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FEDERAL ELECTION COMMISSION
1050 FIRST STREET, N.E.
WASHINGTON, D.C. 20463

AGENDA DOCUMENT NO. 24-10-A
AGENDA ITEM
For the meeting of March 14, 2024

TO: The Commission
The Office of the Commission Secretary

FROM: Shana M. Broussard *SMB*
Commissioner

Allen J. Dickerson *AJD*
Commissioner

DATE: March 7, 2024

RE: Statement of Policy Regarding Commission Action in Matters at the
Initial Stage in the Enforcement Process

The Federal Election Commission (“Commission” or “FEC”) is issuing a Policy Statement to explain generally the ways by which the Commission intends to address Matters Under Review (“Matters” or “MURs”) at the initial stage of enforcement proceedings. This Policy Statement supersedes the Commission’s prior Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 FR 12545 (Mar. 16, 2007). Under this Statement of Policy, the Commission generally will either dismiss a Matter or find “reason to believe” concerning an alleged violation.

We ask that the Chairman place this matter on the Commission’s agenda for the Open Meeting of March 14, 2024.

1 **FEDERAL ELECTION COMMISSION**

2 **11 CFR Part 111**

3 **[Notice 2024-XX]**

4 **Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the**
5 **Enforcement Process**

6
7 **AGENCY:** Federal Election Commission.

8 **ACTION:** Statement of Policy.

9 **SUMMARY:** The Federal Election Commission (“Commission” or “FEC”) is issuing a Policy
10 Statement to explain generally the ways by which the Commission intends to address Matters
11 Under Review (“Matters” or “MURs”) at the initial stage of enforcement proceedings. This
12 Policy Statement supersedes the Commission’s prior Statement of Policy Regarding Commission
13 Action in Matters at the Initial Stage in the Enforcement Process, 72 FR 12545 (Mar. 16, 2007).
14 Under this Statement of Policy, the Commission generally will either dismiss a Matter or find
15 “reason to believe” concerning an alleged violation.

16 **DATES:** The effective date of this Statement of Policy is [INSERT DATE 30 DAYS AFTER
17 PUBLICATION IN THE *FEDERAL REGISTER*].

18 **FOR FURTHER INFORMATION CONTACT:** Aaron Rabinowitz, Assistant General
19 Counsel, Enforcement Division, 1050 First Street NE, Washington, DC 20463, (202) 694-1650
20 or (800) 424-9530.

21 **SUPPLEMENTARY INFORMATION:** This Statement of Policy supersedes the
22 Commission’s prior Statement of Policy Regarding Commission Action in Matters at the Initial
23 Stage of Enforcement. 72 FR 12545 (Mar. 16, 2007) (“Initial Stage Policy”).

1 The Federal Election Campaign Act of 1971, as amended, 52 U.S.C.30101-30145.
2 (“FECA” or “Act”), vests the Commission with “exclusive jurisdiction with respect to civil
3 enforcement” of the Act and Chapters 95 and 96 of Title 26. 52 U.S.C. 30107(e). Enforcement
4 Matters come to the Commission through complaints from the public; information ascertained in
5 the ordinary course of the Commission’s supervisory responsibilities, including referrals from
6 the Commission’s Reports Analysis and Audit Divisions; referrals from other government
7 agencies; and self-reported submissions.

8 FECA provides that “upon receiving a complaint” or upon the basis of information
9 ascertained in the course of carrying out its supervisory responsibilities, the Commission “shall
10 make an investigation of such alleged violation” of the Act where the Commission, with the vote
11 of four members, determines that there is “reason to believe that a person has committed, or is
12 about to commit” a violation of the Act. 52 U.S.C. 30109(a)(2); *see also* 11 CFR 111.10(f).
13 “Reason to believe” findings indicate only that the Commission found sufficient legal
14 justification to open an investigation to determine whether a violation of the Act has occurred.

15 The Act also provides that the Commission may “vote to dismiss” a complaint. 52 U.S.C.
16 30109(a)(1)-(2), (8). At the initial stage of the enforcement process, voting to find reason to
17 believe, or to dismiss, are the only actions contemplated by FECA. The Commission, however,
18 in both public guidance and agency practice, has adopted at least seven possible options by
19 which the Commission has resolved Matters: it may find reason to believe, find no reason to
20 believe, dismiss the allegation, dismiss pursuant to prosecutorial discretion, dismiss with
21 admonishment, dismiss with the issuance of a cautionary letter, or simply close the file without
22 further action. *See, e.g.*, Initial Stage Policy at 12545-12546. Although these differences were
23 initiated with the intent of making the Commission’s actions more understandable to the public,

1 they have instead fostered confusion and imposed unnecessary administrative costs on the
2 Commission’s work.

