



Federal Election Commission
Office of the Inspector General

MEMORANDUM

TO: Alec Palmer
Staff Director/Chief Information Officer

John Quinlan
Chief Financial Officer

Lisa Stevenson
Acting General Counsel

THROUGH: Dennis Phillips
Deputy Inspector General

FROM: Michael Mitchell
Senior Auditor

SUBJECT: Special Review 22-03: Special Review of the Federal Election Commission (FEC) Standard Operating Procedures (SOP) related to non-Federal Election Campaign Act (FECA) law enforcement inquiries

DATE: February 08, 2023

Summary

This memorandum transmits the results of the Federal Election Commission (FEC) Office of the Inspector General (OIG) Special Review of standard operating procedures related to coordination with non-FECA law enforcement inquiries. This special review¹ was selected based on coordination challenges identified by external agency law enforcement personnel and in accordance with Section (4) of the *Inspector General Act of 1978*, as amended.²

¹ The OIG Special Review process can be found at [The Special Review Process 9.24.20.pdf](#) (fec.gov)

² See Inspector General Act of 1978 §4. Duties and responsibilities; report of criminal violations to Attorney General, which provides, in pertinent part, that each Inspector General shall recommend policies for, and to conduct, supervise, or coordinate relationships between their respective establishment (i.e., agency) and other federal agencies, state and local governmental agencies, and nongovernmental entities.

The primary purpose of this review was to assess whether the FEC has adequate policies and procedures in place to timely and effectively respond to non-FECA inquiries made by law enforcement agencies. The review determined that such inquiries are infrequent, that FEC personnel appear aware of how to address them, and, as such, the FEC's current practices are sufficient.

The review further identified an open U.S. Government Accountability Office (GAO) recommendation from the February 2020 report *Campaign Finance: Federal Framework, Agency Roles and Responsibilities, and Perspectives*.³ Specifically, GAO recommended that the FEC and Department of Justice (DOJ) update a 1977 Memorandum of Understanding (MOU) regarding coordination between the agencies. Accordingly, the OIG has no formal recommendations but encourages the agency to implement the GAO recommendation.

Scope

Our review included evaluating FEC SOPs related to coordination with law enforcement inquiries for non-FECA matters. The OIG completed the following tasks during the review:

- Reviewed related agency directives, policies, and procedures
- Solicited feedback from agency personnel via survey/questionnaire
- Interviewed FEC personnel
- Reviewed FEC OIG records for non-FECA-related law enforcement inquiries
- Limited literature review

Review of Related Agency Directives, Policies, and Procedures

The OIG reviewed agency directives, policies, and procedures to determine if the agency had guidance in place to assist staff if contacted by law enforcement officers with non-FECA-related inquiries. The OIG determined that the agency, including the FEC OIG, does not have directives or policies exclusively addressing contact with law enforcement officers for non-FECA related inquiries.

Although the agency does not have specific SOPs to handle non-FECA related inquiries, the Office of General Counsel (OGC) maintains guidance for handling requests for information related to FECA. Additionally, OGC management communicates performance expectations to OGC staff that receive FECA information requests. Further, OGC staff members were provided with guidance via email to assist in routing FECA-related inquiries to the correct contact within the agency.

³ [Campaign Finance: Federal Framework, Agency Roles and Responsibilities, and Perspectives](#)

OIG policies and procedures contain guidance for coordinating with the FEC or another agency for matters not within the jurisdiction of the OIG or that warrant the involvement of other law enforcement agencies. However, no specific OIG policy guides OIG staff in regard to non-FECA related matters.

