⁷ Examples of authorized committees include congressional, senatorial, and presidential campaign committees. Unauthorized committees are defined by the same code as, any "political committee which has not been authorized in writing by a candidate to solicit or receive contributions or make expenditures on behalf of such candidate, or which has been disavowed pursuant to 11 CFR 100.3(a)(3)."³⁸ Examples of un-authorized committees include political action committees that are not connected to candidates and political party committees. The Commission uses this point system as a guide for determining when a committee is in compliance with federal campaign finance law.

If the Reports Analysis Division finds inaccuracies or suspects other problems with campaign filings, then three remedial actions can be taken. First, the agency may send the campaign committee a request for additional information (RAFI). Committees are generally given fifteen days to respond to

³⁵ Ibid., p. 4-42.

³⁶ Ibid.

³⁷ See: Federal Code of Regulations for the FEC at: 11 CFR 100.5(f)(1).

³⁸ See: Federal Code of Regulations for the FEC at: 11 CFR 100.5(f)(2).

requests for additional information. Currently, the Commission will send a maximum of two letters before proceeding to another level of compliance activity. Second, the Commission may vote to refer the internally generated campaign finance allegation to the Office of General Counsel.³⁹ Third, the Commission may choose to assign an audit point to the offending campaign committee. Eventually, when enough audit points build up, the campaign committee is referred to the Audit Division for an audit for cause.⁴⁰

During the 1996 election cycle, a total of 5,289 first letters requesting additional information were sent to authorized committees, while 3,254 second letters requesting additional information were sent.⁴¹ In all, 17,606 filing deficiencies meeting the point assignment threshold for the sending a letter requesting additional information were identified during this election cycle. Of these deficiencies, forty percent were the result of mathematical errors, twenty-three percent were caused when campaign committees failed to file a report schedule, and seventeen percent were caused by missing or inadequate information.⁴² The figures were similar for un-authorized campaign committees during the 1996 election. A total of 6,596 first letters requesting additional information were sent to un-authorized committees, while 3,024 second letters were sent. Similar to the authorized committees, forty percent of the requests related to

³⁹ PriceWaterhouse Coopers, "Technology and Performance Audit and Management Review of the Federal Election Commission," (Arlington, Virginia: January 29, 1999), p. 4-42.

⁴⁰ Ibid.

⁴¹ Ibid., p. 4-43.

⁴² Ibid.

mathematical errors, eighteen percent related to missing report schedules, and seven percent related to missing information.⁴³

The Reports Analysis Division reviews all campaign finance disclosure statements. Because the agency is statutorily given six months to audit authorized committees for cause, the division will generally begin by examining authorized committees. Within the authorized committees, the Reports Analysis Division examines those committees involved in the closest races first. The reason being that violations in the closest races are presumed to have had the most significant impact on the outcome of an election. The Reports Analysis Division then moves to review the other authorized and unauthorized committees to see if they meet the thresholds established by the Audit Point Assessment System.

The Reports Analysis Division refers internally generated allegations of campaign finance violations to the Office of the General Counsel. The subject of these referrals, examined in greater detail in the single allegation enforcement profiles contained in Chapter Six, appear to routinely relate to allegations of contribution limitation violations or excessive contributions, corporate contributions or expenditures, failure to register and file disclosure statements or statements of organization, contributions in the names of others, or the failure of respondents to file 48-hour reports.

The Audit Division is responsible for conducting "audits for cause," and presidential campaign audits. Audits for cause are initiated by the Commission when a committee is found to be substantially out of compliance or when a committee accumulates enough points under the Audit Point Assessment System. At that

⁴³ Ibid.

point, the Reports Analysis Division formally refers its findings to the Federal Election Commission's Audit Division.

The Audit Division had thirty employees during 1998.⁴⁴ Of these thirty employees, twenty six were assigned to six audit committees.⁴⁵ The division is led by an Assistant Staff Director for Audit.⁴⁶ Under the Assistant Staff Director for Audit are three Deputy Assistant Staff Directors.⁴⁷ Two Deputy Assistant Staff Directors are each assigned to oversee three audit committees.⁴⁸ The third Deputy Assistant Staff Director oversees the Presidential Election Campaign Fund audits.⁴⁹

The Audit Division conducts audits of both authorized and un-authorized committees. Audits of authorized committees must be initiated within the span of six months after the general election. Un-authorized committees are not restricted to this time span for audits. Generally, the agency's Commissioners have selected for audit those referrals from the Reports Audit Division that have received the most points under the Audit Point Assessment System.⁵⁰ To initiate an audit requires an affirmative vote of four members of the Commission. Those allegations not receiving approval from the Commission for the initiation of an audit are then closed.

The Audit Division is responsible for conducting full audits of each presidential candidate receiving federal funding and "audits for cause." Federal campaign finance law requires

⁴⁴ Ibid., p. 4-47.

