

**FEDERAL ELECTION COMMISSION**

[Notice 2023-\_\_]

AGENDA DOCUMENT NO. 23-10-B1  
AGENDA ITEM  
For the meeting of May 4, 2023  
SUBMITTED LATE**Audit Process For Committees That Do Not Receive Public Funds****AGENCY:** Federal Election Commission**ACTION:** Agency Procedure**SUMMARY:** The Federal Election Commission is revising its procedures for how it conducts audits of political committees that do not receive public funds.**FOR FURTHER INFORMATION CONTACT:** Dayna C. Brown, Assistant Staff Director, Audit Division, or Jessica Selinkoff, Assistant General Counsel, Policy Division, 1050 First Street NE, Washington, DC 20463, (202) 694-1200, (202) 694-1650, or (800) 424-9530.**SUPPLEMENTARY INFORMATION:** The Federal Election Campaign Act of 1971, as amended, (the “Act”) provides that the Federal Election Commission (the “Commission”) “may conduct audits ... of any political committee required to file a report under section 30104 [of the Act].” 52 U.S.C. 30111(b).<sup>1</sup> The Commission previously set forth its audit process for committees that do not receive public funds, in part, in Directives 69 and 70, Policy Statement Regarding a Program for Requesting Consideration of Legal Questions by the Commission, 84 FR 36602 (Jul. 19, 2019) (the “Legal Question Resolution Program”), and Procedural Rules for Audit Hearing, 74 FR 33140 (Jul. 10, 2009), as amended, 74 FR 79535 (Aug. 7, 2009) (collectively, the “Previous Procedural Documents”).

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<sup>1</sup> The Commission also has the statutory authority to conduct an audit in instances which, based upon a complaint, “the Commission determines by an affirmative vote of 4 of its members, that it has reason to believe that a person has committed, or is about to commit, a violation” of the Act. 52 U.S.C. 30109(a)(2). The procedures set forth here do not apply to audits conducted under 52 U.S.C. 30109 after finding reason to believe a violation has occurred, which are instead governed by the Act’s enforcement provisions. *See generally* 52 U.S.C. 30109; 11 CFR part 111; Guidebook for Complainants and Respondents on the FEC Enforcement Process, *available at* [https://www.fec.gov/resources/cms-content/documents/respondent\\_guide.pdf](https://www.fec.gov/resources/cms-content/documents/respondent_guide.pdf).

The audit procedures set forth herein will take effect June 1, 2024, and will apply to all audits that begin after this date. An audit begins when committees receive an audit notification;<sup>2</sup> thus, any committee that receives an audit notification on or after June 1, 2024 will be audited under these new audit procedures. Audits that began before these procedures went into effect — *i.e.*, a committee received an audit notification before June 1, 2024 — will continue to be conducted according to the processes set forth in the Previous Procedural Documents.

The Previous Procedural Documents are hereby sunset as follows. Directive 70, The Legal Question Resolution Program,<sup>3</sup> and the Procedural Rules for Audit Hearings will remain in full effect with respect to audits commenced before June 1, 2024.<sup>4</sup> At the conclusion of the last audit to be commenced before June 1, 2024, Directive 70, the Legal Question Resolution Program, and the Procedural Rules for Audit Hearings will no longer apply.

On January 9, 2023, the Commission published a notice of public hearing and request for public comments on its policies and procedures regarding the auditing of political committees that do not receive public funds.<sup>5</sup> On February 14, 2023, the Commission held a hearing.<sup>6</sup> In adopting the process set forth below, the Commission took into consideration the comments and testimony received during that process.<sup>7</sup>

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<sup>2</sup> *See infra*, Section I.C (explaining the audit notification).

<sup>3</sup> The Commission is publishing in the *Federal Register* a new version of the Legal Question Resolution Program that will not apply to questions from audited committees.

<sup>4</sup> Directive 69, which concerns, among other things, staff deadlines in audits, is being amended.

<sup>5</sup> Notice of Public Hearing and Request for Public Comments, 88 FR 1228 (Jan. 9, 2023).