Solicitation from Agency Personnel via Survey

The OIG surveyed FEC personnel seeking information in the following areas:

- **Length of Service:** The employee's length of service with the agency (Figure 1).
- **Awareness:** Employee awareness of FEC directive, policy, or procedure that guides employees if they receive a request for information from federal, state, or local law enforcement concerning non-FECA matters (Figure 2).
- **Reported Number of Law Enforcement Contacts and Employee Response:** If a federal, state, or local law enforcement agency ever contacted the staff member in their official capacity and requested FEC information, assistance with an investigation, or a point of contact concerning non-FECA matters and their reported response (Figure 3).
- **Likely Actions if Contacted:** Actions employees would likely take if they received an inquiry from a law enforcement officer (Figure 4).

Length of Service Reported by Survey Respondents

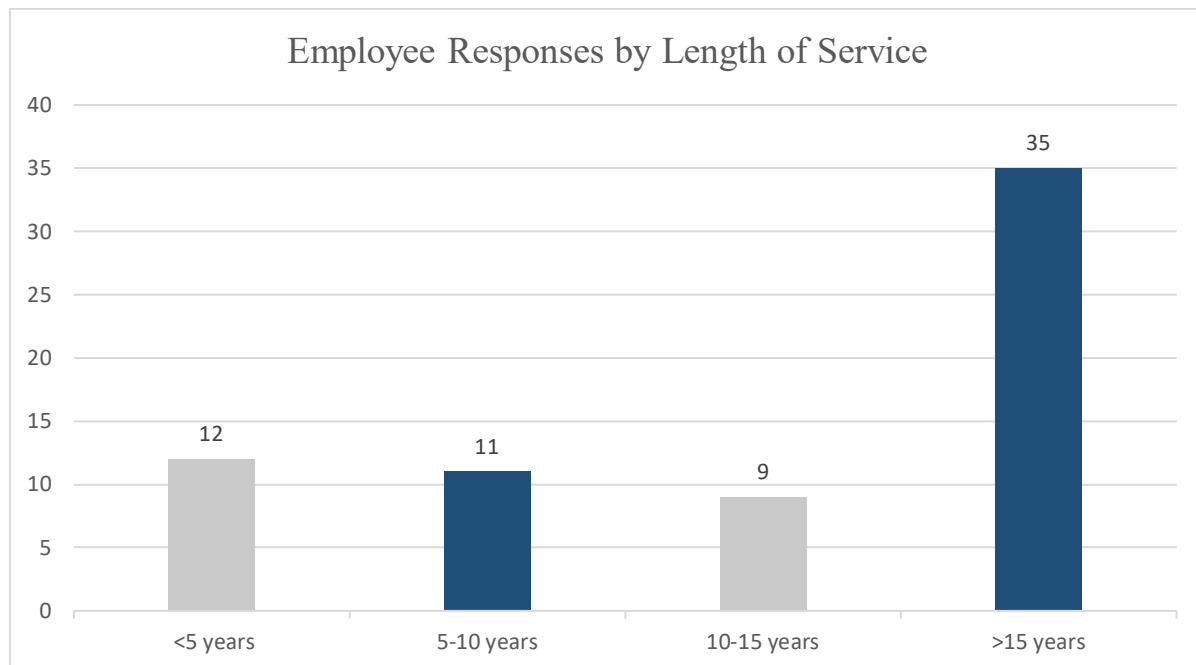


Figure 1: Length of service reported by randomly selected survey respondents

- Sixty-seven employees responded to the survey.

- A majority of respondents (35) worked with the agency for greater than 15 years.
- The remaining respondents (32) worked with the agency for less than 15 years.

Awareness of FEC Directive, Policy, or Procedure Concerning Law Enforcement Contact