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ Ibid., p. 4-49.

that the FEC, "audit all Presidential candidates and convention committees receiving federal funds to ensure that the funds are not misused and that committees have maintained proper records and filed accurate records."⁵¹

The audit process is generally the same for presidential audits and "audits for cause." An audit is begun with the sending of a letter announcing the audit to the committee being audited. The Audit Division requests a time to set up a meeting to review records and gather other data, as necessary. The respondent committee is given thirty days in which to provide the information requested by auditors. The Commission also has the authority to subpoena information that the committee fails to provide. The respondent committee may have the audit begin immediately or the committee may request a delay. Prior to holding an "entrance conference" meeting with committee officials, the Audit Division works with the Office of the General Counsel and the Reports Audit Division to identify the focus of the audit.⁵² The purpose of the entrance conference is to meet the campaign committee officials and to begin their work.

Fieldwork begins at the entrance conference. The purpose of the fieldwork is to gather the primary documents supporting disclosure filings and to perform tests on the information provided by the respondent committee.⁵³ These tests are designed to ferret out the types of concerns the Audit Division, the Office of General Counsel, and the Reports Analysis Division have identified as suspect.

⁵¹ FEC Annual Report, FY 1991, p. 7.

⁵² PriceWaterhouse Coopers, "Technology and Performance Audit and Management Review of the Federal Election Commission," (Arlington, Virginia: January 29, 1999), p. 4-49.

⁵³ *Ibid.*, p. 4-50.

Exit Conferences are held when the audit's fieldwork is finished.⁵⁴ Auditors disclose the findings of the investigation during this conference. The respondent then has ten days to respond to the audit's findings.⁵⁵ Auditors then compare the findings of the audit with the Audit Point Assessment System threshold to identify if any further action is necessary.

With presidential campaign and convention audits, interim audit reports are prepared by the Audit Division. These interim reports are then conveyed to the Office of the General Counsel for review. After being reviewed by the Office of the General Counsel, the reports are transmitted to the full Commission for review. The Commission is then free to agree or disagree with the findings, conclusions, and recommendations contained in the interim report. Interim audit reports of Presidential campaigns are considered by the Federal Election Commission at open meetings. Once the Commission has approved a final audit report, the audit is officially made public.

By law, all presidential campaigns that receive federal funds are required to be audited by the Commission. As a result, these audits appear to be highly political. According to one former or current Commissioner, the approval of an audit requires four votes. This means that approval of each item in an audit requires four votes. If a political or philosophical deadlock occurs on any part of the audit report, then no problem is found and the item drops out of the whole audit report. Technical items are most likely to be left out. According to this current or former Commissioner, it is no coincidence that the same types of things fall out of the Republican and Democrat audit reports. If the report is on a

⁵⁴ Ibid.

⁵⁵ Ibid.

third party candidate, deadlocks are not as likely to result. One of the reasons for the dropping out of certain things in the Presidential audits of Democrat and Republican candidates is that the candidates could be held personally liable for the repayment of federal matching funds. As a result, the former or current Commissioner indicated that a Commissioner will not vote in favor of collecting these funds. And, as this same individual pointed out, the presidential candidates are limited in what they can raise after an election.

It is important to note that the fact that presidential audit reports are made public does not preclude the Commission from taking enforcement action against that campaign. The Commission is free to refer matters contained in the final audit reports to the Office of the General Counsel for enforcement action. Additionally, federal law requires that presidential campaigns repay the Commission if the campaign committee has received excessive public funds. Other instances in which repayment is required include: when primary campaign committees have excessive funds on hand when their date for eligibility ends; and when campaign committees have received interest on the investment of the public funds.⁵⁶

The Press Office serves as the center of the regulatory agency's media interaction with the public and press. This office has a staff of five people each assigned to handle specific areas of the office's operations. For instance, one individual is responsible for the issuance of press releases related to closed Matters Under Review. Another individual appears to be knowledgeable as to the federal campaign finance act and court rulings. As with other divisions within the agency, the division of labor appears to have been designed to

⁵⁶ Ibid.

have some overlap in responsibilities. This allows the office to operate in an efficient manner, even if a staff member is absent.

This office issues press releases and answers media questions related to compliance activities, fundraising and expenditure information by committees, and data relating to political action committees. The Press Office also issues assorted information on agency rule-making and the issuance of Advisory Opinions by the agency. Furthermore, the Press Office, in conjunction with other portions of the agency, distributes numerous brochures explaining the campaign finance law, and the role of campaign committees, political action committees, and party committees in the electoral process that are published through the Office of Public Information.

In general, it appears that the Press Office has significant contact with other individuals within the agency. For instance, the press officers appear to have good access to Commissioners, the Staff Director, the General Counsel, and other division heads. If statistical information is needed, then it appears that the press office can readily call upon the data division. If information about a closed matter under review is required, then individuals in the office appear more than willing to call upon individuals they know in the Office of the General Counsel or to search through microfilm and binders in the Public Records Division. When a member of the public or media has a question, the press office appears readily available to assist in finding an answer.

The Press Officer for the Federal Election Commission also serves as the Commission's official Freedom of Information Officer.⁵⁷ This means that the Press Officer is responsible for responding to requests for information in accord with the

⁵⁷ FEC Annual Report, FY 1991, p. 10.

