regulations on the basis of information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities, or on the basis of a referral from an agency of the United States or any State. If the Commission determines by an affirmative vote of four members that it has ''reason to believe'' that a respondent violated the Act or Commission regulations, the respondent must be notified by letter of the Commission's finding(s). 11 CFR 111.9(a).[6] The Office of General Counsel will also provide the respondent with a Factual and Legal Analysis, which will set forth the bases for the Commission's finding of reason to believe.

After the Commission makes a ''reason to believe'' finding, an investigation is conducted by the Office of General Counsel., in which the Commission may undertake field investigations, audits, and other methods of information-gathering. 11 CFR 111.10. Additionally, the Commission may issue subpoenas to order any person to submit sworn written answers to written questions, to provide documents, or to appear for a deposition. 11 CFR 111.11–111.12. Any person who is subpoenaed may motion the Commission for it to be quashed or modified. 11 CFR 111.15.

Following a ''reason to believe'' finding, the Commission may attempt to reach a conciliation agreement with the respondent(s) prior to reaching the ''probable cause'' stage of enforcement (*i.e.*, a pre-probable cause conciliation agreement). See 11 CFR 111.18(d). If the Commission is unable to reach a pre-probable cause conciliation agreement with the respondent, or determines that such a conciliation agreement would not be appropriate, upon completion of the investigation referenced in the preceding paragraph, the Office of General Counsel prepares a brief setting forth its position on the factual and legal issues of the matter and containing a recommendation on whether or not the Commission should find ''probable cause to believe'' that a violation has occurred or is about to occur. 11 CFR 111.16(a).

The Office of General Counsel notifies the respondent(s) of this recommendation and provides a copy of the probable cause brief. 11 CFR 111.16(b). The respondent(s) may file a written response to the probable cause brief within fifteen days of receiving said brief. 11 CFR 111.16(c). After reviewing this response, the Office of General Counsel shall advise the Commission in writing whether it intends to proceed with the recommendation or to withdraw the recommendation from Commission consideration. 11 CFR 111.16(d).

If the Commission determines by an affirmative vote of four members that there is ''probable cause to believe'' that a respondent has violated the Act or Commission regulations, the Commission authorizes the Office of General Counsel to notify the respondent by letter of this determination. 11 CFR 111.17(a). Upon a Commission finding of ''probable cause to believe,'' the Commission must attempt to reach a conciliation agreement with the respondent. 11 CFR 111.18(a). If no conciliation agreement is finalized within the time period specified in 11 CFR 111.18(c), the Office of General Counsel may recommend to the Commission that it authorize a civil action for relief in the appropriate court. 11 CFR 111.19(a). Commencement of such civil action requires an affirmative vote of four members of the Commission. 11 CFR 111.19(b). The Commission may enter into a conciliation agreement with respondent after authorizing a civil action. 11 CFR 111.19(c).

[6] If the Commission finds no ''reason to believe,'' or otherwise terminates its proceedings, the Office of General Counsel shall advise the complainant and respondent(s) by letter. 11 CFR 111.9(b).

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FEDERAL ELECTION COMMISSION

11 CFR Part 111

[Notice 2006–20]

Proposed Policy Regarding Self-Reporting of Campaign Finance Violations; (Sua Sponte Submissions)

AGENCY: Federal Election Commission.

ACTION: Draft statement of policy with request for comments.

SUMMARY: The Commission is seeking comments on a proposed policy statement to clarify and memorialize its approach to enforcement actions arising from self-reported violations (also known as *sua sponte* submissions). In order to encourage the self-reporting of violations about which the Commission would not otherwise have learned, the Commission proposes, in appropriate cases warranting such mitigation, to offer significantly lower penalties than the Commission would otherwise have sought in complaint-generated matters involving similar circumstances. The Commission is also outlining a new expedited procedure that it intends to use in a limited number of situations through which the Commission may allow individuals and organizations that self-report violations and that make a complete report of their internal investigation to proceed directly into conciliation prior to the Commission determining whether their conduct may have violated statutes or regulations within its jurisdiction. The proposed policy also addresses various issues that can arise in connection with parallel criminal, administrative or civil proceedings. The Commission requests comments on this proposed policy.

DATES: All comments must be submitted on or before January 29, 2007.