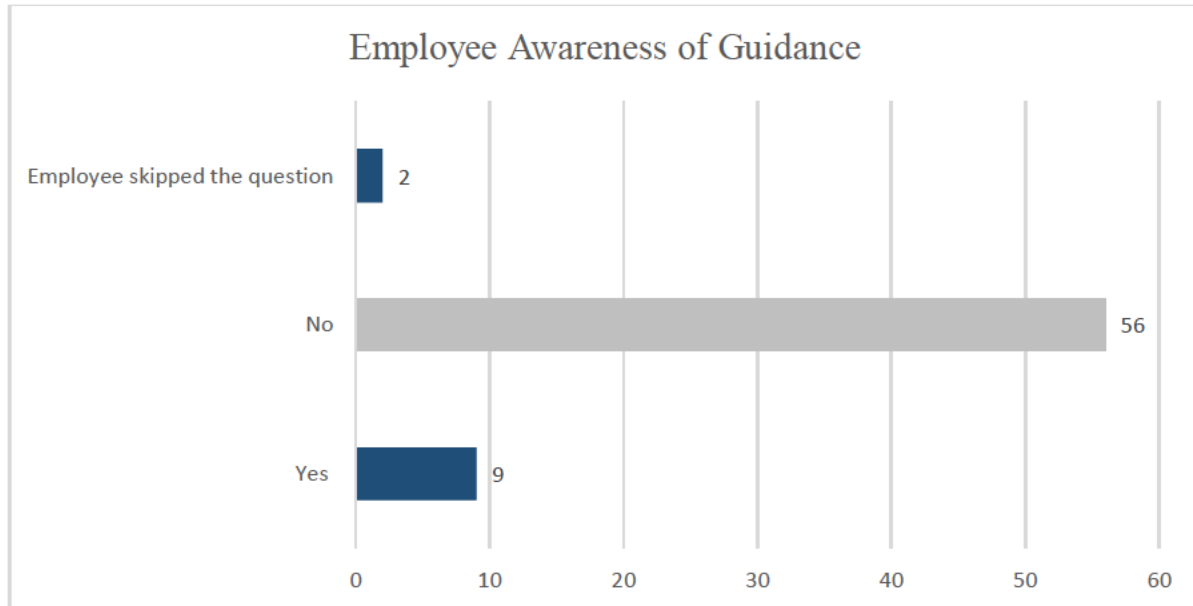


Figure 2: Survey respondents reported awareness of FEC directives, policies, or procedures related to law enforcement inquiries

- Fifty-six of the 67 respondents were not aware of an FEC directive, policy, or procedure that guides employees who receive a request for information from federal, state, or local law enforcement concerning non-FECA matters.
- Nine employees reported awareness of guidance in these matters. Seven of these employees worked with the agency for more than 15 years. One employee has been with the agency between 5-10 years, and the other for less than five years.
- Two individuals did not respond to the question.