3 Accordingly, the Commission is issuing this policy to apprise complainants, respondents,
4 and the public of its decision to simplify voting options at the initial stage of the enforcement
5 process. Generally speaking, at the initial stage in the enforcement process, the Commission will
6 take one of the following actions with respect to a MUR: (1) find “reason to believe” or (2)
7 dismiss.

8 **A. “Reason To Believe”**

9 The Act requires that the Commission find “reason to believe that a person has
10 committed, or is about to commit, a violation” of the Act as a predicate to opening an
11 investigation into the alleged violation. 52 U.S.C. 30109(a)(2). The Commission will find
12 “reason to believe” where the available evidence in the Matter is at least sufficient to warrant
13 conducting an investigation, and where the seriousness of the alleged violation warrants either
14 further investigation or immediate conciliation. A “reason to believe” finding will always be
15 followed by either an investigation or pre-probable cause conciliation.

16 For example:

- 17 • A “reason to believe” finding followed by an investigation would be appropriate
18 when a complaint credibly alleges that a significant violation may have occurred, but
19 further investigation is required to determine whether a violation in fact occurred and,
20 if so, its exact scope.
- 21 • A “reason to believe” finding followed by conciliation would be appropriate when the
22 Commission is certain that a violation has occurred, and the seriousness of the
23 violation warrants conciliation.

1 A “reason to believe” finding by itself does not establish that the law has been violated.
2 When the Commission later accepts a conciliation agreement with a respondent, the conciliation
3 agreement speaks to the Commission’s ultimate conclusions. When the Commission does not
4 enter into a conciliation agreement with a respondent, and does not file suit, a Statement of
5 Reasons, a Factual and Legal Analysis, or a General Counsel’s Report may provide further
6 explanation of the Commission’s conclusions.

7 **B. “Vote to Dismiss”**

8 The Act also provides that the Commission may “vote to dismiss” a MUR, either before
9 or after respondents are notified. 52 U.S.C. 30109(a)(1).

10 The Commission’s rationale for voting to dismiss may vary from case to case. It may be
11 exercising its prosecutorial discretion under *Heckler v. Chaney*, 470 U.S. 821 (1985) to dismiss
12 Matters that do not merit the additional expenditure of Commission resources. Alternatively, the
13 Commission may dismiss because the complaint, any response filed by the respondent, and other
14 available information, when taken together, fail to give rise to a reasonable inference that a
15 violation has occurred.

16 Examples where a dismissal would be appropriate include, but are not limited to, situations
17 where:

- 18 • A violation has been alleged, but the respondent’s response or other evidence
19 convincingly demonstrates that no violation has occurred;
- 20 • A complaint alleges a violation that is either not credible or is so vague that an
21 investigation would be effectively impossible;
- 22 • A complaint fails to describe a violation of the Act;

- 1 • The seriousness of the alleged conduct is not sufficient to justify the likely cost and
2 difficulty of an investigation to determine whether a violation in fact occurred;
- 3 • The available information is sufficient to support a “reason to believe” finding, but
4 the violation is minor;
- 5 • A respondent admits to a violation, but the amount of the violation is not sufficient to
6 warrant any monetary penalty; or
- 7 • A complaint convincingly alleges a violation, but the significance of the violation is
8 not sufficient to warrant further pursuit by the Commission.

9 When the Commission votes to dismiss, a Statement of Reasons, a Factual and Legal
10 Analysis, or a General Counsel’s Report may provide further explanation of the Commission’s
11 conclusions.

12 **C. Conclusion**

13 This policy enunciates and describes the Commission’s standards for actions at the point
14 of determining whether to open an investigation or to enter into conciliation with respondents
15 prior to a finding of probable cause to believe. The policy does not confer any rights on any
16 person and does not in any way limit the right of the Commission to evaluate every case
17 individually on its own facts and circumstances.

18 This notice represents a general statement of policy announcing the general course of
19 action that the Commission intends to follow. This policy statement does not constitute an
20 agency regulation requiring notice of proposed rulemaking, opportunities for public
21 participation, prior publication, and delay effective under 5 U.S.C. 553 of the Administrative
22 Procedures Act (“APA”). As such, it does not bind the Commission or any member of the

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1 general public. The provisions of the Regulatory Flexibility Act, 5 U.S.C. 605(b), which apply
2 when notice and comment are required by the APA or another statute, are not applicable.

3

4 Dated: _____

5 On behalf of the Commission,

6 **Sean J. Cooksey,**

7

8 *Chairman,*

9

10 *Federal Election Commission.*