Congressional Research Service
Informing the legislative debate since 1914

The Federal Election Commission: Overview and Selected Issues for Congress

Updated December 22, 2015

Congressional Research Service
https://crsreports.congress.gov
R44318

CRS REPORT
Prepared for Members and
Committees of Congress

Summary

More than 40 years ago, Congress created the Federal Election Commission (FEC) to administer the Federal Election Campaign Act (FECA) and related amendments. Today, the FEC is responsible for administering disclosure of millions of campaign finance transactions; interpretation and civil enforcement of FECA and agency regulations; and administering the presidential public financing program.

Six presidentially appointed commissioners, who are subject to Senate advice and consent, head the FEC. No more than three members may be affiliated with the same political party. Congress arrived at this bipartisan, even-numbered structure amid debate over how to properly insulate the campaign finance agency from political pressures. Although this structure ensures that commissioners must reach bipartisan agreement to make most decisions, it has not saved the agency from bipartisan criticism. Throughout its history, critics have alleged that the FEC fails to adequately regulate campaign finance activity or does so too stringently.

Discussion of what the commission does, why it does so, and how is less common. This report provides selected information about the FEC's history and ongoing issues that are likely to be of interest to Congress for appropriations, legislative, or oversight activities. The discussion is organized around those factors that most actively shape the FEC: its structure and commission appointments; organizational issues; and debate over campaign finance policy. These selected topics represent both ongoing and recent areas of congressional activity. CRS Report R44319, *The Federal Election Commission: Enforcement Process and Selected Issues for Congress*, by R. Sam Garrett provides additional information about the FEC's enforcement process—a topic that is related to some of the issues discussed in this report but also distinct from the organizational and administrative themes considered here.

As the FEC heads toward a half-century of regulating campaigns, perhaps the most fundamental question facing Congress and the commission is what the agency's mission should be today and in the future. As Congress monitors the FEC, it perhaps faces a choice similar to that facing the agency itself: whether to focus on major change—if any—or to emphasize managing routine business. Recent Congresses have engaged in oversight activities surrounding the FEC's enforcement practices and agency transparency. For more than 20 years, Congress occasionally has considered legislation to restructure the agency, particularly to change the number of commissioners, thereby reducing possibilities for deadlocked votes. H.R. 2931 in the 114th Congress is the latest such proposal.

This report will be updated occasionally as events warrant.

Contents

Introduction 1
Scope of the Report 2
A Note on Terminology 2
Highlights of Recent Congressional Activity 2
FEC Structure, Organization, and Commissioners 3
Staff and Budget 4
The FEC and Before: A Brief History 5
Original, Invalidated Appointment Structure 7
Current Appointment Structure 7
Party Balance and Terms 8
Expired Terms and Holdover Status 8
At Least Four Agreeing Votes Required for Most Actions 9
Loss of Policymaking Quorum in 2008 9
Selected Policy and Organizational Issues 9
Matters Primarily Concerning Campaign Finance Policy 10
Agency Response to *Citizens United* 10
Deadlocked Votes 11
The FEC's Legislative Recommendations 14
Matters Primarily Concerning Commission Administration or Operations 16
Senior Staff Vacancies and Staff Morale 16
Reorganization Proposals 17
Commission Interaction with the Public and with Those It Regulates 18
Administering Disclosure 19
Information Technology 20
Potential Considerations for Congress and Concluding Comments 21

Figures

Figure 1. FEC Organization 5
Figure 2. Most Frequent FEC Legislative Recommendations Since 2005 14
Figure 3. Vacant or Acting Senior Staff Positions, Fall 2015 17

Tables

Table 1. Legislation Substantially Devoted to FEC Organization or Operations, 2013-2015 3
Table 2. Current Members of the Federal Election Commission 4

Table A-1. Legislation Substantially Devoted to FEC Organization or Operations, 1995-2015 23
Table A-2.Congressional Hearings Substantially Devoted to FEC Oversight, 1995-2015 30

Appendixes

Appendix. Legislation and Hearings Substantially Devoted to FEC Organization, Operations, or Oversight 23

Contacts

Author Information 31
Acknowledgments 31

Introduction

Throughout the early and mid-1970s, Congress laid the foundation of modern campaign finance policy. Before and after the Watergate scandal, Congress debated whether or how to regulate contributions, expenditures, and disclosure of campaign finance activities. In particular, the 1974 FECA amendments established much of the regulatory framework that remains today. The Supreme Court considered those matters in its landmark *Buckley v. Valeo* decision (1976).[1] To this day, these topics continue to structure the policy debate.[2]

Perhaps because monumental questions surrounding how and whether to regulate political contributions and spending occupied Congress and the courts, a significant component of the 1974 FECA amendments—creating a new federal agency to administer FECA—received comparatively limited attention.[3] That agency, the Federal Election Commission (FEC), would come to symbolize the fierce debate that occupies campaign finance policy overall. The FEC is responsible for civil enforcement of federal campaign finance law. The commission also administers public financing of presidential campaigns (applicable to participating candidates) and conducts outreach and educational activities. Members of the public, the media, campaign practitioners, and policymakers rely on campaign finance data disclosed on the FEC website—the agency's most public activity.

Some allege that Congress designed the FEC to fail, most notably through a bipartisan, six-member structure that requires agreement from at least four commissioners for substantive action.[4] Furthermore, some contend that recent years have marked a particularly problematic period in which, amid policy stalemates, some areas of campaign finance law have gone without adequate interpretation or enforcement. Others respond, equally vigorously, that Congress purposely insulated the FEC from excessive partisanship in the wake of Watergate and in one of the most sensitive areas of constitutionally protected political speech. They also caution that the commission cannot or should not do via regulation what Congress has declined to do by statute.

Whether by design or coincidence, fundamental tensions about campaign finance law and regulation have been evident at the FEC throughout its history. Nonetheless, attention to working relationships among commissioners is increasingly part of the narrative about how the commission functions. Some commissioners have openly criticized their colleagues and the agency.[5] As the FEC marked its 40th anniversary in 2015, according to one media account,

---

[1] 424 U.S. 1 (1976). For discussion of *Buckley* and related cases, see CRS Report R43719, *Campaign Finance: Constitutionality of Limits on Contributions and Expenditures*, by L. Paige Whitaker.

[2] For an overview, see, CRS Report R41542, *The State of Campaign Finance Policy: Recent Developments and Issues for Congress*, by R. Sam Garrett.

[3] The 1974 amendments were P.L. 93-443. FECA is now codified at 52 U.S.C. §30101 *et seq*. The FEC opened its doors on April 14, 1975. For additional historical highlights, see Federal Election Commission, *Anniversary Timeline*, http://fec.gov/pages/40th_anniversary/40th_anniversary.shtml.

[4] The following pages contain additional information and citations concerning these points. For an overview of arguments surrounding the FEC's design, see, for example, Robert E. Mutch, *Campaigns, Congress, and Courts: The Making of Federal Campaign Finance Law* (New York: Praeger, 1988), pp. 83-117.

[5] See, for example, Isaac Arnsdorf, "Not Laughing," *Politico Influence* blog posting, November 17, 2015, http://www.politico.com/tipsheets/politico-influence/2015/11/millercoors-hires-bloom-for-merger-space-bill-passes-casino-bill-fails-brady-fundraiser-211322; Andy Kroll, "The Chairwoman Who's At War With Her Own Agency," *National Journal*, October 10, 2015, p. 13; and Donald F. McGahn, Vice Chairman, *Background Information Regarding Proposed Enforcement Manual*, Memorandum to the Federal Election Commission, p. 1, Washington, DC, July 25, 2013, http://www.fec.gov/members/former_members/mcgahn/statements/13-21-k.pdf.

"officials past and present argued about whether to rent a theater, whether to publish a report, whether to serve bagels or doughnuts, and whether, in fact, the agency even had an anniversary worth noting."[6] These and similar reports highlighting alleged dysfunction at the FEC are common. Some may be relevant for congressional needs as the House and Senate examine the FEC and form their own opinions on the agency. Discussions of the FEC's organization, duties, and major areas of policy debate—the focus of this report—are less common, but are at least as relevant for Congress.

Scope of the Report

The report provides background information about key areas of controversy and context that might be relevant for Congress as the House and Senate approach their oversight duties, appropriate funds, consider nominations, and explore options for restructuring the FEC or maintaining the status quo. As discussed throughout this report, issues ranging from minor administrative matters to fundamental changes in campaign finance law might be relevant as Congress considers the FEC. Because there appears to be little congressional consensus about how or whether to address the FEC and its functions, this report provides a resource for Congress to examine which policy questions and options are of particular interest, if any. The report is not a legal analysis of commission activity, nor does it provide detailed discussion of relationships with potentially related agencies such as the Department of Justice or Internal Revenue Service.[7] Another CRS report discusses the FEC's role in enforcing campaign finance law and regulation.[8]

A Note on Terminology

This report uses the terms "FEC," "commission," and "agency" interchangeably. Some discussions of the FEC's authority, which are generally beyond the scope of this report, use the term "commission" to denote members of the FEC as opposed to agency staff. This distinction is not central to this report but is relevant for some enforcement debates, as noted primarily in another CRS report.[9]

Highlights of Recent Congressional Activity

Table 1 below summarizes recent legislation substantially devoted to the FEC. Congress most recently held an oversight hearing focusing on the FEC in 2011, as discussed later in this report.[10] The **Appendix** at the end of this report lists major legislation devoted to the FEC and oversight hearings dating to 1995.

[6] Rebecca Ballhaus and Brody Mullins, "Party Politics: Agency Can't Agree on How to Celebrate Anniversary," *The Wall Street Journal*, April 17, 2015, p. A1.

[7] This includes recent attention to IRS examinations of certain tax-exempt organizations.

[8] CRS Report R44319, *The Federal Election Commission: Enforcement Process and Selected Issues for Congress*, by R. Sam Garrett.

[9] CRS Report R44319, *The Federal Election Commission: Enforcement Process and Selected Issues for Congress*, by R. Sam Garrett.

[10] U.S. Congress, House Committee on House Administration, Subcommittee on Elections, *Federal Election Commission: Reviewing Policies, Processes and Procedures*, hearing, 112th Cong., 1st sess., November 3, 2011 (Washington: GPO, 2012).

Table 1. Legislation Substantially Devoted to FEC Organization or Operations, 2013-2015

Congress	Bill Number	Short Title	Brief Summary	Primary Sponsor	Most Recent Major Action
114th	H.R. 2931	Restoring Integrity to America's Elections Act	Would restructure the FEC as a 5-member body including a single chairperson with enhanced powers and who would be appointed for a 10-year term	Kilmer	Referred to Committee on House Administration, 06/25/2015
113th	H.R. 3487	—	Extended until 2018 FEC authority to conduct the Administrative Fine Program and expanded program coverage to include additional reporting, such as non-candidate committees and independent expenditures	Miller (Mich.)	Became P.L. 113-72, 12/26/2013
113th	H.Res. 648	—	Would have directed FEC to transmit to the House copies of certain e-mails to or from former IRS official Lois Lerner	Stockman	Referred to Committee on House Administration, 06/25/2014

Source: Congressional Research Service analysis of bill texts.