ADDRESSES: All comments should be addressed to Mark Shonkwiler, Assistant General Counsel, or April Sands, Attorney, and must be submitted in either electronic or written form. Electronic mail comments should be sent to *selfreportpolicy@fec.gov* and must include the full name, electronic mail address and postal service address of the commenter. Electronic mail comments that do not contain the full name, electronic mail address and postal service address of the commenter will not be considered. If the electronic mail comments include an attachment, the attachment must be in the Adobe Acrobat (.pdf) or Microsoft Word (.doc) format. Faxed comments should be sent to (202) 219–3923, with printed copy follow-up to ensure legibility. Written comments and printed copies of faxed comments should be sent to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463. Commenters are strongly encouraged to submit comments electronically to ensure timely receipt and consideration. The Commission will make every effort to post public comments on its Web site within ten business days of the close of the comment period.

FOR FURTHER INFORMATION CONTACT: Mark D. Shonkwiler, Assistant General Counsel, or April J. Sands, Attorney, Enforcement Division, Federal Election Commission, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION:

I. Goals and Scope of the Policy

The Commission periodically receives submissions from persons who self-report statutory or regulatory violations of which the Commission had no prior knowledge. The Commission considers such self-reports (which also are referred to as *sua sponte* submissions) as information ascertained in the normal course of carrying out its supervisory responsibilities pursuant to 2 U.S.C. 437g(a)(2), and may investigate if it determines there is reason to believe a violation has occurred. The Commission also investigates complaints reporting the potentially illegal conduct of another, submitted pursuant to 2 U.S.C. 437g(a)(1), but which also, by implication, provide a basis for investigating the complainant itself.[1] As a general proposition, self-reported

[1] If a person who self-reports a violation of the FECA also makes specific allegations as to other persons not joining in the submission, and particularly where the person making the submission seeks to assign primary responsibility for the violations to another person (including an organization's former officers or employees), the Commission, acting through its Office of General Counsel, may advise the self-reporting person that a portion of the relevant materials should be re-submitted as a complaint to which other persons would be allowed to respond prior to any findings by the Commission.

matters, when accompanied by full cooperation, may be resolved more quickly and on more favorable terms than matters arising by other means (*e.g.*, those arising via external complaints, referrals from other government agencies, or referrals from the Commission's Audit or Reports Analysis Divisions).[2]

The Commission recently has seen an increase in self-reported violations, which may be attributable, at least in part, to greater attention being placed on compliance programs for areas of potential organizational liability, and recognition that addressing a problem through self-auditing and self-reporting may help minimize reputational harm. The increase in the number of self-reported matters has highlighted the need to increase the transparency of Commission policies and procedures. Moreover, the Commission seeks to provide appropriate incentives for this demonstration of cooperation and responsibility.

This policy provides an overview of the factors that influence the Commission's handling and disposition of certain kinds of matters. It should be noted that while cooperation in general, and self-reporting in particular, will be considered by the Commission as mitigating factors, they do not excuse a violation of the Act or end the enforcement process. Also, this 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.[3] Nevertheless, as explained below, the Commission may provide appropriate consideration to respondents who voluntarily disclose and who fully cooperate with the Commission's disposition of the matter.

II. Self-Reporting of FECA Violations

Self-reporting of violations typically allows respondents to resolve their civil liability in a manner which has the potential to: (1) Reduce the investigative burden on both the Commission and themselves; (2) demonstrate their acceptance of organizational or personal responsibility and commitment to internal compliance; and (3) conclude their involvement in the Commission's enforcement process on an expedited basis. A person who brings to the Commission's attention violations of the FECA and Commission regulations and who cooperates with the resulting investigation may also receive appropriate consideration in the terms of an eventual conciliation agreement. For example, the Commission may do one or more of the following:

- Take no action against particular respondents;
- Offer a significantly lower penalty than what the Commission otherwise would have sought in a complaint-generated matter involving similar circumstances or, where appropriate, no civil penalty;
- Offer conciliation before a finding of probable cause to believe a violation occurred, and in certain cases proceed directly to conciliation without the Commission first finding reason to believe that a violation occurred (see discussion below);
- Refrain from making a formal finding that a violation was knowing and willful, even where the available information would otherwise support such a finding;
- Proceed only as to an organization, rather than as to various individual agents or, where appropriate, proceed only as to individuals rather than organizational respondents;
- Include language in the conciliation agreement that indicates the level of cooperation provided by respondents and the remedial action taken by the persons.