Freedom of Information Act (FOIA). Among the FOIA activities handled by the Press Officer are requests for computer tapes containing campaign finance data and the agency's Direct Access Program.⁵⁸

The Office of Congressional Affairs serves as a liaison for the needs of those in the Congress, congressional staffs, and congressional committees. This office has a staff of one – the congressional liaison. The current congressional liaison has been with the agency for a number of years and works out of an office near those of the Commissioners and the other executive staff. As a result, the congressional liaison appears to have direct contact into Commissioners or the Staff Director. This office does not lobby Congress. Rather, the office appears to present the Commission's annual recommendations to those in Congress. The liaison also attends congressional hearings in order to monitor the activities of the Congress that might impact the agency.

The Office of the Commission Secretary provides organizational support to the Commission and assists in the holding of Commission meetings. The secretary takes the official minutes of both the public and executive sessions of the Commission. The Office of the Commission Secretary is also responsible for the dissemination and collection of all tally votes items distributed to Commissioners for their consideration.

⁵⁸ Ibid.

The Office for Equal Employment Opportunity handles activities relating to the Equal Employment Opportunity Act. And, the Personnel Labor Management Office handles employee labor relations issues.

Section Five: The Office of the Inspector General

The Office of the Inspector conducts audits, investigates thefts, misuse of agency resources, employee conduct or behavior, and other matters.⁵⁹ In the past, the Office of the Inspector General has examined management of computer software within the FEC, FEC enforcement of the Freedom of Information Act, and FEC preparations for the Year 2000 computer problem. As the present Inspector General put it, it just happens that the agency conducts a large number of audits.⁶⁰ Should problems be found within the agency by the Inspector General, then the Office of the Inspector General is required to notify Congress of the problems and any suggested means of alleviating the problems.⁶¹ Twice annually, the Inspector General submits reports to the Congress outlining their findings.

The Inspector General is selected by the Commission. The present Inspector General has been with the Federal Election Commission for more than twenty-three years, more than nine as

⁵⁹ Notes from an interview with FEC Inspector General Lynne McFarland, November 3, 1999.

⁶⁰ Ibid.

⁶¹ www.fec.gov/1996/offices.htm#anchor560369

the Inspector General. While Commissioners can give the Inspector General suggestions as to what should be investigated, they can not tell the Inspector General what to do or not to do.⁶² Similarly, Congress can ask the Inspector General to investigate certain aspects of the agency, but the Congress also is not supposed to tell the Inspector General what to examine.⁶³ The reason is that the Inspector General is supposed to be independent. Because the Inspector General is independent, they report directly to the Commission and the Congress. This means that information is not routed through the Staff Director to the Commission.⁶⁴ Instead, information that the Inspector General sends to the Commission is provided directly to the Commission, thus bypassing other agency lines of communication.⁶⁵ Likewise, the Staff Director does not control the hiring or firing of the Inspector General's staff.⁶⁶ Lastly, the Inspector General is free to attend all Commission level Finance Committee meetings.⁶⁷

The Inspector General at the Federal Election Commission has a staff of three. In order to come up with an annual audit plan, the Inspector General sends out an email memorandum to all of the individuals within the agency asking for their suggestions.⁶⁸ The Inspector General then assembles an audit plan that guides the department's activities for that year. The Inspector General has full discretion to investigate all

⁶² Ibid.

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ Ibid.

⁶⁸ Ibid.

aspects of the agency, except for the Commission's decision process or program functions of the agency.⁶⁹ For instance, the Inspector General can not go ahead and audit political action committees, because that is a program function of the regulatory agency.⁷⁰

Chapter Discussion and Conclusion

This chapter has served to outline the structural features of the Federal Election Commission and its three executive offices. The agency appears to be clearly designed to carry out the agency's primary activities: disclosure, enforcement, operation of the Presidential Election Campaign Fund, and provider of electoral information. The composition of the Commission, as well as the formal and informal activities of the Commission, were examined. The position of Commission Chairman and the Commission level Finance Committee, Regulations Committee, and ad hoc Committee on Mediation, were discussed. The chapter also examined the nature of the three executive offices of the Federal Election Commission: the Office of the General Counsel, the Office of the Chief of Staff, and the Office of the Inspector General. In each instance, the various subdivisions of these offices were examined in order to provide the reader with a fuller understanding as to the nature of the activities each carries out as a part of the regulatory agency. Understanding how the parts of the regulatory agency fit together is key to understanding how the Federal Election Commission functions because each portion of the agency serves a distinct purpose in carrying out the formal and informal functions of the agency.

⁶⁹ Ibid.

⁷⁰ Ibid.

The next chapter of this dissertation examines some of the constraints that both the President and the Congress have over the activities of the Federal Election Commission. This chapter will demonstrate how Presidents and the Congress each possess sets of policy tools through which they can influence and constrain the manner in which the Federal Election Commission interprets, implements, and enforces the federal campaign finance law.