Notes: The table excludes appropriations bills and those that do not substantially address FEC organization or operations. The table also excludes general campaign finance legislation, including some public financing legislation that proposes creating relevant oversight entities within the FEC, bills that propose to create or terminate the Election Assistance Commission, and electronic filing bills.

FEC Structure, Organization, and Commissioners

The FEC is a six-member independent regulatory agency whose members serve six-year terms. They may continue in "holdover" status after those terms end. Commissioners are appointed by the President and subject to Senate confirmation. As discussed below, the current appointment

method differs from the process Congress originally enacted but that was later invalidated. The Senate most recently confirmed commissioners in 2013, as shown in **Table 2**. Congress most recently reauthorized the FEC in 1980 (FY1981).[11]

Table 2. Current Members of the Federal Election Commission

Commissioner	Term Expires/Expired	Date Confirmed	Party Affiliation
Lee E. Goodman	04/30/2015 (remains in holdover status)	09/23/2013	Republican
Caroline C. Hunter	04/30/2013 (remains in holdover status)	06/24/2008	Republican
Matthew S. Petersen	04/30/2011 (remains in holdover status)	06/24/2008	Republican
Ann M. Ravel	04/30/2017	09/23/2013	Democrat
Steven T. Walther	04/30/2009 (remains in holdover status)	06/24/2008	Independent
Ellen L. Weintraub	04/30/2007 (remains in holdover status)	03/12/2003	Democrat

Source: Legislative Information System nominations database. CRS added party affiliation based on FEC seating charts.

Staff and Budget

A professional staff of approximately 350 employees does the FEC's daily work.[12] Most of these staff members are civil servants. FECA specifies two statutory staff positions: a staff director and general counsel.[13] The commission also has a congressionally mandated inspector general.[14] **Figure 1** below shows major commission offices.

As an independent agency, the FEC transmits its budget requests directly to Congress, and concurrently to the Office of Management and Budget (OMB).[15] In FY2015, Congress appropriated $67.5 million to the FEC.[16] The agency requested approximately $76.1 million for FY2016 in anticipation of negotiating a new lease on its office space.[17] In recent years, the Financial Services and General Government (FSGG) appropriations bills (H.R. 2995 and S. 1910 for FY2016) provided the initial legislative vehicle for FEC funding.

[11] 94 Stat. 398; P.L. 96-253. As the **Appendix** shows, some subsequent bills have proposed to reauthorize the agency. Although the most recent authorization of appropriations for the FEC expired at the end of FY1981, the agency's underlying statutory authorities remain in effect. Congress also has continued appropriating funds to the agency. For further information on legal and procedural effects of expired authorizations of appropriations generally, see CRS Report R42098, *Authorization of Appropriations: Procedural and Legal Issues*, by Jessica Tollestrup and Brian T. Yeh.

[12] These are "full-time equivalent" (FTE) staff. Data appear in Federal Election Commission, *Fiscal Year 2015 Congressional Budget Justification*, Washington, DC, March 7, 2014, p. 13, http://www.fec.gov/pages/budget/fy2015/fy_2015_congressional_budget.pdf.

[13] 52 U.S.C. §30106c(f)(1).

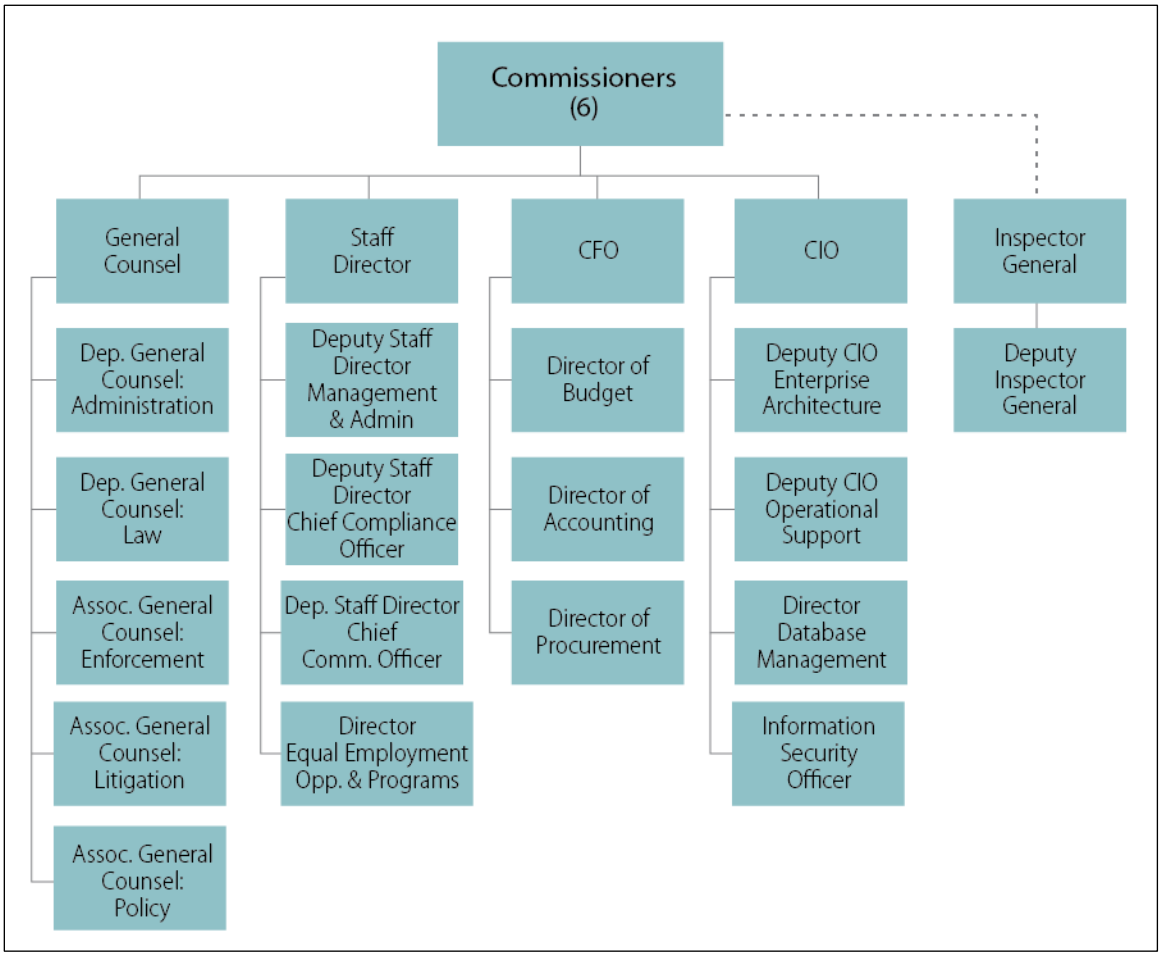
[14] 5 U.S.C. Appx §8G; P.L. 100-504.

[15] 52 U.S.C. §30107(d).

[16] For additional discussion, see the "Federal Election Commission" section of CRS Report R44172, *Financial Services and General Government (FSGG): FY2015 Appropriations*, coordinated by Baird Webel.

[17] Federal Election Commission, *Fiscal Year 2016 Congressional Budget Justification*, Washington, DC, February 2, 2015, pp. 5-9, http://www.fec.gov/pages/budget/fy2016/fy_2016_congressional_budget.pdf.

Figure 1. FEC Organization



Source: CRS figure based on information in Federal Election Commission, "FEC Offices," http://fec.gov/about/offices/offices.shtml.

Notes: Individual titles are subject to change. The figure does not reflect vacancies or acting appointments, which are discussed elsewhere in this report. Also as noted elsewhere in this report, currently, a single person fulfills both the staff director and chief information officer (CIO) roles.

The FEC and Before: A Brief History

Proposals for an entity resembling the FEC date to at least the early 1960s.[18] Modern campaign finance policy took root in the 1970s with enactment of FECA and related amendments—where this report begins.[19] Congress first vested campaign finance administrative authority within the House and Senate, and with the Comptroller General. Administering campaign finance first fell to

[18] For background on legislative history, see the 1976 archived CRS Report DL762489, *A History of the Federal Election Commission*, by Carol F. Casey. Available to congressional clients from the author of the current report upon request.

[19] Although proposals for an FEC-like entity emerged in the 1960s and 1970s, calls for some kind of federal campaign finance agency date to at least the 1930s. Much of the pre-1970s debate focused on what kinds of information should be disclosed and to which entity. For a brief overview of congressional activity, see, for example, Robert E. Mutch, *Buying the Vote: A History of Campaign Finance Reform* (New York: Oxford University Press, 2014), pp. 115-120.

those entities amid debate over whether Congress could or should cede overseeing its campaign activities to an outside body. At first, those duties primarily meant administering disclosure of financial activity, as the 1971 FECA principally mandated reporting requirements similar to those in place today. In what has been described as a "compromise" surrounding separation-of-powers matters and institutional prerogatives in the 1971 FECA, "Congress divide[d] the administrative and enforcement responsibilities for [FECA] among three supervisory offices."[20] The Clerk of the House and Secretary of the Senate were responsible for administering the act for each chamber, respectively, while the Comptroller General, head of the General Accounting Office (GAO, now the Government Accountability Office), handled presidential campaign finance compliance. Longtime Committee on House Administration Chairman Wayne Hays championed the "supervisory officer" framework and staunchly opposed an independent campaign finance regulatory agency.[21]

The "supervisory officer" system generally facilitated effective disclosure of campaign finance activity, but enforcement concerns persisted. Some Members of Congress and other observers also raised concerns that three officers who were employed by the House and Senate were not sufficiently independent to administer and enforce the new law.[22] Fundraising controversies in the 1972 election cycle increased calls for an independent campaign finance agency. As the Watergate scandal emerged in 1973-1974, congressional demand for an independent agency took on new momentum, eventually overcoming Representative Hays's preferred approach.[23] The 1974 FECA amendments created the first version of the FEC. As noted below, the Supreme Court's 1976 *Buckley* decision invalidated the FEC's initial appointment structure.

Independent campaign finance administration and enforcement was central to the early 1970s congressional debates over FECA and the 1974 amendments. The House and Senate considered proposals with different numbers of commissioners, appointment structures, and enforcement powers. The three-three structure (plus two later-invalidated *ex officio* members, discussed below) was unique but reflected elements of various congressional proposals. As campaign finance historian Robert Mutch explains, "No other government agency was so constructed. This unique appointment process appears to have been a grudging acquiescence to [a] form of independence while retaining as much congressional control as possible" through the House and Senate leadership's initial appointment powers.[24]

Over time, the FEC's bipartisan structure became central to its identity and to its controversy. Congress's choice to establish a politically balanced and even-numbered membership has been both praised as insulating the agency and criticized as thwarting its effectiveness. From the

[20] Elmer B. Staats, "Impact of the Federal Election Campaign Act of 1971," *Annals of the American Academy of Political and Social Science*, vol. 425 (May 1976), p. 112.

