



11 CFR Part 111

[Notice 2024-08]

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

AGENCY: Federal Election Commission.

ACTION: Statement of Policy.

SUMMARY: 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, published on 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.

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

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

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

The Federal Election Campaign Act of 1971, as amended, 52 U.S.C. 30101-30145. (“FECA” or “Act”), vests the Commission with “exclusive jurisdiction with respect to civil enforcement” of the Act and 26 U.S.C. chapters 95 and 96. 52 U.S.C. 30107(e). Enforcement Matters come to the Commission through complaints from the public; information ascertained in the ordinary course of the Commission’s supervisory responsibilities, including referrals from

the Commission's Reports Analysis and Audit Divisions; referrals from other government agencies; and self-reported submissions.

FECA provides that "upon receiving a complaint" or upon the basis of information ascertained in the course of carrying out its supervisory responsibilities, the Commission "shall make an investigation of such alleged violation" of the Act where the Commission, with the vote of four members, determines that there is "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); *see also* 11 CFR 111.10(f).

"Reason to believe" findings indicate only that the Commission found sufficient legal justification to open an investigation to determine whether a violation of the Act has occurred.

The Act also provides that the Commission may "vote to dismiss" a complaint. 52 U.S.C. 30109(a)(1)-(2), (8). At the initial stage of the enforcement process, voting to find reason to believe, or to dismiss, are the only actions contemplated by FECA. The Commission, however, in both public guidance and agency practice, has adopted at least seven possible options by which the Commission has resolved Matters: it may find reason to believe, find no reason to believe, dismiss the allegation, dismiss pursuant to prosecutorial discretion, dismiss with admonishment, dismiss with the issuance of a cautionary letter, or simply close the file without further action. *See, e.g.*, Initial Stage Policy at 12545-12546. Although these differences were initiated with the intent of making the Commission's actions more understandable to the public, they have instead fostered confusion and imposed unnecessary administrative costs on the Commission's work.

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

A. "Reason To Believe"

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

For example:

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

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

B. “Vote to Dismiss”

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

The Commission’s rationale for voting to dismiss may vary from case to case. It may be exercising its prosecutorial discretion under *Heckler v. Chaney*, 470 U.S. 821 (1985) to dismiss

Matters that do not merit the additional expenditure of Commission resources. Alternatively, the Commission may dismiss because the complaint, any response filed by the respondent, and other available information, when taken together, fail to give rise to a reasonable inference that a violation has occurred.

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

- A violation has been alleged, but the respondent's response or other evidence convincingly demonstrates that no violation has occurred;
- A complaint alleges a violation that is either not credible or is so vague that an investigation would be effectively impossible;
- A complaint fails to describe a violation of the Act;
- The seriousness of the alleged conduct is not sufficient to justify the likely cost and difficulty of an investigation to determine whether a violation in fact occurred;
- The available information is sufficient to support a "reason to believe" finding, but the violation is minor;
- A respondent admits to a violation, but the amount of the violation is not sufficient to warrant any monetary penalty; or
- A complaint convincingly alleges a violation, but the significance of the violation is not sufficient to warrant further pursuit by the Commission.

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

C. Conclusion

This policy enunciates and describes the Commission's standards for actions at the point of determining whether to open an investigation or to enter into conciliation with respondents prior to a finding of probable cause to believe. The policy does not confer any rights on any

person and does not in any way limit the right of the Commission to evaluate every case individually on its own facts and circumstances.

This notice represents a general statement of policy announcing the general course of action that the Commission intends to follow. This policy statement does not constitute an agency regulation requiring notice of proposed rulemaking, opportunities for public participation, prior publication, and delay effective under 5 U.S.C. 553 of the Administrative Procedures Act (“APA”). As such, it does not bind the Commission or any member of the general public. The provisions of the Regulatory Flexibility Act, 5 U.S.C. 605(b), which apply when notice and comment are required by the APA or another statute, are not applicable.

Dated: March 14, 2024

On behalf of the Commission,

Sean J. Cooksey,

Chairman,

Federal Election Commission.

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