<sup>6</sup> For the recording of the hearing, as well as witness testimony, see <https://www.fec.gov/updates/february-14-2023-public-hearing/>.

<sup>7</sup> For a complete list of comments, see <https://www.fec.gov/legal-resources/policy-other-guidance/>.

The goal of the new audit process is to strike the appropriate balance, within the constraints of the Act, among efficiency, procedural protections for audited committees, orderly development of the law, transparency, and the Commission’s statutory authority to seek voluntary compliance with the Act.

## **I. Revised Audit Process**

### **A. Overview**

The audit process begins with a review of a committee’s reports by the Commission’s Reports Analysis Division (“RAD”). If RAD determines that a committee’s reporting errors exceed Commission-approved compliance thresholds, RAD will refer the committee to the Commission’s Audit Division. The Audit Division will recommend that the Commission authorize audits of committees within the resource limitations of the Division. If the Commission votes to authorize an audit, Audit staff will send a notification letter to the audited committee explaining the process, informing the committee of its right to be represented by counsel, setting forth the basis upon which the Commission initiated the audit, and requesting records.

Following an Entrance Conference and audit fieldwork, Audit staff will prepare an Exit Conference Report containing proposed findings and recommended corrective action. The Exit Conference Report, which will attach OGC’s written legal analysis of each proposed finding, will be provided to the committee at the Exit Conference. The committee may submit a written response to the Exit Conference Report addressing any factual or legal issue. Audit staff and OGC will work diligently to informally resolve any issues identified in the audited committee’s response. If any issue remains unresolved, the committee may request an Audit Hearing to present arguments directly before the commissioners.

Following the response period and Audit Hearing, if any, Audit staff will prepare an Audit Division Recommendation Report, which will contain Audit’s proposed findings, incorporate OGC’s legal analysis of each proposed finding, document informal efforts to resolve issues raised by the audited committee, and note any corrective action the committee has taken since the exit conference. Audit staff will also prepare a proposed Final Audit Report of the Commission as an attachment. The Commission will vote on the proposed audit findings and approve a Final Audit Report of the Commission. Following the conclusion of the audit, the Commission will publish the audit documents on the Commission’s website, as outlined in Section III below. Commission-approved audit findings may be referred to the Commission’s Alternative Dispute Resolution Office (“ADRO”), Administrative Fine Program (“AF”) or OGC pursuant to Commission-approved thresholds.

#### **B. RAD Audit Referral**

Pursuant to the Act, the Commission “shall perform an internal review of reports filed by select committees to determine if the reports filed by a particular committee meet the threshold requirements for substantial compliance with the Act. Such thresholds for compliance shall be established by the Commission.”<sup>8</sup> 52 U.S.C. 30111(b). RAD issues Requests for Additional Information (“RFAs”) to committees based on these Commission-approved thresholds for compliance when additional clarification is needed or a potential error, omission, or possible prohibited activity is identified. A committee’s failure to respond, and inadequate or late responses to RFAs, may result in a committee accruing one or more audit points. When a committee accumulates audit points that meet Commission-established thresholds for an election

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<sup>8</sup> The Commission publishes criteria for substantial compliance on its website, via redacted versions of the RAD Review and Referral Procedures (“RAD Procedures”). See FEC, Documents on enforcement and compliance practices, Reports Analysis Division documents, <https://www.fec.gov/legal-resources/enforcement/procedural-materials/>.

cycle, RAD will refer the committee to the Audit Division for an audit (“RAD Audit Referral”), consistent with the Commission-approved RAD Procedures. Audit staff review the RAD Audit Referrals and submit a request to the Commission to authorize an audit of committees meeting the thresholds subject to the Audit Division’s resource limitations. Audits must be authorized by an affirmative vote of four or more commissioners. The Act provides that “audit[s] shall be commenced within 30 days of such vote, except that any audit of an authorized committee of a candidate . . . shall be commenced within 6 months of the election for which such committee is authorized.” *Id.*

### **C. Notification to the Audited Committee**

The audit process begins with a notification letter to the committee that the Commission has authorized an audit of the committee (“Notification”). The Notification sets forth the basis upon which the Commission initiated the audit, requests records, informs the committee of its right to be represented by counsel, directs the committee to appropriate Commission resources, and advises the committee that any records and/or correspondence the committee provides to the Commission are subject to the Commission’s disclosure policies, set forth below in Section III, and may also be shared with other law enforcement agencies.