[21] Robert E. Mutch, *Campaigns, Congress, and Courts: The Making of Federal Campaign Finance Law* (New York: Praeger, 1988), pp. 83-84.

[22] Frederick C. Mosher and Others, *Watergate: Implications for Responsible Government* (New York: Basic Books, 1974), pp. 87-104; and Elmer B. Staats, "Impact of the Federal Election Campaign Act of 1971," *Annals of the American Academy of Political and Social Science*, vol. 425 (May 1976), pp. 98-113. The Mosher and Others publication was a National Academy of Public Administration (NAPA) special report commissioned by the Senate Watergate Committee (formally known as the Senate Select Committee on Presidential Campaign Activities).

[23] Robert E. Mutch, *Campaigns, Congress, and Courts: The Making of Federal Campaign Finance Law* (New York: Praeger, 1988), pp. 86-87.

[24] Robert E. Mutch, *Campaigns, Congress, and Courts: The Making of Federal Campaign Finance Law* (New York: Praeger, 1988), pp. 87-88.

beginning, the bipartisan structure has made compromise on the most contentious issues difficult and has opened individual commissioners to charges of partisan bias.[25]

Original, Invalidated Appointment Structure

Congress originally designed eight positions for the FEC: six commissioners and two non-voting *ex officio* members (the Clerk of the House and Secretary of the Senate). Under that structure, two commissioners were appointed by the President, two by the President pro tempore of the Senate, and two by the Speaker of the House.

Two federal court decisions altered the FEC's original design. First and most significantly, in *Buckley* the Supreme Court of the United States invalidated the original appointments method, holding that congressional appointments violated the Constitution's Appointments Clause.[26] Almost 20 years later, a federal court again found fault with the FEC's appointment structure. In 1993, the U.S. Court of Appeals for the District of Columbia held in *FEC v. NRA Political Victory Fund* that the presence of the two congressional *ex officio* members violated constitutional separation of powers.[27]

Current Appointment Structure

In a broad revision of FECA in 1976, undertaken in response to the *Buckley* decision, Congress adopted the current appointment method. Today, all commissioners are presidentially appointed with Senate advice and consent.[28] Members of the congressional leadership or committees of jurisdiction (the House Committee on House Administration and Senate Rules and Administration Committee) apparently continue to influence the appointment process.[29]

FECA specifies few qualifications for FEC commissioners, noting simply that they "shall be chosen on the basis of their experience, integrity, impartiality, and good judgment."[30] As one former general counsel notes, although many commissioners are lawyers, "a commissioner does not have to be a lawyer and the commission has a long history of having non-lawyers serve as members."[31] Commissioners typically have experience as congressional staffers, political professionals, election lawyers, or some combination thereof.

---

[25] See, for example, Michael J. Malbin, "After Surviving Its First Election Year, FEC Is Wary of the Future," *National Journal*, March 26, 1977, pp. 469-473.

[26] As noted previously, *Buckley* is 424 U.S. 1 (1976). For a brief discussion of the ruling's implications for congressional appointments, see Congressional Research Service, *Constitution of the United States of America: Analysis and Interpretation*, "Article II-Executive Department," http://www.crs.gov/conan/default.aspx?doc=Article02.xml&mode=topic&s=2&c=2&t=3|2.

[27] 6 F.3d 821 (D.C. Cir. 1993); cert. denied (513 U.S. 88 (1994)).

[28] 52 U.S.C. §30106(a)(1).

[29] Members of the congressional leadership reportedly suggest nominees, although documentation of the practice is sparse. In one example, from 2005, Sen. Reid stated that he was "very pleased that the president acted today upon my two recommendations for Commissioners." See Sen. Harry Reid, "Reid Statement on Nominations to the Federal Election Commission," press release, December 16, 2005, http://democrats.senate.gov/2005/12/16/reid-statement-on-nominations-to-the-federal-election-commission/#.Vk9Kbis4hjZ. On congressional influence on presidential appointments generally, see CRS Report R44083, *Appointment and Confirmation of Executive Branch Leadership: An Overview*, by Henry B. Hogue and Maeve P. Carey.

[30] 52 U.S.C. §30106(a)(3).

[31] Larry Noble, "In Search of Qualified FEC Commissioners," Campaign Legal Center blog posting, June 30, 2015, http://www.campaignlegalcenter.org/news/blog/clc-blog-search-qualified-fec-commissioners. David Mason (1998-

Party Balance and Terms

Occasional vacancies reduce the number of sitting commissioners, but the FEC may exercise its core functions with as few as four members. No more than three commissioners may be affiliated with the same political party.[32] In practice, the commission has been divided equally among Democrats and Republicans, although, as noted in **Table 1**, one current commissioner identifies as an independent.[33] FECA staggers commissioner terms so that two terms expire every other April 30 during odd-numbered years (e.g., 2017, 2019, etc.).[34] This arrangement means that, at least by design, two new commissioners would assume office biennially. However, the President is under no obligation to make biennial nominations.

Expired Terms and Holdover Status

Currently, FEC commissioners may serve a single six-year term.[35] As another CRS report explains, for some federal boards and commissions, including the FEC, "[a]n individual may be nominated and confirmed for a seat for the remainder of an unexpired term in order to replace an appointee who has resigned (or died). Alternatively, an individual might be nominated for an upcoming term with the expectation that the new term will be underway by the time of confirmation."[36] In fact, some FEC commissioners have assumed office when the term for which they were nominated was well underway. For example, on June 24, 2008, the Senate confirmed Donald F. McGahn and Steven T. Walther to terms that expired just 10 months later, on April 30, 2009.[37] Both continued serving in their seats past the expiration of their terms, although they could have been replaced through subsequent appointments.

These and other commissioners could remain in office because FECA permits FEC members to remain in office in "holdover" status, exercising full powers of the office, after their terms expire "until his or her successor has taken office as a Commissioner."[38] As **Table 2** above shows, as of late 2015, most current commissioners are serving in holdover status. Expired terms are, in and of themselves, not necessarily a policy concern because commissioners may remain in office until replaced. But, if the commission's membership fell below four members, as it did in 2008 (discussed below), it would lose its policymaking quorum.

2008) was the most recent non-lawyer, at the time of service, appointed to the commission.

[32] 52 U.S.C. §30106(a)(1).

[33] Steven T. Walther identifies himself as an independent. As noted elsewhere in this report, Sen. Reid recommended Walther to the commission and Walther reportedly worked for Democratic clients before joining the FEC. Walther often votes with Democrats on the FEC, although he has emphasized his independence since early in his commission tenure. See, for example, Matthew Murray, "Walther Takes on Washington," *Roll Call* online, January 14, 2009.

[34] 52 U.S.C. §30106(a)(2)(A).

[35] See 52 U.S.C. §30106(a)(2)(A).

[36] CRS Report R44083, *Appointment and Confirmation of Executive Branch Leadership: An Overview*, by Henry B. Hogue and Maeve P. Carey, p. 11.

[37] "Confirmations," *Congressional Record*, vol. 154, part 10 (June 24, 2008), p. 13696.

[38] A commissioner may remain in office after the expiration of his or her term unless or until (1) the President nominates, and the Senate confirms, a replacement; or (2) the President, as conditions permit, makes a recess appointment to the position. For additional discussion of recess appointments generally, see CRS Report RS21308, *Recess Appointments: Frequently Asked Questions*, by Henry B. Hogue; and CRS Report RL33009, *Recess Appointments: A Legal Overview*, by Vivian S. Chu. On ability to remain in office until a successor takes office, see 52 U.S.C. §30106(a)(2)(B). Commissioners appointed before December 31, 1997, or announced as intended nominees before November 30, 1997, were eligible for reappointment. See 111 Stat. 1305 and 111 Stat. 2523.

At Least Four Agreeing Votes Required for Most Actions

FECA requires affirmative votes from at least four commissioners to authorize most consequential agency activity, including making, amending, or repealing rules; issuing advisory opinions (AOs); and approving enforcement actions and audits.[39] Matters without at least four votes for or against an action can have the effect of leaving questions of law, regulation, or enforcement unresolved, as some view the issues in question as having been neither approved nor rejected.[40] The "Deadlocked Votes" section provides additional detail.

Loss of Policymaking Quorum in 2008

The significance of the four-vote threshold became particularly evident in 2008. Following expired recess appointments and amid ongoing Senate consideration of FEC nominations, the agency had just two commissioners for the first six months of the year. In late 2007, in anticipation of only two commissioners remaining in office in 2008, commissioners amended the FEC's rules of internal procedure to permit executing some duties if the agency lost its four-member policymaking quorum. These revisions to the FEC's Directive 10 permit the commission to continue meeting with fewer than four members to approve general public information, such as educational guides; appoint certain staff; and approve other basic administrative and employment matters.[41] After the Senate confirmed nominees in June 2008, the new commissioners faced a backlog of enforcement matters, advisory opinions, and other agency business.[42] The FEC has maintained a full policymaking quorum since then.

Selected Policy and Organizational Issues

Throughout its history, the FEC has been controversial. Topics such as disagreements among commissioners and dueling perspectives on what the agency should do, and how, receive the most prominent and consistent attention in Congress, within the FEC, and in the media. Other topics, such as staffing and information technology, are less prominent but can substantially affect the agency's daily business. This section briefly summarizes selected but recurring areas of debate that might be relevant for Congress.

---

[39] See 52 U.S.C. §30106(c); 52 U.S.C. §30107(a)(6)-52 U.S.C. §30107(a)(9); and 52 U.S.C. §30109(a).

[40] Campaign lawyers and some former commissioners have different interpretations of deadlocked votes. In enforcement matters, for example, some practitioners view deadlocks as an opportunity to challenge the boundaries of the law (because no violation was found), whereas others regard deadlocks as leaving the issue unresolved. See Kenneth P. Doyle, "Increasing Prevalence of Split FEC Votes On Key Issues Could Shape Next Campaigns," *Daily Report for Executives*, April 9, 2009, p. C-1; Nicholas Confessore, "Election Panel Enacts Policies by Not Acting," *The New York Times*, August 26, 2014, p. A1; Brad Smith, *What does it mean when the Federal Election Commission "Deadlocks",* Center for Competitive Politics blog posting, April 14, 2009, http://www.campaignfreedom.org/2009/04/14/what-does-it-mean-when-the-federal-election-commission-deadlocks/; and Bob Bauer, *'Desperate' at the FEC, Part II: The Risks of Unintended Consequences*, More Soft Money Hard Law blog posting, June 11, 2015, http://www.moresoftmoneyhardlaw.com/2015/06/desperate-fec-part-ii-risks-unintended-consequences/.

[41] Federal Election Commission, "Rules of Procedure," 73 *Federal Register* 5568, January 30, 2008. Section L (p. 5570) of the document refers to operations with fewer than four commissioners; that language was adopted in December 2007.