Reported Law Enforcement Contacts

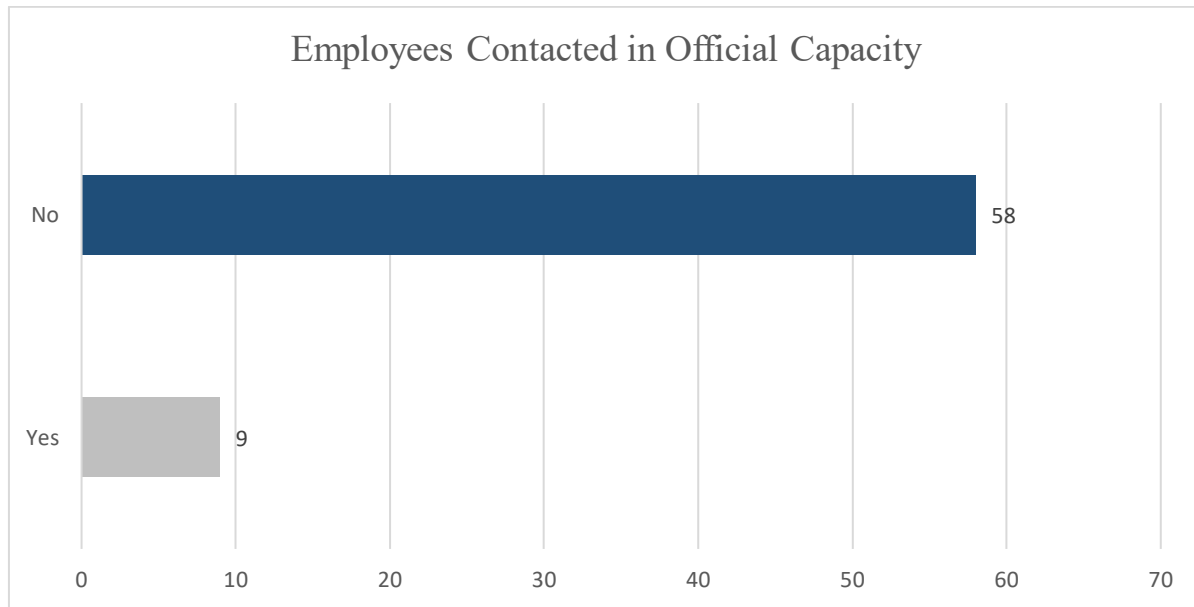


Figure 3: Law enforcement contacts reported by survey respondents

- Fifty-eight employees reported they had never received requests for information from federal, state, or local law enforcement contacts in their official capacity.
- Nine respondents indicated they had been contacted by law enforcement while working with the FEC. Seven of the nine employees reported working with the agency for more than 15 years.
- One respondent contacted by law enforcement during their duties was aware of an existing policy or procedure.

Reported Actions

- Eight respondents reported that they referred the inquirer to management when contacted by law enforcement. One respondent did not report their actions.