The initial request for records will be relevant to Audit’s gathering of background information about the committee (such as its organization and compliance contacts), initial review of the committee’s disclosure reports for mathematical and other errors, reconciliation of bank records and committee databases to reported activity to ensure activity has been reported accurately, reconciliation of committee databases to bank records, and determination of a testing plan based on the noncompliance identified in the RAD Audit Referral. The initial request for records may include the following: bank statements, committee reconciliations, documentation

for all accounts (including the federal and Levin account, if applicable), receipt and disbursement databases, credit card merchant statements, invoices, canceled checks, committee credit card records, contributor check copies, communications soliciting and receiving contributions, signed contracts, payroll journals, deposit batches, debit and credit memos, source documentation for contributions, and loan/line of credit information.<sup>9</sup>

Committees are expected to provide all requested records in an electronic format that can be accessed and read by Audit staff, except that committees may submit paper records to the extent the committee maintained the records in paper format and it is impractical to convert the records to an electronic format.

The committee has 30 calendar days from the date of the Notification to provide the records requested in the Notification.<sup>10</sup> Audit staff will grant a 15-calendar day extension upon the written request of the committee, for a total of 45 days. Extensions sought for longer than 15 calendar days may be granted by Audit staff subject to the committee agreeing, in writing, to toll the applicable statute of limitations for the duration of the extension granted. Audit staff will attempt, for a period of no more than 30 calendar days, to resolve informally with the committee any disputes over the production of records as early as possible in the process.

If any disputes over records requests remain upon the expiration of the 30-calendar day informal resolution period, Audit staff may request that OGC draft subpoenas, requests for written answers, or other compulsory process for Commission approval. Audit staff will make such request by memorandum within 5 days of the expiration of the informal resolution period.

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<sup>9</sup> The list of records is not exhaustive.

<sup>10</sup> For this and all deadlines discussed herein, if the deadline falls on a weekend or legal holiday, as defined at 11 CFR 111.2, the deadline will be the next business day.

Within 10 calendar days of Audit staff's request, OGC shall circulate to the Commission a recommendation memorandum, attaching Audit's memorandum to OGC, all communications with the audited committee relevant to the records dispute, and drafts of the compulsory process documents OGC requests that the Commission authorize, on a 48-hour no objection basis. If any commissioner objects, the Commission shall consider the recommendation memorandum in the next executive session. If a committee does not comply with approved compulsory process, the Commission shall consider any recommendation to initiate civil enforcement of such compulsory process on a 48-hour no objection basis. If any commissioner objects, the Commission shall consider the request for civil enforcement of compulsory process in the next executive session.

#### **D. Entrance Conference and Fieldwork**

Within 60 days of the date by which the committee provides Audit staff with requested documents, an Entrance Conference shall be held between representatives of Audit, RAD, OGC, and the committee. At the Entrance Conference, Audit staff will explain the Commission's audit process. Additional meetings between Commission staff and committee personnel may be held during fieldwork to discuss possible audit findings and to resolve issues arising during the audit.

If, during fieldwork, Audit staff discover, in the normal course of their review, evidence suggesting additional instances of material non-compliance, Audit staff will circulate a request to approve an expanded audit scope to the Commission on a 48-hour no objection basis. The request will include a brief summary of the evidence and the relevant Commission-approved compliance thresholds. If any commissioner objects, the Commission shall consider the request in executive session. If the request is approved by an affirmative vote of four or more commissioners, Audit staff shall send the committee a Supplemental Notification that sets forth

the expanded scope of the audit and basis therefore, and a supplemental request for records commensurate with the expanded scope.