[42] For historical background, see archived CRS Report RL34324, *Campaign Finance: Legislative Developments and Policy Issues in the 110th Congress*, by R. Sam Garrett; and CRS Report RS22780, *The Federal Election Commission (FEC) With Fewer than Four Members: Overview of Policy Implications*, by R. Sam Garrett.

Matters Primarily Concerning Campaign Finance Policy

Throughout its history, the FEC has been criticized for failing to reach consensus on key policy questions covering various topics. Perhaps most consequentially, these disagreements can include stalemates over rulemakings and enforcement actions. Both are major topics that this report does not cover in depth but which are addressed in other CRS products.[43] In brief, some contend that the content of FEC rules—or protracted rulemakings—has undermined congressional intent in some cases. These criticisms were especially prominent after Congress enacted the 2002 Bipartisan Campaign Reform Act (BCRA), the most recent overhaul of federal campaign finance law.[44] Complicated subject matter, protracted debate among commissioners, and litigation made some rulemakings lengthy and controversial.[45] Rulemaking disagreements also occurred during other periods.

In some cases, such as the post-BCRA environment, policy disagreements outside the agency can affect the rulemaking process at least as much as internal division. Public and interest-group perspectives can shape rulemakings through submitted comments.[46] The FEC must attempt to reconcile those competing perspectives—as well as its own internal disagreements—to implement the law as written by Congress, and, often, as interpreted by courts. As noted below, most recently, the Supreme Court's 2010 *Citizens United* ruling has shaped the commission's policy debates and operating environment.

Agency Response to *Citizens United*

Particularly after the Supreme Court issued its *Citizens United* decision, disagreements in areas ranging from disclosure to enforcement have been prominent at the FEC, in Congress, and beyond.[47] In brief, *Citizens United* invalidated FECA's prohibitions on corporate and union treasury funding of independent expenditures and electioneering communications, thereby permitting new forms of corporate and union electoral activity. The decision did not affect the FEC per se, but it greatly influenced the environment in which the commission operates.

Mirroring similar debate in Congress, the commission was unable to agree on rules implementing *Citizens United* for almost five years after the Supreme Court issued its decision in January 2010. A December 2011 Notice of Proposed Rulemaking (NRPM) posing questions about what form post-*Citizens United* rules should take[48] remained open until late 2014, reflecting an apparent stalemate over the scope of the agency's *Citizens United* response. In October 2014, the commission approved rules to remove portions of existing regulations that *Citizens United* had

[43] For additional enforcement discussion, see CRS Report R44319, *The Federal Election Commission: Enforcement Process and Selected Issues for Congress*, by R. Sam Garrett. On recent rulemaking activity, see CRS Report R41542, *The State of Campaign Finance Policy: Recent Developments and Issues for Congress*, by R. Sam Garrett .

[44] For an overview of the initial policy and rulemaking environments post-BCRA, see Victoria A. Farrar-Myers and Diana Dwyre, *Limits and Loopholes: The Quest for Money, Free Speech, and Fair Elections* (Washington: CQ, 2008), pp. 123-140.

[45] For example, rulemakings on various BCRA provisions resulted in a series of at least three lawsuits covering six years. These are the *Shays and Meehan v. Federal Election Commission* cases.

[46] For an overview of federal rulemaking, see CRS Report RL32240, *The Federal Rulemaking Process: An Overview*, coordinated by Maeve P. Carey.

[47] 130 S. Ct. 876 (2010). For additional discussion, see CRS Report R41542, *The State of Campaign Finance Policy: Recent Developments and Issues for Congress*, by R. Sam Garrett; and CRS Report R43719, *Campaign Finance: Constitutionality of Limits on Contributions and Expenditures*, by L. Paige Whitaker .

[48] Federal Election Commission, "Independent Expenditures and Electioneering Communications by Corporations and Labor Organizations," 248 *Federal Register* 80803, December 27, 2011.

invalidated, such as spending prohibitions on corporate and union treasury funds.[49] The 2014 rules did not require additional disclosure surrounding independent spending, which some commenters had urged, but which others argued was beyond the agency's purview.[50]

Those favoring a deregulatory approach generally argue that the FEC has little additional role in issuing post-*Citizens United* rules, particularly without major statutory changes from Congress. Others argue that the FEC should instead pursue other rules, particularly to require additional disclosure surrounding spending that was previously prohibited. In one prominent recent instance, two commissioners even took initial steps to file a rulemaking petition with their fellow commissioners, calling for more expansive post-*Citizens United* rules.[51] As stalemate over some policy areas has continued, some campaign lawyers have urged the commission to try to find compromise on potentially less dramatic but nonetheless consequential compliance questions, such as amending the agency's reporting forms to reflect recently permissible campaign activities.[52] In other cases, some campaign practitioners have turned to the advisory opinion (AO) process to answer specific questions in lieu of final rules on overarching policy questions.[53]

Deadlocked Votes

"Deadlocked" votes are the most prominent and enduring indicator of policy disagreements within the FEC.[54] Although 3-3 votes are the most obvious deadlocks, they may include any vote without at least four votes for or against a decision (e.g., 2-2; 3-2; 2-3, etc.). Unlike matters that a majority of the commission has definitively approved or rejected, actions without at least four votes for or against can have the effect of leaving questions of law, regulation, or enforcement unresolved. In these cases, deadlocked votes essentially halt substantive commission action on the matters in question.[55]

[49] Federal Election Commission, "Independent Expenditures and Electioneering Communications by Corporations and Labor Organizations," 79 *Federal Register* 62797, October 21, 2014.

[50] Some Senators filed comments calling for additional donor disclosure. See Letter from Sen. Jeanne Shaheen et al. to Commissioner Caroline Hunter, Chair, FEC, February 21, 2012. The document may be obtained from the FEC rulemaking comments search function at http://sers.fec.gov/fosers/.

[51] Ann M. Ravel and Ellen L. Weintraub, rulemaking petition, FEC meeting-agenda document no. 15-31-B, June 8, 2015, http://fec.gov/agenda/2015/documents/mtgdoc_15-31-b.pdf. For discussion, see, for example, Paul Blumenthal, "Federal Election Commission Members Really Don't Like Each Other," *Huffington Post*, June 18, 2015, http://www.huffingtonpost.com/2015/06/18/federal-election-commission_n_7615084.html; and Fredreka Schouten, "2 FEC Officials Take Stand on Election Abuse," *USA Today*, June 9, 2015, p. 2A.

[52] See, for example, Federal Election Commission, "Rulemaking Petition: Administrative Fines Program and Commission Forms," 80 *Federal Register*, 16594, March 30, 2015.

[53] AOs provide an opportunity to pose questions about how the commission interprets the applicability of FECA or FEC regulations to a specific situation (e.g., a planned campaign expenditure). AOs apply only to the requester and within specific circumstances, but can provide general guidance for those in similar situations. See 52 U.S.C. §30108.

[54] For an overview, see, for example Michael M. Franz, "The Devil We Know? Evaluating the Federal Election Commission as Enforcer," *Election Law Journal*, vol. 8, no. 3 (2009), pp. 167-187; Thomas E. Mann, "The FEC: Administering and Enforcing Campaign Finance Law," in *The New Campaign Finance Sourcebook*, Anthony Corrado, Thomas E. Mann, Daniel R. Ortiz, and Trevor Potter (Washington: Brookings Institution Press, 2005), pp. 239-241; and Scott E. Thomas and Jeffrey H. Bowman, "Obstacles to Effective Enforcement of the Federal Election Campaign Act," *Administrative Law Review*, vol. 52, no. 2 (2000), pp. 575-608.

[55] On enforcement items, deadlocks are rarely the *final* vote on a matter, as the commission usually votes to close the file after a deadlock occurs.

The FEC does not regularly compile and release summary deadlocks data. Most recently, the commission appears not to have produced an official, publicly available statistical summary since 2009. Using those data, CRS found that in 2008-2009, the FEC deadlocked on no rulemakings; on approximately 13% of closed Matters Under Review (MURs, the FEC's most significant enforcement cases); and on approximately 17% of advisory opinions (AOs).[56] A CRS analysis of more recent FEC vote tallies found that in calendar year 2014, commissioners deadlocked on 24.4% of closed MURs.[57] Results from other analyses vary based on methodology, time period, and the types of votes studied.[58]

Recently, commissioners and outside observers have disagreed at commission meetings and in the media about what deadlocks represent. That debate includes heated exchanges about whether deadlocks are, in effect, an effort to prevent reasonable rulemaking or enforcement, to prevent overzealous rulemaking or enforcement, or something else.[59] Ambiguity surrounding deadlocks notwithstanding, apparent stalemates among commissioners—regardless of whether they are regarded as "deadlocks" per se—have featured prominently in consequential policy questions at the commission, such as the post-*Citizens United* rules; enforcement questions surrounding coordination among various political committees; and filling senior staff vacancies. Additional discussion appears elsewhere in this report.

At the same time, some current and former commissioners (and outside observers) have noted that the FEC finds agreement on most issues.[60] As then-FEC chairman Lee Goodman noted in his 2014 summary, "our Commission managed to act by majority vote in 93% of all matters (administrative and substantive), and to act by majority vote in 86% of substantive matters."[61]

---

[56] See CRS Report R40779, *Deadlocked Votes Among Members of the Federal Election Commission (FEC): Overview and Potential Considerations for Congress*, by R. Sam Garrett. The report is archived but available to congressional clients for historical reference upon request.

[57] Using the FEC's Enforcement Query System (EQS), CRS accessed commission vote certifications for MURs closed in calendar year 2014. This analysis defined a deadlock as any matter including a vote without a majority of at least four members (e.g., 3-3; 2-3, etc.).

[58] See, for example, Kenneth P. Doyle, "Campaign Finance: Analysis: Deadlocks Are Only Part of Story at FEC," *Daily Report for Executives*, August 31, 2015, special report; Michael M. Franz, "The Devil We Know? Evaluating the Federal Election Commission as Enforcer," *Election Law Journal*, vol. 8, no. 3 (2009), pp. 167-187; Dave Levinthal, "How Washington Starves its Election Watchdog," Center for Public Integrity, December 17, 2013, http://www.publicintegrity.org/2013/12/17/13996/how-washington-starves-its-election-watchdog; Todd Lochner, Dorie Apollonio, and Rhett Tatum, "Wheat From Chaff: Third-Party Monitoring and FEC Enforcement Actions," *Regulation & Governance*, vol. 2 (2008), pp. 216-233; and Public Citizen, "Roiled in Partisan Deadlock, Federal Election Commission is Failing," press release, n.d. (released 2015), http://www.citizen.org/documents/fec-deadlock-update-april-2015.pdf.

[59] See, for example, Lee Goodman, "The FEC's Problems Aren't with the GOP," Politico.com, May 10, 2015, http://www.politico.com/magazine/story/2015/05/the-fecs-problems-arent-with-the-gop-117798#.VV4BelVViko; and Brad Smith, *Do Commissioners Weintraub and Ravel Want the FEC to Fail?*, Center for Competitive Politics blog posting, May 20, 2015, http://www.campaignfreedom.org/2015/05/20/do-commissioners-weintraub-and-ravel-want-the-fec-to-fail/.