Likely Actions if Contacted by Law Enforcement

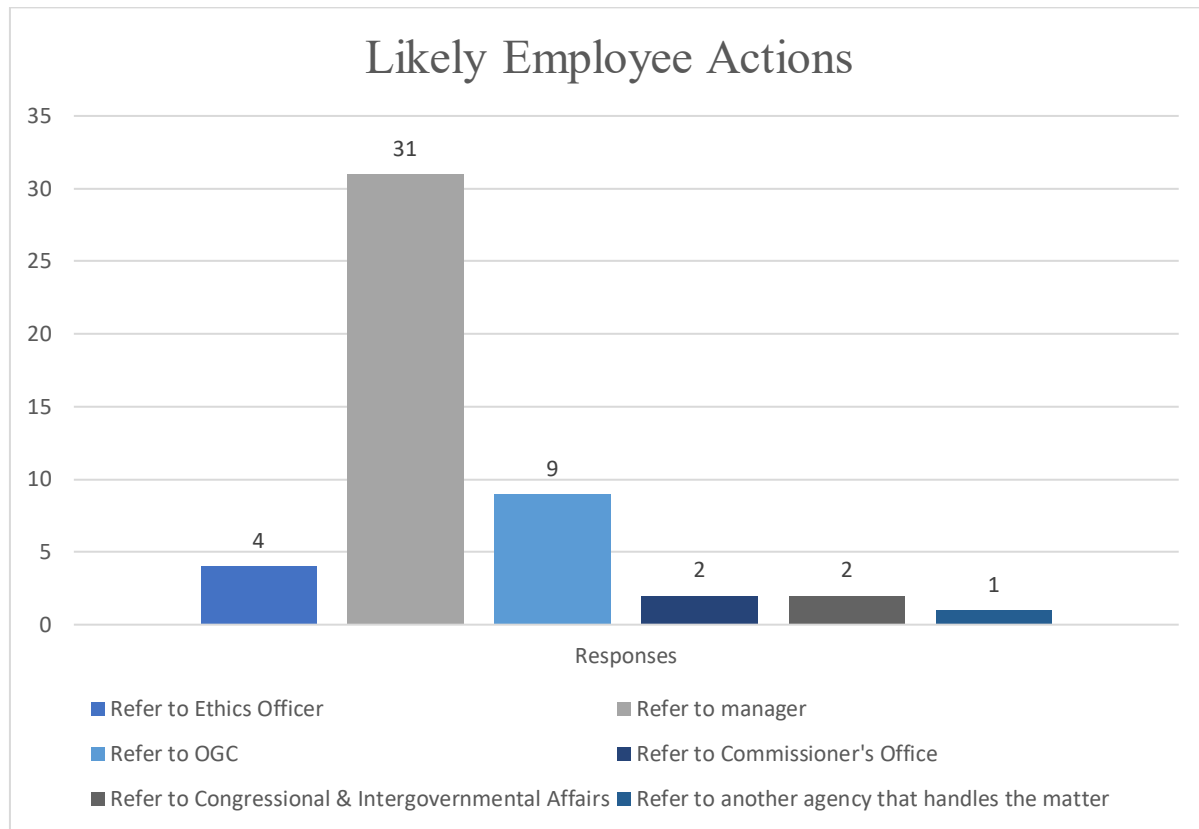


Figure 4: Survey respondents' likely actions in response to hypothetical LE inquiry.

- Forty-eight of 67 employees provided potential steps they would take if they received an inquiry from law enforcement in their official capacity.
- Referring the requestor to management (31) was the most frequent staff response. Directing the requestor to OGC (9) was the next frequently reported action.
- Other responses included referrals to the Congressional and Governmental Affairs office and the ethics officer.

Interviews with FEC Managers

The OIG interviewed several FEC managers regarding non-FECA-related contact with law enforcement. Managers were selected based on the likelihood of an inquiry in their division.

The Office of the Staff Director (OSD) managers indicated that contact from law enforcement does occur, citing the coordination with Federal Protective Services (FPS) initiated due to threats received by Commissioners as a typical event. Additionally, the OSD managers have received phone calls and emails from law enforcement officers seeking

information concerning campaign finance disclosures. Managers reported directing those inquiries to OGC or the Congressional, Legislative, and Intergovernmental Affairs Office.

The Office of the Chief Financial Officer (OCFO) indicated no known occurrences of non-FECA-related law enforcement contacts within the division. The most likely courses of action disclosed during interviews included notifying OGC management of law enforcement inquiries and potentially contacting FEC OIG, depending on the nature of the inquiry.

The OGC reported that the most common non-FECA-related law enforcement interactions stem from employee criminal involvement or misconduct. The OGC reported that they immediately contact FEC OIG once potential illegal action is discovered.

Review of FEC OIG Internal Records for Non-FECA Contact with law enforcement

FEC OIG's electronic hotline complaints from 2010 to the present were reviewed to determine the frequency of contact between law enforcement agencies and the FEC OIG in FECA and non-FECA-related inquiries. From 2010 to 2022, a total of 16 OIG records revealed contact with law enforcement agencies. The OIG received eight non-FECA-related inquiries, including:

- Four employee-related inquiries (e.g., background checks)
- One procurement-related inquiry
- One alleged IT breach
- One informational request.
- One general inquiry about FEC office locations

The OIG records contained four FECA-related complaints and four FECA-related records inquiries initiated by law enforcement.

Limited Literature Review

A limited literature review of government publications was performed to determine if coordination challenges with the FEC were previously documented. In February 2020, the GAO published *Campaign Finance: Federal Framework, Agency Roles and Responsibilities, and Perspectives* detailing coordination challenges of the Department of Justice (DOJ), the FEC, and the Internal Revenue Service (IRS).⁴

⁴ [Campaign Finance: Federal Framework, Agency Roles and Responsibilities, and Perspectives](#)