III. Factors Considered in Self-Reported Matters

The Commission may take into account various factors in considering how to proceed regarding self-reported violations. In general, more expedited processing and a more favorable outcome will be possible when the self-reporting party can show that upon discovery of the potential violations, there was an immediate end to the activity giving rise to the violation(s); the Respondent made a timely and complete disclosure to the Commission and fully cooperated in the disposition of the matter; and the Respondent implemented appropriate and timely corrective measures, including internal safeguards necessary to prevent any recurrence. Further detail as to these factors is supplied below.

Nature of the Violation

(1) *The type of violation:* Whether the violation was (a) Knowing and willful, or resulted from reckless disregard for legal requirements or deliberate indifference to indicia of wrongful conduct; (b) negligent; (c) an inadvertent mistake; or (d) based on the advice of counsel;[4]

(2) *The magnitude of the violation:* Whether the violation resulted from a one-time event or an ongoing pattern of conduct repeated over an extended period of time (and whether there was a history of similar conduct); how many people were involved in or were aware of the violation and the relative level of authority of these people within the organization; whether individuals were coerced into participating in the violation; the amount of money involved either in terms of absolute dollar amount or in terms of the percentage of an entity's activity; and the impact the violation may have had on any Federal election;

(3) *How the violation arose:* Whether the conduct was intended to advance the organization's interests or to defraud the organization for the personal gain of a particular individual; whether there were compliance procedures in place to prevent the type of violation now uncovered and, if so, why those procedures failed to stop or deter the wrongful conduct; and whether the persons with knowledge of the violation were high-level officials in the organization.

Extent of Corrective Action and New Self-Governance Measures

(4) *Have all needed investigative and corrective actions been taken:* Whether the violation immediately ceased upon its discovery; how long it took after discovery of the violation to take appropriate corrective measures, including disciplinary action against persons responsible for any misconduct; whether there was a thorough review of the nature, extent, origins, and consequences of the conduct and related behavior; whether the respondent expeditiously corrected and clarified the public record by making appropriate and timely disclosures as to the source and recipients of any funds involved in a violation; whether a Federal political committee promptly made any necessary refunds of excessive or prohibited contributions; and whether an organization or individual respondent waived its claim to refunds of excessive or prohibited contributions and instructed recipients to disgorge such funds to the U.S. Treasury.

(5) *Have more effective compliance measures been implemented:* Whether there are assurances that the conduct is unlikely to recur; whether the

[2] When violations are found, FECA requires the Commission to attempt to correct or prevent violations through conciliation agreements before suit may be filed in Federal district court.

[3] Some violations, for instance, are subject to a mandatory minimum penalty prescribed by statute. *See* 2 U.S.C. 437g(a)(6)(C).

[4] A respondent seeking to defend conduct based on advice of counsel may not simultaneously withhold documentary or other evidence supporting that assertion based on the attorney-client privilege.

respondent has adopted and ensured enforcement of more effective internal controls and procedures designed to prevent a recurrence of the violation; and whether the respondent provided the Commission with sufficient information for it to evaluate the measures taken to correct the situation and ensure that the conduct does not recur.

Disclosure and Cooperation

(6) *Was the violation fully disclosed to the Commission:* Whether steps were taken upon learning of the violation; whether the disclosure was voluntary or made in recognition that the violation had been or was about to be discovered, or in recognition that a complaint was filed, or was about to be filed, by someone else; and whether a comprehensive and detailed disclosure of the results of its internal review was provided to the Commission in a timely fashion;

(7) *Was there full cooperation with the Commission:* Whether the respondent promptly made relevant records and witnesses available to the Commission, and made all reasonable efforts to secure the cooperation of relevant employees, volunteers, vendors, donors and other staff without requiring compulsory process; whether the respondent agreed to waive or toll the statute of limitations for activity that previously had been concealed or not disclosed in a timely fashion.

The Commission recognizes that all of the above-listed factors will not be relevant in every instance of self-reporting of potential FECA violations, nor is the Commission required to take all such factors into account. In addition, these factors should not be viewed as an exhaustive list. The Commission will continue to resolve matters based on the facts and circumstances of each case.

The Commission seeks to encourage the self-reporting of violations. To that end, the Commission will consider reducing opening civil penalty offers [5] by up to 75%. The amount of the reduction depends on the facts and circumstances of a particular case. The Commission will consider the factors set forth above. In order to provide more concrete guidance, the Commission may establish a policy setting forth the weight it will give to some of the facts and circumstances.