[60] See, for example, Brad Smith, *Do Commissioners Weintraub and Ravel Want the FEC to Fail?*, Center for Competitive Politics blog posting, May 20, 2015, http://www.campaignfreedom.org/2015/05/20/do-commissioners-weintraub-and-ravel-want-the-fec-to-fail/.

[61] FEC Chairman Lee E. Goodman, *End of Year Statement from Chairman Lee E. Goodman*, December 2014, n.p., http://fec.gov/members/goodman/statements/LEG_Closing_Statement_Dec_2014.pdf.

What Counts as a Deadlock?

Part of the ambiguity surrounding deadlocks arises because there is no standard method for counting deadlocks. Debate over how to count deadlocks typically centers around which things should be counted and which actions or time periods should be included. For example, Matter Under Review (MUR) 6729, which concerned disclaimers and reporting requirements, and which the FEC closed in 2014, illustrates that the episode could be counted at least two different ways. The commission took five votes on various questions regarding MUR 6729 at the agency's September 16, 2014, meeting. Three of those votes involved 3-3 deadlocks on motions supporting "reason to believe" that FECA either had or had not been violated and authorizing additional action. If using MURs as the "unit of analysis" (the thing being counted), MUR 6729 would be counted as a single deadlock because any one of the votes arguably precluded substantially resolving the matter. From this perspective, it matters more that the commission could not issue a decision and less why it could not do so. When examining votes, however, the analysis becomes more ambiguous. Should three deadlocks be counted? Should the two votes on which the commission reached agreement mitigate the deadlocks that occurred on other votes, etc.? Here, the individual disagreements are perhaps more important than the overall halt to the commission's decisionmaking that deadlocks imply. Both approaches might be valid, and both might be viewed as under-counting or over-counting deadlocks.

Debating Deadlocks: Potential Implications

Given their controversy and political sensitivity, deadlocked votes occupy much of the debate about the FEC's functioning. For some, deadlocks represent a failure to enforce campaign finance law or provide clear boundaries through rulemakings. For others, they signal that the commission is carefully considering what the law permits and prohibits.[62] Focusing on deadlocks might or might not provide meaningful information. Deadlocks are about vote outcomes. In and of themselves, they reveal little about why the commission made its decision (or declined to make a decision) and what that might suggest for the future. Focusing on deadlock statistics could understate conflict if, for example, the commission postponed a vote—thereby avoiding a formal deadlock—because it feared that a deadlock would occur. On the other hand, focusing only on deadlock statistics can overstate deadlocks' importance if they overshadow the commission's ability to find consensus in other areas.

As Congress determines whether oversight or other action regarding deadlocked votes is necessary, a threshold issue may be to consider whether deadlocks represent a public policy concern and if so, how. Occasional deadlocks might be expected given the complexity (and sometimes controversy) embodied in federal campaign finance law and regulation. In fact, Congress appears to have anticipated that the commission might be unable to reach consensus in some controversial cases, and perhaps intended for deadlocks to occur. According to one analysis, "In order to ensure that the Commission would not become a vehicle for partisan purposes, the

[62] Some observers have also suggested that focusing on deadlocks glosses over substantive differences in technical areas of law and policy. Democratic election lawyer and former White House Counsel Robert Bauer has written, for example, that "an agency that regulates political activity should find common ground where it can, but on the large and difficult questions, the agency owes the regulated community and the public responsible adjudication, consistency and clarity." See Bob Bauer, *More Conflict at the FEC: The Question of Partisanship and the Problem of Finger-Pointing*, More Soft Money Hard Law blog posting, May 26, 2015, http://www.moresoftmoneyhardlaw.com/2015/05/conflict-fec-question-partisanship-problem-finger-pointing/?utm_source=feedburner&utm_medium=email&utm_campaign=Feed%3A+moresoftmoneyhardlaw%2FPcJo+%28More+Soft+Money+Hard+Law%29.

Congress created an unusual conflict within the FEC" through the six-member structure.[63] Commenting on the four-vote requirement, former commissioner Scott E. Thomas and his executive assistant, Jeffrey H. Bowman, continued, "These provisions were specifically designed to ensure that formal action on a matter before the Commission could go forward only on the affirmative vote of a mixed majority of Commission members."[64] In addition, deadlocks might be viewed positively if enforcement actions being considered are perceived as unwarranted or excessive. Nonetheless, deadlocks mean that the commission has been unable to reach consensus about some element of law or regulation. As a result, at least in specific circumstances, deadlocks prevent campaign finance law from being enforced or preclude those seeking guidance from clearly knowing whether their planned activities will run afoul of the law.

The FEC's Legislative Recommendations

Despite disagreements in some areas, the FEC has consistently reached agreement on certain requests for legislative change. The FEC has varied its legislative requests in frequency, number, and prioritization over time. Congress is under no obligation to act on those recommendations. Recently the House and Senate have chosen not to do so, although Members have introduced legislation reflecting some recommendations. **Figure 2** below shows those requests submitted at least twice since 2005.

Figure 2. Most Frequent FEC Legislative Recommendations Since 2005

FEC RECOMMENDATION (NUMBER OF TIMES RECOMMENDED)	YEARS RECOMMENDED									
	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Electronic Filing of Senate Reports (7)	●	○	●	○	●	○	●	●	●	●
Fraudulent Misrepresentation of Campaign Authority (7)	●	○	●	○	●	○	●	●	●	●
Authority to Create Senior Executive Service Positions (6)	●	○	○	○	●	○	●	●	●	●
Make Permanent the Administrative Fine Program (4)	●	○	○	○	○	○	○	●	●	●
Personal Use of Campaign Funds (4)	○	○	○	○	●	○	●	●	●	○

Source: CRS figure based on analysis of FEC legislative recommendations available at http://fec.gov/law/feca/feca.shtml#legrec.

Notes: The figure summarizes substantially similar recommendations. Consult individual recommendations for specific language, some of which varies over time. The commission did not issue recommendations in 2006, 2008, or 2010.

Especially high-priority items, based on frequency of the commission's recommendations, include the following:[65]

[63] Scott E. Thomas and Jeffrey H. Bowman, "Obstacles to Effective Enforcement of the Federal Election Campaign Act," *Administrative Law Review*, vol. 52, no. 2 (2000), pp. 575-608.

[64] Scott E. Thomas and Jeffrey H. Bowman, "Obstacles to Effective Enforcement of the Federal Election Campaign Act," *Administrative Law Review*, vol. 52, no. 2 (2000), pp. 575-608.

[65] The FEC explains its recommendations in submissions to Congress, available at http://fec.gov/law/feca/feca.shtml#legrec.

- The FEC has proposed requiring Senate political committees (e.g., campaigns) to file their campaign finance reports electronically. Currently, Senate committees typically file paper reports.[66] Paper filing causes delay and expense in making complete Senate data publicly available. Congress has declined to enact legislation requiring electronic filing. In some cases, electronic-filing legislation has been subject to amendments containing unrelated or controversial campaign finance provisions.
- Two requested changes concern campaign misconduct. First, the FEC has recommended broadening existing prohibitions on "fraudulent misrepresentation" of campaign authority, such as fundraising for fictitious political committees. Second, and somewhat similarly, the FEC has asked Congress to extend current restrictions on personal use of campaign funds to other kinds of political committees (e.g., parties or PACs). Both recommendations appear to reflect ongoing FEC concerns that some areas of questionable campaign conduct do not squarely fall within FECA or commission regulations. Particularly in the "personal use" instance, FEC audit staff have raised concerns over the past several years about embezzlement or other financial mismanagement as more money flows through political committees that, in many cases, remain largely volunteer operations. Congress has not actively addressed either topic through recent legislation or oversight.
- The agency has proposed making permanent the Administrative Fine Program (AFP), which provides streamlined enforcement for late or missing reports. The 113th Congress extended the AFP until 2018. The AFP generally is noncontroversial and regarded as an effective tool for increasing FEC efficiency and encouraging compliance.
- The commission has requested authorization to convert some of its Senior Level (SL) management positions to Senior Executive Service (SES) status. The FEC contends that offering SES positions could provide a larger applicant pool because SES positions offer some additional benefits not available to SL appointees. It is unclear whether SES positions would, in fact, encourage more applicants. In general, SES appointees occupy the most senior civilian management positions in executive branch agencies.[67] SL positions are more common in agencies that provide specialized or technical services and expertise. Congress has not recently considered legislation on this proposal.

More detailed analysis could be relevant if Congress chooses to pursue any or all of the agency's recommendations.

[66] 52 U.S.C. §30102(g).

[67] For background on the SES, see CRS Report R41801, *The Senior Executive Service: Background and Options for Reform*, by Maeve P. Carey.

Matters Primarily Concerning Commission Administration or Operations

Senior Staff Vacancies and Staff Morale

Commissioners have the greatest impact on agency policy, but administrative leadership and daily FEC management falls to staff. As **Figure 3** below shows, as of late 2015, the FEC lacked permanent occupants in several senior positions. As the FEC IG noted in October 2015, some senior positions had been vacant for more than a year.[68] Perhaps most notably, these include a vacancy in the general counsel position—the agency's chief enforcement official and legal advisor—dating to July 2013. Amid reported stalemate over how to fill the position, and reportedly reflecting commissioners' divisions over enforcement, the general counsel position was vacant for more than two years between June 2013 and August 2015.[69] The commission appointed FEC attorney Daniel Petalas as acting general counsel in August 2015.[70]

The FEC Inspector General (IG) has raised concerns that "frequent turnover" in the general counsel, chief financial officer (CFO), and deputy staff director for management and administration positions "hinders the organization from efficiently and effectively carrying out the [FEC's] mission."[71] FEC management has responded that it "understands the importance of filling these key, vacant positions" but that permanently doing so is "challeng[ing]."[72] As noted in the "Information Technology" section, the IG also has questioned having a single person occupying the staff director and chief information officer (CIO) positions.

In addition, although not necessarily related to senior-staff vacancies, FEC personnel consistently report low morale. In 2015, for example, responding FEC employees' "global satisfaction index," an Office of Personnel Management (OPM) measure of overall satisfaction with jobs, pay, organization, and "whether they would recommend their organization as a good place to work," stood at 43%. The FEC ranked 39th of 41 small agencies.[73]

---

[68] Federal Election Commission, Office of Inspector General, *Inspector General Statement on the Federal Election Commission's Management and Performance Challenges - 2015*, Washington, DC, October 16, 2015, p. 5, http://www.fec.gov/fecig/documents/ManagementandPerformanceChallenges-2015-FinalReport.pdf.

[69] See, for example, Kenneth P. Doyle, "FEC Slow to Announce New Counsel Following Departure of Anthony Herman," *Daily Report for Executives*, July 18, 2013, pp. A-1; and Dave Levinthal, "Gridlocked Elections Watchdog Goes Two Years Without Top Lawyer," Center for Public Integrity, June 30, 2015, http://www.publicintegrity.org/2013/12/17/13996/how-washington-starves-its-election-watchdog.