In the event of a Supplemental Notification, the committee must provide the requested records, in the format described above, within 30 calendar days. The committee may request a 15-calendar day extension to provide the additional records, for a total of 45 calendar days. Extensions sought for longer than 15 calendar days may be granted by Audit staff subject to the committee agreeing, in writing, to toll the applicable statute of limitations for the duration of the extension granted. Audit staff shall attempt to informally resolve with the committee any disputes over supplemental records requests in the same manner as set forth above. If the committee has not provided the additional records requested within 45 calendar days of the Supplemental Notification, Audit staff may request that OGC draft subpoenas, requests for written answers, or other compulsory process for Commission approval, pursuant to the process described above.

#### **E. Exit Conference & Response**

At the conclusion of fieldwork, Audit staff will assess whether the audit has uncovered apparent findings of noncompliance.

For audits in which Audit staff preliminarily identify at least one finding, Audit staff will provide OGC a preliminary Exit Conference Report, setting forth Audit's preliminary findings for legal review. OGC shall provide Audit its legal analysis of the preliminary findings, in writing, which shall be incorporated, with redactions as appropriate (but to the least extent possible), into the Exit Conference Report as an attachment. Thereafter, Audit staff, OGC, RAD, and the committee will meet for an Exit Conference. During this meeting, the committee will



receive the Exit Conference Report, setting forth Audit’s preliminary findings and recommended corrective actions, if any.

Absent a dispute about any proposed finding or recommended corrective action, committees are encouraged to take the recommended corrective action promptly, and to the extent they do, the Commission may take those actions into account in any subsequent OGC enforcement action, including reducing the civil penalty if the findings are referred for enforcement. To receive these benefits, the committee must take the recommended corrective action within 30 calendar days of receipt of the Exit Conference Report, or within 30 calendar days following the resolution of a dispute over a recommended corrective action, whichever occurs later.

Within 30 calendar days of the Exit Conference, the committee may file a response to the Exit Conference Report (“Response”), addressing any factual or legal issues, including any recommended corrective action. The committee may request a 15-calendar day extension to respond to the Exit Conference Report, for a total of 45 calendar days. Extensions sought for longer than 15 calendar days may be granted by Audit staff subject to the committee agreeing, in writing, to toll the applicable statute of limitations for the duration of the extension granted. If the committee’s Response disputes any factual finding, question of law, or recommended corrective action set forth in the Exit Conference Report, Audit staff, in consultation with OGC for disputes over questions of law, shall attempt to resolve the issue informally with the committee for a period of no more than 30 calendar days. If any issue of fact, law, or recommended corrective action remains unresolved at the end of the informal resolution period, the committee may request an Audit Hearing as described further below.

For audits in which Audit staff, in accordance with Commission-approved thresholds, determine (1) at the conclusion of fieldwork, or (2) after receipt of the Exit Conference Report Response, that the committee is in substantial compliance with the Act and there are no proposed findings, Audit staff will circulate to the Commission an Audit Division Recommendation Report stating that the committee is in substantial compliance with the Act and attach a proposed Final Audit Report of the Commission on a 72-hour no-objection basis no later than 15 calendar days from the Exit Conference or after Audit staff determines that the committee is in substantial compliance, whichever occurs earlier. If a commissioner objects, the Audit Division Recommendation Report shall be considered at the next open meeting. After the Commission has approved the Final Audit Report of the Commission by the affirmative vote of four or more commissioners, Audit staff will publish the file pursuant to the process described in Section III below, but will include on the public record only the Audit Division Recommendation Report, Final Audit Report of the Commission, the Exit Conference Report (if applicable), Response (if applicable), and the Vote Certification for the Final Audit Report of the Commission.

#### **F. Audit Hearing**

The Commission is continuing to provide audited committees with the opportunity to address the Commission directly before the Commission considers adopting any finding that the committee has not complied with the Act or Commission regulations.

Committees may, within 10 calendar days of the conclusion of the informal resolution period following the Exit Conference Report Response, submit a written request to the Commission Secretary for an Audit Hearing. The request should be sent to [secretary@fec.gov](mailto:secretary@fec.gov). The Commission Secretary's Office shall notify commissioners, Audit staff, and OGC of any such request within five calendar days of receipt. All timely requests for an Audit Hearing shall

be granted, and the Audit Hearing will be scheduled as soon as practicable, but no later than 60 calendar days following receipt of the request. Late requests for an Audit Hearing will not be accepted absent good cause to be determined by the affirmative votes of four or more commissioners, and unless the committee agrees to toll the applicable statute of limitations. Audit Hearings are voluntary, and the Commission will not draw an adverse inference based on the committee's request for, or lack of request for, an Audit Hearing.