The Commission is considering adopting a policy of granting a civil penalty reduction of up to 50% to respondents who meet the following criteria:

- Respondents alert the Commission to potential violations before the violation had been or was about to be discovered by any outside party, including the FEC;
- Respondents amend reports or disclosures to correct past errors, if applicable;
- Any appropriate refunds, transfers, and disgorgements are made and/or waived;
- The violation immediately ceased upon discovery; and
- Respondents fully cooperate with the Commission in ensuring that the sua sponte submission is complete and accurate and in taking corrective measures.

The Commission is considering adopting a policy of granting a civil penalty reduction of up to 75% to respondents who meet the above criteria plus the following criteria:

- Respondents hired independent experts to conduct a thorough review, investigation, or audit;
- Respondents provide the Commission with all documentation of the experts' review, investigation, or audit; and
- Respondents took appropriate corrective action(s) such as disciplinary action against any persons responsible for misconduct and made changes to internal procedures to prevent a recurrence of the violation.

Alternatively, the Commission is considering adopting a policy of generally granting a civil penalty reduction of 50% to respondents that voluntarily self-report violations to the Commission, and of raising or lowering that discount depending on the aggravating and mitigating factors outlined above. The discount could be as high as 75% or as low as 25%, depending on the facts of the case in question.

The Commission will be the sole arbiter of whether the facts of each case warrant a particular reduction in the penalty. The Commission will generally not give a respondent the benefit of this policy if the respondent is the subject of a criminal or other government investigation. In considering appropriate penalties, the Commission will also consider the presence of aggravating factors, such as knowing and willful conduct or involvement by senior officials of an entity. The Commission may also consider other factors not enumerated in this policy for the purposes of applying or withholding a possible discount.

IV. Fast-Track Resolution

The Commission will generally not make a reason-to-believe finding or open a formal investigation for respondents that self-report violations, if: (1) All potential respondents in a matter have joined in a self-reporting submission that acknowledges their respective violations of the FECA; (2) those violations do not appear to be knowing and willful; and (3) the disclosure is substantially complete and the submission reasonably addresses the significant questions or issues related to the violation. Accordingly, the Commission is modifying its current practice to allow for an expedited Fast-Track Resolution (''FTR'') for a limited number of matters involving self-reported violations. This procedure would be available at the Commission's discretion, but may be requested by respondents.

Respondents eligible for the FTR process will meet with the Office of General Counsel to negotiate a proposed conciliation agreement before the Commission makes any formal findings in the matter. Although the Commission is always free to reject or seek modifications to a proposed conciliation agreement, it is expected that this process will allow for more expedited processing of certain types of violations where factual and legal issues are reasonably clear. It also will allow respondents to resolve certain matters short of the Commission finding that there is reason to believe that a violation has occurred. Examples of matters that might be eligible for such treatment include:

- Matters in which an individual contributor discovers that he or she inadvertently violated the individual aggregate election cycle contribution limit contained in 2 U.S.C. 441a(a)(3);
- Matters in which a political committee seeks to disclose and correct relatively straightforward reporting violations;
- Matters in which a contributor and a political committee jointly seek to resolve their liability for a simple and clearly inadvertent excessive or prohibited contribution; and
- Matters in which the initial self-reporting submission by the respondents is so thorough that only very limited follow-up by the Office of the General Counsel is necessary to complete the factual record.

[5] The Commission normally applies standard civil penalty calculations and then adjusts the figure for aggravating or mitigating circumstances. For example, if the standard civil penalty calculation were $20,000 it might be raised for an aggravating factor, such as failure to timely file an election sensitive report. Once the initial calculation is reached, respondents normally receive a 25% discount off of this penalty for settling during the pre-probable cause conciliation stage. Any discounts pursuant to this policy will be applied after this reduction.

V. Parallel Proceedings

The Commission recognizes that persons self-reporting to the Commission may face special concerns in connection with parallel criminal investigations, State administrative proceedings, and/or civil litigation. The Commission expects that persons who self-report to the Commission will inform the Commission of any existing parallel proceedings. The Commission encourages persons who self-report to the Commission also to self-report related violations to any law enforcement agency with jurisdiction over the activity. This will assist the Commission, where appropriate and possible, in working with other Federal, State, and local agencies to facilitate a global and/or contemporaneous resolution of related violations by a self-reporting person. The possibility of such a resolution is enhanced when the self-reporting person expresses a willingness to engage other government agencies that may have jurisdiction over the conduct and to cooperate with joint discovery and disclosure of facts and settlement positions with respect to the different agencies.