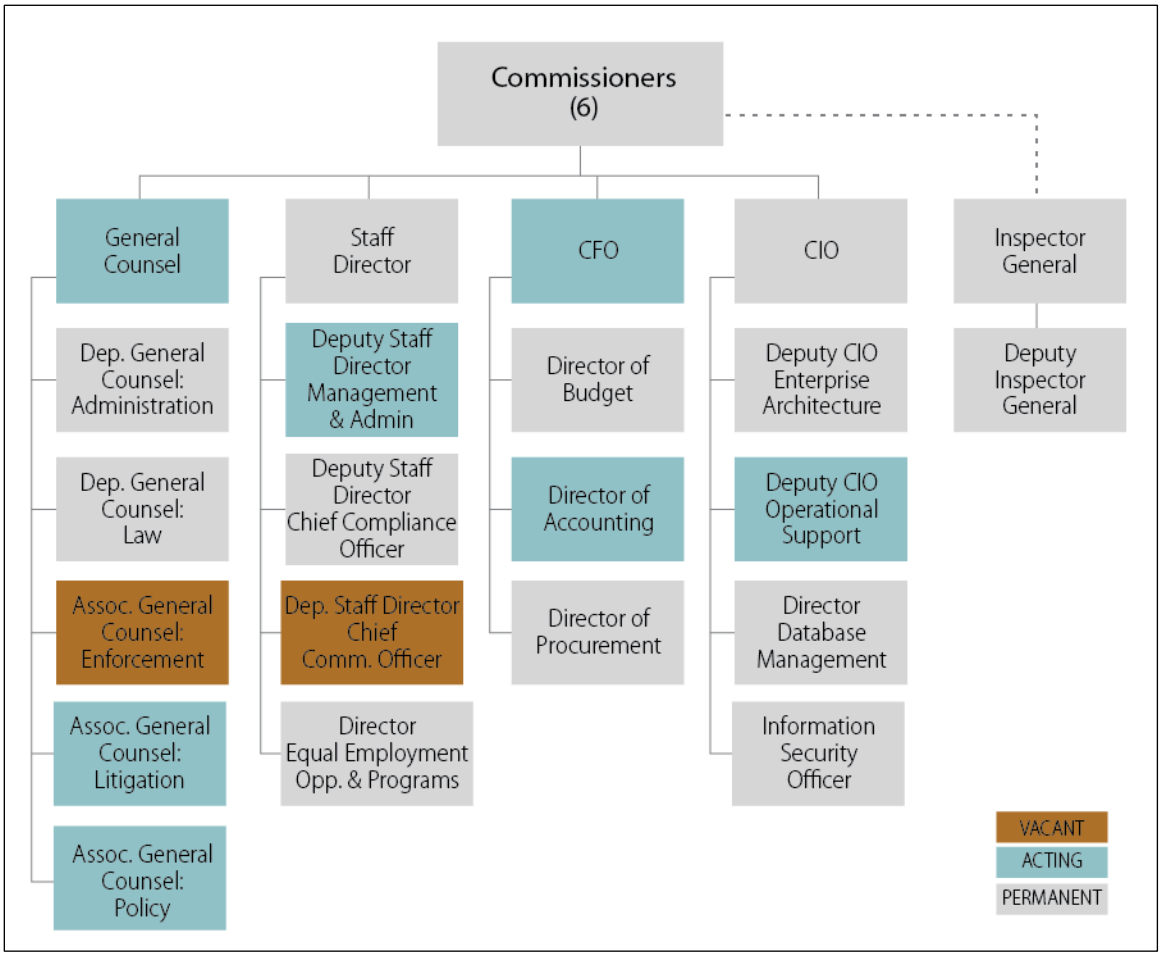
[70] Federal Election Commission, "FEC Announces the Selection of Daniel A. Petalas as Acting General Counsel," press release, August 13, 2015, http://fec.gov/press/press2015/news_releases/20150813release.shtml.

[71] Federal Election Commission, Office of Inspector General, *Inspector General Statement on the Federal Election Commission's Management and Performance Challenges - 2014*, Washington, DC, October 16, 2015, p. 5, http://www.fec.gov/fecig/documents/FEC2014FinancialStatementAuditReport.pdf. See also Federal Election Commission, Office of Inspector General, *Inspector General Statement on the Federal Election Commission's Management and Performance Challenges - 2015*, Washington, DC, October 15, 2014, p. 5, http://www.fec.gov/fecig/documents/ManagementandPerformanceChallenges-2015-FinalReport.pdf.

[72] FEC management's response appears in Attachment A, p. 5, in Federal Election Commission, Office of Inspector General, *Inspector General Statement on the Federal Election Commission's Management and Performance Challenges - 2014*, Washington, DC, October 15, 2014, http://www.fec.gov/fecig/documents/FEC2014FinancialStatementAuditReport.pdf. See also management responses to the 2015 IG report in Attachment A, Federal Election Commission, Office of Inspector General, *Inspector General Statement on the Federal Election Commission's Management and Performance Challenges - 2015*, Washington, DC, October 16, 2015, http://www.fec.gov/fecig/documents/ManagementandPerformanceChallenges-2015-FinalReport.pdf.

[73] These data appear on the Office of Personnel Management's Unlocking Federal Talent website and at

Figure 3. Vacant or Acting Senior Staff Positions, Fall 2015



Source: CRS figure adapted from Federal Election Commission, "FEC Offices," http://fec.gov/about/offices/offices.shtml. Data are current as of November 2015.

Notes: The Staff Director and Chief Information Officer (CIO) are traditionally separate positions at the FEC. As the commission website explains, currently, "the same individual [Alec Palmer] is serving in both the position of the Staff Director and the position of the Chief Information Officer ... Accordingly, the organizational chart reflects both positions—the Staff Director and the Chief Information Officer—as reporting directly to the Commission." In addition, the Director of Equal Employment Opportunity (EEO) "reports directly to the Commission on all EEO matters," but to the Staff Director on administrative matters. See ibid.

Reorganization Proposals

Since the agency's inception, some Members of Congress have proposed reorganizing the FEC to alter the number of commissioners or otherwise change the agency's structure. Most prominently, critiques typically propose eliminating the even-number commissioner structure to make deadlocks less likely. For some, in choosing the current bipartisan structure, Congress intentionally made the FEC "weak" with the agency being "designed to promote deadlock along

https://www.unlocktalent.gov/global-satisfaction and reflect results in Office of Personnel Management, *Federal Employee Viewpoint Survey Results*, Washington, DC, 2015, https://www.unlocktalent.gov/global-satisfaction. The 2015 FEC response rate was 55.4% (N=163). See p. 34 of the *Federal Employee Viewpoint Survey Results*.

party lines on issues that really mattered."[74] Other observers warn that an odd number of commissioners could invite politicized decisionmaking. As one analysis explains, "The FEC's bipartisan design ... allows its regulations to carry weight. If not for this bipartisan design, every FEC action would be tinged with politics and viewed by some as illegitimate."[75]

Restructuring the FEC in any form that eliminated the even number of commissioners could reduce the potential for deadlocks and, therefore, perhaps improve the odds of consensus. Major restructuring could, however, also entail reforms well beyond addressing the comparatively narrow topic of deadlocked votes. In addition, a legislative overhaul of the agency is likely to be controversial. No overarching campaign finance legislation has been enacted since BCRA (2002).[76] This context suggests that efforts to revamp the FEC may be difficult. On the other hand, the cyclical nature of support for campaign finance legislation suggests that changing the commission—or pursuing other major policy goals—could be accomplished provided sufficient demand exists within Congress or perhaps the broader public sphere.

It is also important to note that although changing the number of commissioners is the most recurring and prominent restructuring option, it is by no means the only consideration that might be relevant. For example, scholars and other observers have occasionally proposed providing the general counsel with tie-breaking authority on deadlocked matters. A more enforcement-oriented agency with a powerful chair and administrative law judges is another option.[77] Analysis of these and other options is beyond the scope of this report, but regardless of the reorganization option Congress considered, various questions of agency design and appointments likely would need to be addressed.

Commission Interaction with the Public and with Those It Regulates

Although commissioners have disagreed on many topics, in general, recent discussions at open meetings suggest that they see consensus on at least some transparency issues, such as initiating a major update to the agency's website, discussed in the "Website Upgrade" section of this report. The FEC also has found agreement on providing more formal ways for those regulated by the commission to interact with the agency. For example, in 2009, the FEC began permitting those seeking advisory opinions to appear before the commission to answer questions about the requests. This initiative is designed to address the "frustrat[ing]" situation in which requesters or their attorneys were in the audience during open meetings at which AOs were considered, but

[74] Campaign Legal Center, *Fix the FEC*, background memorandum, September 17, 2015, http://www.campaignlegalcenter.org/news/publications-speeches/fix-fec-background-memorandum-new-bipartisan-legislation-address-0#_ftn5.

[75] Scott Blackburn, *Delusions about 'Dysfunction': Understanding the Federal Election Commission*, Center for Competitive Politics, issue brief, Alexandria, VA, n.d., p. 2, http://www.campaignfreedom.org/wp-content/uploads/2015/10/2015-10-05_Two-Pager_Blackburn_Delusions-About-Dysfunction-Understanding-The-FEC.pdf. Although the brief is not dated, it was released in October 2015.

[76] P.L. 107-155; 116 Stat. 81. BCRA amended FECA. The most significant statutory change since BCRA occurred in December 2014, when Congress permitted political parties and political action committees (PACs) to raise additional funds and, in some cases, create new accounts to do so. See CRS Report R43825, *Increased Campaign Contribution Limits in the FY2015 Omnibus Appropriations Law: Frequently Asked Questions*, by R. Sam Garrett.

[77] For discussion of various options, see, for example, Brooks Jackson, *Honest Graft: Big Money and the American Political Process*, updated ed. (Washington: Farragut Publishing Company, 1990), pp. 335-338; Amanda S. La Forge, "The Toothless Tiger—Structural, Political and Legal Barriers to Effective FEC Enforcement: An Overview and Recommendations," *Administrative Law Journal of American University*, vol. 10 (1996), pp. 351-384; and Bradley A. Smith and Steven M. Hoersting, "A Toothless Anaconda: Innovation, Impotence and Overenforcement at the Federal Election Commission," *Election Law Journal*, vol. 1, no. 2 (2002), pp. 145-171.

were not permitted to answer questions commissioners raised.[78] Some have also proposed that the commission permit other interested parties to appear before the agency to comment on AO requests. The agency rejected such proposals in 2009 and 2015, although anyone may still submit written comments.[79]

Commissioners appear to be less unified on their views about some other transparency matters, such as largely unstructured public forums held in 2015 to solicit feedback on campaign finance and the agency generally.[80] In these debates, commissioners do not necessarily differ on transparency per se, but on their interpretation of how and whether public input should be limited to those who are directly affected by a commission decision—such as a particular enforcement action or advisory opinion—or whether the commission also should solicit public feedback about campaign finance policy generally rather than on specific regulatory matters.