Any request for an Audit Hearing shall specify what issue(s) the committee expects to address and should include citations to any authorities (including prior Commission actions) on which the committee is relying or intends to rely at the Audit Hearing. The committee may incorporate by specific reference any information or arguments set forth in its Response to the Exit Conference Report. Audit staff will provide to the Commission prior to the Audit Hearing the committee's request for an Audit Hearing, the Exit Conference Report and attached OGC legal analysis, the Response, and Audit and OGC's analysis of the Response. If the committee discovers new information after submission of their request for an Audit Hearing, it should provide the new information to Audit staff as soon as possible, prior to the Audit Hearing. Audit staff will, in turn, notify the Commission. If the committee submits documents within 48 hours of the Audit Hearing, the Commission may ask the committee to toll the applicable statute of limitations so that it may consider such late-submitted documents.

The purpose of the Audit Hearing is to provide a committee undergoing an audit with an opportunity to present its arguments directly to the commissioners when the Audit Division proposes a finding that the committee has not complied with the Act or Commission regulations, but before the Commission adopts a Final Audit Report of the Commission containing any findings of non-compliance. A committee may be represented by counsel, at the committee's

own expense, or may appear *pro se* at the hearing. A committee (or its counsel) will have the opportunity to present arguments. Commissioners will have the opportunity to pose questions to the audited committee or their counsel, if represented. At the Audit Hearing, absent prior notice to the Audit Division and for good cause shown, committees may raise only issues that were identified in their Response to the Exit Conference Report or request for an Audit Hearing. Similarly, absent good cause, committees may not introduce any new documents at the Audit Hearing that were not previously provided to Audit staff at least 48 hours prior to the Audit Hearing. Good cause will be decided by the Commission at its sole discretion. If the Commission determines that there is good cause to allow the committee to raise additional issues or to introduce new documents, the committee may be asked to agree to toll the applicable statute of limitations to allow time for the Commission and Audit to consider the new information or issues.

The Commission will conduct the Audit Hearing in an executive session and will have a transcript made of the hearing. The transcript will become part of the record of that audit and may be relied upon for Commission determinations. Committees may be bound by any representations made by the committee or its counsel at the Audit Hearing. The Commission will make the transcript available to the committee for inspection as soon as is practical after the hearing. A committee may purchase copies of its Audit Hearing transcript from the court reporter.

Committees should notify the Commission Secretary at least one week prior to the scheduled date of the Audit Hearing if they intend to use charts, handouts, or audio-visual aids during their presentation to the Commission, to allow the Commission time to coordinate the handling of these arrangements.

The Commission will determine the format and time allotted for each hearing at its discretion. Among the non-exclusive factors that the Commission may consider are agency time constraints and the complexity of the issues to be raised. The Commission will determine the amount of time allocated for each portion of the hearing; the time limit may vary between Audit Hearings. The Commission anticipates that most Audit Hearings will begin with a brief opening statement by the committee or its counsel. Thereafter, commissioners will have the opportunity to pose questions to the audited committee, Audit staff and OGC representatives, as necessary, to clarify any issue of fact or question of law. Audit Hearings will normally conclude with closing remarks from the committee or its counsel. Third-party witnesses may not be called to testify at the Audit Hearing. However, any commissioner may invite the committee to submit supplementary information or briefing after the Audit Hearing. The Commission discourages voluminous submissions. Supplementary information shall be submitted no more than 10 calendar days after the Audit Hearing unless the request for information imposes a different deadline. Requests to supplement the record may be made by the audited committee within 10 calendar days of the Audit Hearing, but no supplemental information will be accepted absent Commission approval of such a request by four or more affirmative votes. Materials requested by the Commission and materials considered by the Commission in making its determination may be made part of the public record.