In situations where contemporaneous resolution of parallel matters is not feasible, the Commission will consider whether terms contained in a conciliation agreement with the Commission may affect potential liability the same respondent realistically faces from another agency. In appropriate cases, where there has been self-reporting and full cooperation, the Commission may agree to enter into conciliation without requiring respondents to admit that their conduct was ''knowing and willful,'' even where there is evidence that may be viewed as supporting this conclusion. (The civil penalty, however, may be based on ''knowing and willful'' conduct.) The Commission has followed this practice in several self-reported matters where the organizational respondents promptly self-reported and took comprehensive and immediate corrective action that included the dismissal of all individual corporate officers whose actions formed the basis for the organization's potential ''knowing and willful'' violation.

The Commission, which has the statutory authority to refer ''knowing and willful'' violations of the FECA to the Department of Justice for potential criminal prosecution, 2 U.S.C. 437g(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities, 2 U.S.C. 437d(a)(9), will not negotiate whether it refers, reports, or otherwise discusses information with other law enforcement agencies. Although the Commission cannot disclose information regarding an investigation to the public, it can and does share information on a confidential basis with other law enforcement agencies.

VI. Conclusion

In light of the considerations explained above, the Commission is considering issuing a policy statement to clarify how it exercises its discretion in enforcement matters involving self-reported violations of the FECA. The Commission invites comments on any aspect of the proposed policy statement, including:

(A) Whether and to what extent the Commission should consider the various factors described above, and/or other factors, in resolving self-reported violations of the FEC; and

(B) Whether and how to apply the new proposed Fast Track Resolution process in resolving self-reported violations of the FECA.

Dated: December 1, 2006.

Michael E. Toner,

Chairman, Federal Election Commission.

[FR Doc. E6–20845 Filed 12–7–06; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL ELECTION COMMISSION

11 CFR Part 111

[Notice 2006–22]

Best Efforts in Administrative Fines Challenges

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Election Commission seeks public comment on proposed revisions to its regulations regarding the Commission's administrative fines program. The administrative fines program is a streamlined process through which the Commission finds and penalizes violations of 2 U.S.C. 434(a), which requires committees registered with the Commission to file periodic reports. Current Commission regulations set forth several grounds upon which a respondent may base a challenge to an administrative fine. The proposed regulations replace the current ''extraordinary circumstances'' defense with a ''best efforts'' defense. The proposed regulations would also provide for Commission statements of reasons on administrative fines final determinations. The Commission has made no final decision on the issues presented in this rulemaking. Further information is provided in the supplementary information that follows.

DATES: Comments must be received on or before January 8, 2007.

ADDRESSES: All comments must be in writing, must be addressed to Mr. J. Duane Pugh Jr., Acting Assistant General Counsel, and must be submitted in either e-mail, facsimile, or paper copy form. Commenters are strongly encouraged to submit comments by e-mail to ensure timely receipt and consideration. E-mail comments must be sent to either *afbestefforts@fec.gov* or submitted through the Federal eRegulations Portal at *http://www.regulations.gov*. If e-mail comments include an attachment, the attachment must be in either Adobe Acrobat (.pdf) or Microsoft Word (.doc) format. Faxed comments must be sent to (202) 219–3923, with paper copy follow-up. Paper comments and paper copy follow-up of faxed comments must be sent to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463. All comments must include the full name and postal service address of the commenter or they will not be considered. The Commission will post comments on its Web site after the comment period ends.

FOR FURTHER INFORMATION CONTACT: Mr. J. Duane Pugh Jr., Acting Assistant General Counsel, or Ms. Margaret G. Perl, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: Under the administrative fines program, the Commission may assess a civil money penalty for a violation of the reporting requirements of 2 U.S.C. 434(a) (such as not filing or filing late) without using the traditional enforcement procedures. 2 U.S.C. 437g(a)(4)(C). Congress intended the Commission to process these straightforward violations through a ''simplified procedure'' that would ease the enforcement burden on the Commission. H.R. Rep. No. 106–295 at 11 (1999). In the final rules establishing and governing the administrative fines program, the Commission created a streamlined procedure that balances the respondent's rights to notice and opportunity to be heard with the Congressional intent that the administrative fines program work in an expeditious manner to resolve these reporting violations without additional administrative burden. *Final Rule on Administrative Fines,* 65 FR 31787–88 (May 19, 2000).

The Federal Election Campaign Act (''FECA'') provides that ''[w]hen the treasurer of a political committee shows