Administering Disclosure

Disclosure—a term of art referring to public reporting of information about contributions and expenditures—is a long-standing principle in campaign finance policy. Since the 1970s, Congress has relied on disclosure to prevent real or apparent corruption in campaign transactions. Even as more contentious policy questions, such as regulating the amounts one can give or spend, have evolved, Congress generally has continued to favor disclosure and courts generally have upheld it as within the government's purview.[81] Facilitating disclosure falls to the FEC.[82]

Although some previous consensus on disclosure has eroded[83] as recent Congresses have debated which transactions should be reported or by whom, the FEC generally is praised for its role in publicizing campaign finance data. "[W]hile most observers are content to dismiss the commission as a bureaucratic sideshow on the American political landscape, most also are willing to credit the agency with at least one major success.... [T]he FEC has built on earlier attempts to make campaign finance data open to public scrutiny and has made disclosure of campaign dollars an accepted and expected part of the electoral process."[84] That assessment was written after the FEC's 10th anniversary in 1985, not after its 40th in 2015. Yet, the same observations ring true

[78] Federal Election Commission, "Advisory Opinion Procedure," 74 *Federal Register* 32160, July 7, 2009.

[79] For additional background, see Lisa J. Stevenson et al., *Third-Party Appearances before the Commission to Discuss Advisory Opinions*, FEC Office of General Counsel, Memorandum to the Commission, Agenda Document 15-37-A, July 10, 2015, http://fec.gov/agenda/2015/documents/mtgdoc_15-37-a.pdf.

[80] For example, such events were held following FEC regional conferences. Controversy also surrounded the scope of comments solicited in advance of a 2015 hearing on rules implementing the *McCutcheon v. FEC* decision. More than 30 witnesses testified on various campaign finance topics. See Federal Election Commission, *Public Hearing on the McCutcheon v. FEC Advance Notice of Proposed Rulemaking*, hearing transcript, Washington, DC, February 11, 2015, http://sers.fec.gov/fosers/viewreg.htm?regno=2014-01.

[81] See CRS Report R41542, *The State of Campaign Finance Policy: Recent Developments and Issues for Congress*, by R. Sam Garrett; and CRS Report R43719, *Campaign Finance: Constitutionality of Limits on Contributions and Expenditures*, by L. Paige Whitaker.

[82] Other agencies handle related disclosure, such as the IRS with organizations operating under Sections 527 and 501(c) of the Internal Revenue Code.

[83] See, for example, Robert F. Bauer, "Not Just a Private Matter: The Purposes of Disclosure in an Expanded Regulatory System," *Election Law Journal*, vol. 6, no. 1 (2007), pp. 38-55; and Bradley A. Smith, Scott Blackburn, and Luke Wachob, *Compulsory Donor Disclosure: When Government Monitors its Citizens*, The Heritage Foundation, legal memorandum no.167, Washington, DC, November 3, 2015, http://www.heritage.org/research/reports/2015/11/compulsory-donor-disclosure-when-government-monitors-its-citizens.

[84] Jeremy Gaunt, ed., "A Rocky Decade Later, the FEC Gets Little Respect," *Campaign Practices Reports*, February 11, 1985, p. 2.

today. Although the commission's disclosure systems are sometimes criticized as outdated, the agency is generally well-regarded for providing timely access to campaign finance data.

In FY2014, the FEC received almost 69,000 disclosure documents containing more than 26 million transactions.[85] Presidential and House reports are generally available to the public via the FEC website within 48 hours. Because Senate reports are filed on paper and with the Secretary of the Senate, which then transmits them to the FEC, availability of those reports is delayed. As the FEC has explained, "A Senate campaign filing often consists of thousands of pages, and data from these filings consume a disproportionate amount of time to be integrated into the Commission's searchable databases."[86] As the section on "The FEC's Legislative Recommendations" notes, the FEC has recommended that Congress require Senate political committees to file reports electronically and directly with the commission.

Information Technology

Information technology (IT) is central to the FEC's public outreach and internal operations.[87] This includes maintaining and upgrading the commission website, enhancing network security, and making ongoing updates to various software and hardware capabilities. IT costs routinely occupy more of the FEC's budget than any expense except personnel. For FY2016, the FEC expects IT to account for approximately 16% of the agency's budget. That amount is consistent with other recent requests.[88]

Security Concerns

The FEC's IG "has identified [IT] security as a challenge for the agency" since FY2004.[89] IT security became more publicly prominent in 2013 when reports emerged that the FEC website had been subject to several successful and attempted breaches.[90] At least some of those attacks appear to have significantly impeded public access to data. Some of the website intrusions reportedly occurred during the October 2013 government shutdown. According to one media account, "[i]t took the agency weeks to get its campaign-finance disclosure system fully back up to speed after an attack by hackers in China disrupted its operation" when most agency staff were furloughed.[91]

---

[85] Federal Election Commission, *Fiscal Year 2016 Congressional Budget Justification*, Washington, DC, February 2, 2015, p. 23, http://www.fec.gov/pages/budget/fy2016/fy_2016_congressional_budget.pdf.

[86] Federal Election Commission, *Fiscal Year 2016 Congressional Budget Justification*, Washington, DC, February 2, 2015, p. 23, http://www.fec.gov/pages/budget/fy2016/fy_2016_congressional_budget.pdf.

[87] This report does not discuss information technology or cybersecurity generally. For additional discussion, see CRS Report R43831, *Cybersecurity Issues and Challenges: In Brief*, by Eric A. Fischer.

[88] Federal Election Commission, *Fiscal Year 2016 Congressional Budget Justification*, Washington, DC, February 2, 2015, pp. 5-9, http://www.fec.gov/pages/budget/fy2016/fy_2016_congressional_budget.pdf.

[89] Federal Election Commission, Office of Inspector General, *Inspector General Statement on the Federal Election Commission's Management and Performance Challenges - 2014*, Washington, DC, October 15, 2014, p. 1, http://www.fec.gov/fecig/documents/FEC2014FinancialStatementAuditReport.pdf.

[90] See, for example, Kenneth P. Doyle, "FEC Says Attempted Hacking of Website Impedes Public Access to Campaign Data," *Daily Report for Executives*, November 5, 2013, pp. A-14; and Dave Levinthal, "How Washington Starves its Election Watchdog," Center for Public Integrity, December 17, 2013, http://www.publicintegrity.org/2013/12/17/13996/how-washington-starves-its-election-watchdog.

[91] Brody Mullins and Rebecca Ballhaus, "Weak Internet Security Leaves U.S. Elections Agency Vulnerable to Hackers, Report Finds," *The Wall Street Journal*, updated June 10, 2015, http://www.wsj.com/articles/weak-internet-security-leaves-fec-vulnerable-to-hackers-reports-find-1433945246.

While acknowledging some subsequent progress on IT issues, the IG and an auditor contracted by the IG continued to raise concerns about the commission's information security and various IT practices.[92] The IG also has questioned the decision to permit one person to serve as both staff director and CIO.[93] The FEC has agreed with some of the IG's IT recommendations.[94]

Concern about the FEC's IT challenges, and the agency's response to those challenges, appears to be ongoing. However, citing various "management actions and a recent commitment to establish more robust IT security standards, the OIG has removed Information Technology Security as a management challenge" from its October 2015 review. The IG reported that the agency nonetheless "continues to struggle with implementing IT projects" and said that it would continue to monitor the FEC's progress on IT issues.[95]

Website Upgrade

The FEC's website is the agency's primary outreach tool. Practitioners rely on the site for compliance information. The media and the public rely heavily on it for campaign finance reports and background information.

Revamping the FEC website has been a major priority. The FEC began soliciting formal feedback about its website in 2009.[96] In 2014, the commission partnered with 18F, "a digital services delivery team in the General Services Administration (GSA)" to solicit feedback from various governmental and nongovernmental sources about how they use the site and what features should be included on a new site.[97] In October 2015, the commission launched a new "beta site" with substantially enhanced data analysis features. Work on the new site continues.

Potential Considerations for Congress and Concluding Comments

The Federal Election Commission is one of the most roundly criticized agencies in Washington. Some contend that the commission has done too little and others say that it has done too much. These criticisms are familiar, but examining the agency's mission and the context in which it operates is less common. Because policy consensus has not yet emerged, this report has emphasized recurring topics that might rise to Congress's attention. If Congress decides to

[92] See, for example, Federal Election Commission, Office of Inspector General, *Inspector General Statement on the Federal Election Commission's Management and Performance Challenges - 2014*, Washington, DC, October 15, 2014, http://www.fec.gov/fecig/documents/FEC2014FinancialStatementAuditReport.pdf.; and Federal Election Commission, Office of Inspector General, *Audit of the Federal Election commission's Fiscal Year 2014 Financial Statements*, final report, November 2014, http://www.fec.gov/fecig/documents/FEC2014FinancialStatementAuditReport.pdf.

[93] The FEC appointed Alec Palmer as staff director in 2011 and noted that he "will continue his responsibilities" as CIO. See Federal Election Commission, "Federal Election Commission Names Alec Palmer as New Staff Director," press release, August 3, 2011, http://fec.gov/press/press2011/20110803newStaffDir.shtml.

[94] FEC management responses appear in the cited IG reports.

[95] Federal Election Commission, Office of Inspector General, *Inspector General Statement on the Federal Election Commission's Management and Performance Challenges - 2015*, Washington, DC, October 15, 2014, pp. 1-2, http://www.fec.gov/fecig/documents/ManagementandPerformanceChallenges-2015-FinalReport.pdf.

[96] Federal Election Commission, "Web Site and Internet Communications Improvement Initiative," 74 *Federal Register* 31430, July 1, 2009.

[97] Federal Election Commission, "FEC Hosts Public Forum on Website Improvement," press release, September 17, 2014, http://www.fec.gov/press/press2014/news_releases/20140917release.shtml.

reexamine the FEC, more in-depth analysis of individual policy questions or matters of agency design likely would be required.

As Congress examines the nation's campaign finance enforcement agency, it might first desire to consider whether the FEC established 40 years ago meets current needs. Broadly speaking, what should the FEC do and how should it do those things? If Congress chooses to alter the FEC at all, do the House and Senate primarily want a different agency or do they want a different set of laws for the agency to enforce? The latter option suggests a broad reexamination of federal campaign finance policy as it has existed for decades. For those who view the status quo as antiquated, reconsidering major topics such as contribution limits, disclosure requirements, and independent spending might be preferable to narrower technical changes. On the other hand, fundamental changes to campaign finance policy are likely to be controversial and protracted. Altering the FEC also likely would be contentious, but the approach would be more modest than overhauling campaign finance policy. The following questions raise more specific points for consideration.