Recommendations for Executive Action		
Agency Affected	Recommendation	Status
Federal Election Commission	The FEC, in consultation with DOJ, should review guidance addressing coordination with DOJ, to include the MOU, and once a quorum of commissioners is in place, update that guidance as appropriate based on the review. (Recommendation 1)	<div> <input checked="" type="radio"/> Open ⓘ </div> <p>The Federal Election Commission (FEC) achieved a quorum with the confirmation of three new commissioners in December 2020. As of April 2022, the FEC reported that in March 2022, two FEC Commissioners and relevant FEC staff met with Department of Justice (DOJ) senior leadership and staff for the purpose of discussing the Memorandum of Understanding (MOU), and staff are now in the process of preparing draft MOU language. We will consider closing this recommendation when the agency has completed its review and updated guidance based on these efforts.</p>
Office of the Attorney General	The Attorney General, in consultation with the FEC, should review guidance addressing coordination with the FEC, to include the MOU, and once a quorum of commissioners is in place, update that guidance as appropriate based on the review. (Recommendation 2)	<div> <input checked="" type="radio"/> Open ⓘ </div> <p>According to the Department of Justice (DOJ), as of June 2022, the Assistant Attorney General of the Criminal Division of DOJ in March 2022 met with two Commissioners of the Federal Election Commission (FEC) to discuss a new Memorandum of Understanding (MOU) addressing coordination between the FEC and DOJ. DOJ reported that staff at the Election Crimes Branch of the Public Integrity Section of the Criminal Division and the FEC Office of General Counsel intend to continue working toward a draft of the new MOU. We will consider closing this recommendation when the agency has completed its review and updated guidance based on these efforts.</p>

Figure 5: GAO Recommendations for Executive Action⁵

Currently, the Commission's only recommendation (Figure 5) is to update the 1977 memorandum of understanding MOU between the DOJ and the FEC.⁶

The GAO report also identified IRS coordination challenges related to organizations formed in accordance with 26 U.S.C. § 501c.⁷ Certain tax-exempt organizations are prohibited from engaging in political activity. Other organizations, such as social welfare organizations, labor unions, and trade associations, may engage in limited political activity.⁸

The 2020 GAO report indicated that IRS challenges include obtaining complete and accurate information from filers and navigating statutes and regulations to monitor compliance.

The DOJ's enforcement manual, *Federal Prosecution of Election Offenses*⁹, sets forth the consultation requirement for election fraud and campaign finance crimes. In regard to campaign finance crimes, the manual states:

Justice Department supervision over the enforcement of all criminal statutes and prosecutive theories involving corruption of the election process,

⁵ https://www.gao.gov/products/gao-20-66r#summary_recommend

⁶ 43 Fed. Reg. 5441 (Feb. 8, 1978)

⁷ 26 U.S.C. § 501(c), et seq.

⁸ *Id.*

⁹ *Federal Prosecution of Election Offenses*, Eighth Edition, December 2017 pg. 15

criminal patronage violations, and campaign financing crimes is delegated to the Criminal Division's Public Integrity Section. This Headquarters' consultation policy is set forth in the U.S. DEPT OF JUSTICE, U.S. ATTORNEYS' MANUAL (USAM), Section 9-85.210.

Section 9-85.210 of USAM details the consultation requirements for violations of campaign financing law, federal patronage laws, and corruption of elections.

9-85.210 - Violations of Campaign Financing Laws, Federal Patronage Laws, and Corruption of Elections—Consultation Requirement

Consultation with the Public Integrity Section of the Criminal Division is required in each federal criminal matter that involves alleged or suspected violations of federal or state campaign financing laws, federal patronage crimes, or corruption of the election process.

Federal prosecutors and agents must consult with the Public Integrity Section prior to opening any such matter or taking any potentially overt investigative step, including but not limited to interviewing witnesses, issuing grand jury subpoenas, executing search warrants, or conducting surveillance. This provision does not, however, apply to intaking a complaint, provided that the intaking component advises the complainant that receiving a complaint in no way implies that there is or will be any federal criminal investigation of the allegation.

Federal prosecutors shall also consult with the Public Integrity Section before instituting grand jury proceedings relating to, or filing an information or seeking an indictment charging, a campaign finance, ballot fraud, or patronage offense.