**G. Audit Division Recommendation Report and Proposed Final Audit Report of the Commission**

No later than 60 calendar days after the Exit Conference Report Response deadline, the expiration of the 30 calendar day period for informal resolution of disputes, the Audit Hearing, or the expiration of the committee's opportunity to request an Audit Hearing, whichever occurs

later, Audit staff will circulate to the Commission an Audit Division Recommendation Report. The Audit Division Recommendation Report is a consolidated and updated (to the extent necessary) presentation of Audit's proposed findings and OGC's legal analysis, prepared for Commission consideration prior to voting on any recommended findings. Specifically, the Audit Division Recommendation Report will include, for each proposed finding, Audit staff's factual findings, OGC's legal analysis, and whether the committee implemented Audit's recommended corrective actions. The Audit Division Recommendation Report will also include, as an attachment, a proposed Final Audit Report of the Commission. The proposed Final Audit Report of the Commission shall contain any proposed findings and legal analysis that Audit staff recommend that the Commission adopt and shall include, as attachments, any non-financial materials relevant to the Commission's decision and not otherwise incorporated into the proposed Final Audit Report (such as copies of materials produced by the committee).<sup>11</sup> The Audit Division Recommendation Report and proposed Final Audit Report of the Commission will be circulated to the Commission for a vote on a one-week tally. If any commissioner objects during the tally vote, the Audit Division Recommendation Report shall be placed on the Commission's next open session agenda.

## **II. Final Audit Report of the Commission**

The Final Audit Report of the Commission will include all findings receiving four or more affirmative votes of the commissioners. If no findings are approved, the Final Audit Report of the Commission shall so state.

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<sup>11</sup> As used here and in Section III, below, "non-financial materials" include, but are not limited to, public communications described in 11 CFR 100.26 and solicitations for contributions. "Financial materials" include, but are not limited to, bank records, committee databases and spreadsheets, cancelled checks, loan documentation, credit card merchant statements, invoices, contributor check copies, credit card receipts, signed contracts, payroll journals, and deposit batches.

Any proposed audit finding that is rejected by four or more votes will not be included in the Final Audit Report of the Commission. Any proposed audit finding the disposition of which does not receive four or more votes will be included in the Final Audit Report of the Commission under the heading “Issues Not Agreed Upon by a Majority of the Commission.” Any commissioner may issue a statement describing the reasons for their vote on any recommendation made by the Audit staff. Any such statement of reasons shall be made part of the file.

### **III. Publication of the Audit File**

Within 30 calendar days of the conclusion of the audit by adoption of a Final Audit Report of the Commission, the Commission will publish the audit file on its website. The Commission will disclose the following audit materials as a matter of regular practice, subject to redactions, as necessary, for confidentiality under 52 U.S.C. 30109 and applicable privileges: 1) the Exit Conference Report and accompanying OGC legal analysis, 2) the Audit Division Recommendation Report, 3) memoranda requesting compulsory process, 4) the Final Audit Report of the Commission, 5) committee responses, including attached declarations and affidavits but not including any financial materials, 6) the committee request for an Audit Hearing, 7) the transcript of the Audit Hearing, 8) Vote Certifications, 9) Statements of any commissioners, and 10) any other non-financial materials and documents upon which commissioners relied.

### **IV. Potential Enforcement**

Within 30 calendar days of the adoption of the Final Audit Report of the Commission, Audit staff will assess whether any Commission-approved audit findings meet Commission approved thresholds for referral to one of the Commission’s enforcement processes in OGC,

ADRO, or AF. Such referrals are considered “information ascertained in the ordinary course of the Commission’s supervisory responsibilities.” 52 U.S.C. 30109(a)(2). To the extent the committee took the recommended corrective action as set forth in Section I.E., the Commission may reduce the civil penalty in an OGC enforcement action. To receive this benefit, the committee must have taken the recommended corrective action within 30 calendar days of receipt of the Exit Conference Report, or within 30 calendar days following the resolution of a dispute over a recommended corrective action, whichever occurs later.

Dated: \_\_\_\_\_

On behalf of the Commission,

**Dara Lindenbaum,**

*Chair,*

*Federal Election Commission.*

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