- Does Congress want to change the status quo at all? If so, in which areas and how?
- Does Congress want the FEC to be primarily an enforcement agency, primarily a disclosure agency, or something else?
- If Congress wants the FEC to focus on one task over others, should another agency take on other duties? Is it sufficient for some tasks to be de-prioritized, etc.?
- To what extent should the commission have discretion to prioritize some aspects of its mission over others? Does Congress want to provide more or new direction?
- Does Congress want to retain the FEC's six-member, bipartisan structure? If Congress chose instead an odd number of commissioners, how, if at all, might that affect perceptions of the agency's legitimacy or partisanship?
- Does the FEC have sufficient appropriations to carry out its current mission and future ones?
- Does Congress want to examine relations among commissioners? If so, does it want to try to affect those relations through oversight, by influencing nominations, etc.?
- Does Congress want to consider the FEC's legislative recommendations? If so, which ones?
- Does Congress want to consider findings from outside critiques of the agency, such as those conducted by the FEC's inspector general or advocacy groups?

As Congress considers the questions presented above and the issues noted throughout this report, it might also be important to ask which decisions are within the commission's purview and which things only Congress can change. The FEC can control much of its agenda. Commissioners can determine those areas where they can compromise and where they must disagree. They can set the overall tone for the agency and its staff. They can decide how to allocate resources and where to prioritize enforcement. Other factors are beyond the FEC's control. The agency cannot establish its own statutory mandate. It cannot unilaterally reconcile complex and sometimes ambiguous campaign finance law. Most importantly, the FEC cannot change the First Amendment provisions that so closely protect the very conduct that Congress has charged the commission with regulating.

Appendix. Legislation and Hearings Substantially Devoted to FEC Organization, Operations, or Oversight

Table A-1. Legislation Substantially Devoted to FEC Organization or Operations, 1995-2015

Congress	Bill Number	Short Title	Brief Summary	Primary Sponsor	Most Recent Major Action
114th	H.R. 2931	Restoring Integrity to America's Elections Act	Would restructure the FEC as a 5-member body including a single chairperson with enhanced powers and who would be appointed for a 10-year term	Kilmer	Referred to Committee on House Administration, 06/25/2015
113th	H.R. 3487	—	Extended until 2018 FEC authority to conduct the Administrative Fine Program and expanded program coverage to include additional reporting, such as non-candidate committees and independent expenditures	Miller (Mich.)	Became P.L. 113-72, 12/26/2013
113th	H.Res. 648	—	Would have directed FEC to transmit to the House copies of certain e-mails to or from former IRS official Lois Lerner	Stockman	Referred to Committee on House Administration, 06/25/2014

Congress	Bill Number	Short Title	Brief Summary	Primary Sponsor	Most Recent Major Action
111th	H.J.Res 65	—	Would have disapproved of FEC rulemaking regarding campaign travel aboard private aircraft	Halvorson	Referred to Committee on House Administration, 12/16/2009
111th	S. 1648	Federal Election Administration Act of 2009	Would have replaced the FEC with a 3-member Federal Election Administration ; chairperson with enhanced powers would have been appointed for a 10-year term and could have appointed administrative law judges to preside over enforcement actions	Feingold	Referred to Committee on Rules and Administration, 08/07/2009
111th	S.J.Res. 23	—	Would have disapproved of FEC rulemaking regarding campaign travel aboard private aircraft	Feingold	Referred to Committee on Rules and Administration, 12/17/2009

Congress	Bill Number	Short Title	Brief Summary	Primary Sponsor	Most Recent Major Action
110th	H.R. 421	Federal Election Administration Act of 2007	Would have replaced the FEC with a 3-member Federal Election Administration ; chairperson with enhanced powers would have been appointed for a 10-year term and could have appointed administrative law judges to preside over enforcement actions	Meehan	Referred to Committee on House Administration, 01/11/2007
110th	H.R. 6296	—	Extended until 2013 FEC authority to conduct the Administrative Fine Program	Brady	Became P.L. 110-433, 10/16/2008
110th	S. 478	Federal Election Administration Act of 2007	Would have replaced the FEC with a 3-member Federal Election Administration ; chairperson with enhanced powers would have been appointed for a 10-year term and could have appointed administrative law judges to preside over enforcement actions	McCain	Referred to Committee on Rules and Administration, 02/01/2007

Congress	Bill Number	Short Title	Brief Summary	Primary Sponsor	Most Recent Major Action
109th	H.R. 5676	Federal Election Administration Act of 2006	Would have replaced the FEC with a 3-member Federal Election Administration ; chairperson with enhanced powers would have been appointed for a 10-year term and could have appointed administrative law judges to preside over enforcement actions	Shays	Referred to Committee on House Administration, 06/22/2006
109th	S. 3560	Federal Election Administration Act of 2006	Would have replaced the FEC with a 3-member Federal Election Administration ; chairperson with enhanced powers would have been appointed for a 10-year term and could have appointed administrative law judges to preside over enforcement actions	McCain	Referred to Committee on Rules and Administration, 06/22/2006

Congress	Bill Number	Short Title	Brief Summary	Primary Sponsor	Most Recent Major Action
108th	H.R. 2709	Federal Election Administration Act of 2003	Would have replaced the FEC with a 3-member Federal Election Administration ; chairperson with enhanced powers would have been appointed for a 10-year term and could have appointed administrative law judges to preside over enforcement actions	Shays	Referred to Committee on House Administration, 07/10/2003
108th	S. 1388	Federal Election Administration Act of 2003	Would have replaced the FEC with a 3-member Federal Election Administration ; chairperson with enhanced powers would have been appointed for a 10-year term and could have appointed administrative law judges to preside over enforcement actions	McCain	Referred to Committee on Rules and Administration, 07/10/2003
107th	H.J.Res 119	—	Would have disapproved of FEC post-BCRA "soft money" rulemaking	Shays	Referred to Committee on House Administration, 10/08/2002
107th	S. 602	Common Sense Federal Election Reform Act of 2001	Would have extended FEC commissioner terms to 8 years; most of bill related to other topics	Domenici	Referred to Committee on Rules and Administration, 03/22/2001

Congress	Bill Number	Short Title	Brief Summary	Primary Sponsor	Most Recent Major Action
107th	S.J.Res. 48	—	Would have disapproved of FEC post-BCRA "soft money" rulemaking	McCain	Referred to Committee on Rules and Administration, 10/08/2002
106th	H.R. 1818	FEC Reform and Reauthorization Act of 1999	Would have altered some enforcement procedures and disclosure requirements	Hoyer	Referred to Committee on House Administration, 05/14/1999
106th	H.R. 2490	Treasury and General Government Act, 2000	Sec. 640 established Administrative Fine Program	Kolbe	Became P.L. 106-58, 09/29/1999
106th	H.R. 4037	FEC Reform and Reauthorization Act of 2000	Would have altered some enforcement procedures and disclosure requirements	Hoyer	Referred to Committee on House Administration, 05/14/1999
106th	S. 504	Federal Election Enforcement and Disclosure Reform Act	Would have restructured FEC with 7 members, including one not affiliated with Democratic or Republican parties; some nominees would have been recommended by the Supreme Court; would have altered FEC audit and injunction authority	Cleland	Referred to Committee on Rules and Administration, 03/02/1999

Congress	Bill Number	Short Title	Brief Summary	Primary Sponsor	Most Recent Major Action
106th	S. 1107	Constitutional and Effective Reform of Campaigns Act of 1999	Would have term-limited FEC commissioners and altered some disclosure requirements, in addition to other provisions	Warner	Referred to Committee on Rules and Administration, 05/24/1999
106th	S. 2833	—	Would have altered FEC audit and injunction authority and some disclosure requirements	Dodd	Referred to Committee on Rules and Administration, 06/29/2000
105th	H.R. 1780	Voter Empowerment Act of 1997	Would have altered disclosure requirements and transferred FECA enforcement authority from the FEC to the Attorney General	Dreier	Referred to Committees on House Oversight, Ways and Means, and Judiciary, 06/04/1997
105th	H.R. 3748	FEC Reauthorization Act of 1998	Would have altered some enforcement time periods and processes and required additional commission review of statutory officers	Thomas	Reported by the Committee on House Oversight, 06/25/1998
105th	S. 446	—	Would have altered FEC audit and injunction authority and some disclosure requirements	Dodd	Referred to Committee on Rules and Administration, 03/14/1997

Congress	Bill Number	Short Title	Brief Summary	Primary Sponsor	Most Recent Major Action
105th	S. 1664	Federal Election Enforcement and Disclosure Reform Act	Would have restructured FEC with 7 members, including one not affiliated with Democratic or Republican parties; some nominees would have been recommended by the Supreme Court; would have altered FEC audit and injunction authority	Cleland	Committee on Rules and Administration, 02/23/1998

Source: Congressional Research Service analysis of bill texts.

Notes: Unless otherwise noted, the table excludes appropriations bills and those that do not substantially address FEC organization or operations, such as general campaign finance legislation, including some public financing legislation that proposes creating relevant oversight entities within the FEC; bills that propose to create or terminate the Election Assistance Commission thereby affecting some FEC functions; and bills devoted entirely to electronic filing of campaign finance reports.

Table A-2.Congressional Hearings Substantially Devoted to FEC Oversight, 1995-2015

Congress	Chamber	Hearing Date	Committee	Hearing Title
112th	House	November 3, 2011	Subcommittee on Elections, Committee on House Administration	Federal Election Commission: Reviewing Policies, Processes and Procedures
108th	House	May 20, 2004	Committee on House Administration	Hearing on Federal Election Commission and 527 Groups
108th	House	October 16, 2003	Committee on House Administration	Hearing on Federal Election Commission Enforcement Procedures

Congress	Chamber	Hearing Date	Committee	Hearing Title
105th	House	March 31, 1998	Committee on Government Reform and Oversight	Federal Election Commission Enforcement Actions: Foreign Campaign Contributions and Other FECA Violations
105th	House	March 5, 1998	Subcommittee on Government Management, Information, and Technology; Committee on Government Reform and Oversight	Oversight of the Federal Election Commission

Source: Congressional Research Service analysis of GPO FDSys data.

Notes: The table reflects hearings substantially related to FEC organization or performance rather than oversight or legislative matters that happen to involve the FEC. For example, hearings on the congressional response to the 2010 *Citizens United* ruling and consideration of the Bipartisan Campaign Reform Act (P.L. 107-155) are excluded because although commission activities were addressed at some hearings, the principal purpose appears to have been other matters related to campaign finance policy or law. The table also excludes appropriations and nominations hearings. Finally, the table excludes a 113th Congress Senate Judiciary Committee, Subcommittee on Crime and Terrorism, hearing on criminal enforcement of campaign finance law. That hearing included witnesses from the Department of Justice, Internal Revenue Service, and interest groups, but none from the FEC.

Author Information

R. Sam Garrett
Specialist in American National Government

Acknowledgments

CRS Information Research Specialist Michael Greene contributed to research on deadlocked votes. CRS Research Assistant Lara E. Chausow contributed to research on legislation in the **Appendix**. CRS Visual Information Specialist Amber Hope Wilhelm designed or adapted the figures.

Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not

subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.