Matters for which consultation with the Public Integrity Section is required include, but are not limited to, investigations and prosecutions of the offenses codified in: 18 U.S.C. §§ 592 to 611; 52 U.S.C. §§ 10307, 20511, 20701, 30101-30145; and prosecutive theories that involve election fraud or campaign fund raising violations using 18 U.S.C. §§ 241, 242, and 245; 18 U.S.C. § 371; 18 U.S.C. §§ 1341, 1343, and 1346; 18 U.S.C. § 1952; and 18 U.S.C. §§ 1956 and 1957.

[cited in [JM 9-43.100](#)] [updated August 2022]

Figure 6: Snapshot of U.S. DOJ, U.A. Attorneys' Manual

The DOJ manual further states that:

Not all FECA violations are federal crimes, either because they lack the requisite criminal intent or because they do not meet the applicable monetary floor for FECA crimes. Early consultation with the Public Integrity Section assists the Department, the United States Attorneys' Offices, and the FBI by ensuring that investigative and prosecutorial resources are focused on FECA violations only when appropriate.

Accordingly, the Department requires that the Public Integrity Section be consulted before beginning any criminal investigation, including a preliminary investigation of a matter involving possible violations of

FECA. USAM § 9-85.210. This consultation is also required before any investigation of campaign financing activities under one of the Title 18 felony theories discussed above. *Id.* The Public Integrity Section also recommends that the Section be consulted before commencing an investigation of possible violations of the public funding programs in Title 26.¹⁰

Observations

1. FEC has guidance for staff and a process if law enforcement contacts staff for FECA-related law enforcement inquiries

The agency maintains written policies and procedures to guide staff responses to questions involving FECA. In addition to formalized policy, a scripted response was also created within OGC to train staff in the event they were contacted by law enforcement in their official capacity. The script was disseminated to OGC staff via email. However, no specific guidance exists for non-FECA related law enforcement inquiries.

2. Agency personnel reported infrequent contact with law enforcement

The frequency of law enforcement inquiries appears minimal, based on the survey responses received by the OIG. Nine staff members reported being contacted by law enforcement during their tenure with the FEC, eight of whom reported having referred the inquiry to management.

Staff overwhelmingly reported that if they received inquiries from law enforcement, they would forward the inquiry to their managers or OGC.

3. Interviewed personnel reported limited contact with law enforcement for non-FECA-related inquiries

FEC OIG interviewed personnel from OGC, OSD, and OCFO regarding contact with law enforcement. From the interviews conducted by the OIG, communications with law enforcement agencies concerning non-FECA related matters appear minimal. However, contact with law enforcement does occur. According to the interviewees, calls received from law enforcement contacts are mostly related to information requests concerning FECA disclosures.

4. FEC OIG records reflect few contacts with law enforcement agencies for non-FECA-related matters.

¹⁰ [Federal Prosecution of Election Offenses, Eighth Edition, December 2017 pg. 167-168](#)

FEC OIG records from 2010 to the present reveal 16 prior contacts from law enforcement agencies requesting information. The OIG received eight non-FECA related inquiries, four FECA related complaints, and four FECA related records inquiries initiated by law enforcement.

5. A prior recommendation from the 2020 GAO report remains open

GAO's report, *Campaign Finance: Federal Framework, Agency Roles and Responsibilities, and Perspectives*, has an open recommendation to update the 1977 MOU between the DOJ and FEC.¹¹

GAO identified coordination challenges between the FEC and the IRS. However, these challenges appear related to 26 U.S.C. § 501(c) examination of tax-exempt organizations and political intervention.¹²

6. Consultation with DOJ's Public Integrity Section for FECA inquiries

Consistent with the DOJ's *Federal Prosecution of Election Offenses*¹³ and FEC OGC guidance, requests for information or records should come through the Public Integrity Section of the Department of Justice.

Conclusion

The review determined that additional policies and procedures addressing non-FECA law enforcement inquiries are unnecessary. First, policies and procedures exist concerning FECA related inquiries. Second and relatedly, survey responses indicated that FEC personnel are aware of the appropriate course of action in the event of any law enforcement inquiry (FECA related or otherwise), i.e., referral to management and/or OGC. Third, and finally, the survey responses further indicated that non-FECA inquiries by external law enforcement personnel occur infrequently. Accordingly, given the infrequency of non-FECA law enforcement contacts and the responses of FEC personnel, the OIG determined further policies or procedures are unnecessary.

Recommendation

The OIG makes no formal recommendation but encourages the agency to continue working towards closing the recommendation from GAO-20-66R.

¹¹ [43 Fed. Reg. 5441 \(Feb. 8, 1978\)](#)

¹² [Campaign Finance: Federal Framework, Agency Roles and Responsibilities, and Perspectives pg.43-44](#)

¹³ [Federal Prosecution of Election Offenses, Eighth Edition, December 2017 pg. 15](#)

If you have any questions regarding this closing memorandum, please contact Mr. Michael Mitchell at MMitchell@fec.gov.

cc: The Commission



FEDERAL ELECTION COMMISSION
Washington, DC 20463

February 23, 2023

MEMORANDUM

TO: Christopher Skinner
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CC: D. Alec Palmer
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John Quinlan
Chief Financial Officer

FROM: Lisa J. Stevenson *LJS*
Acting General Counsel

Charles Kitcher *LJS for CK*
Associate General Counsel for Enforcement

Lawrence L. Calvert *LLC*
Special Counsel to the General Counsel

RE: Draft Report in OIG Special Review 22-03, "Special Review of the Federal Election Commission (FEC) Standard Operating Procedures (SOP) related to non-Federal Election Campaign Act (FECA) law enforcement inquiries"

Thank you for the opportunity to comment on the above-referenced draft report. We appreciated OIG's conclusion in the special review that the FEC has adequate policies and procedures in place to timely and effectively respond to non-FECA inquiries made by law enforcement agencies.

The draft did note an open Government Accountability Office ("GAO") recommendation from an earlier review that the FEC and the Department of Justice update the 1977 Memorandum of Understanding between the two agencies regarding enforcement of the Federal Election Campaign Act. OIG's draft report "has no formal recommendations, but encourages the agency to implement the GAO recommendation." OIG Draft Report, SR22-03, at 2.

In this regard, we refer OIG to the Commission's September 2022 response to a question about the MOU and the GAO recommendation propounded by the Committee on House Administration of the U.S. House of Representatives. The Commission said then:

Following the reciprocal recommendations to the Commission and DOJ set forth in the 2020 GAO report, the Commission and DOJ have made steady, careful progress towards agreement on an updated MOU, while balancing the numerous other priorities of both agencies. Initially, during the period in which the Commission largely lacked a quorum to approve such an agreement, these efforts consisted of discussions at the staff level. After the quorum was regained, the Commission has continued to partner with DOJ to take constructive steps. In addition to increased staff-level discussions, this work has included a meeting of two FEC Commissioners representing the Commission and senior DOJ leadership that took place on March 15, 2022. This meeting was specifically for the purpose of high-level discussion of relevant principles for the MOU and agreeing on a framework for further progress towards an updated agreement. Following that meeting, DOJ has prepared and shared an updated MOU draft with the Commission, which the Commission is currently reviewing.

* * *

Throughout the current effort, the Commission has focused on process improvements and increased inclusion based on lessons learned from prior experience, which to date has yielded steady and constructive progress. It is the Commission's view that both agencies are committed to the effort of reaching an updated MOU, as is reflected in the significant staff time the Commission has invested in the effort at the Commissioner and senior staff level (and which it appears DOJ has similarly invested), and the Commission intends to continue those investments and the pursuit of the goal of executing an updated agreement.

Since last September, the Commission and DOJ have continued to exchange proposed edits to the draft MOU. [REDACTED]