

FEC Adopts Policy to Reduce Penalties for Self-Reporting of Campaign Finance Violations

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Recognizing the need "to provide appropriate incentives for [the] demonstration of cooperation and responsibility," the FEC recently issued the final version of a Self-Reporting Statement of Policy designed to encourage more candidates and PACs to come forward when they uncover evidence of internal campaign finance violations. In exchange for bringing these matters to the Commission's attention *sua sponte*, the FEC will offer penalties between 25% and 75% lower than the Commission would otherwise have sought in identical matters arising by other means. Additionally, the Commission will expedite the conciliation process for self-reporters and, in many cases, will allow respondents to resolve matters short of a "reason to believe" finding by the Commission.

In its Statement of Policy, the Commission identified seven factors that it would examine when considering how to handle self-reported violations, including the type of violation (*e.g.*, a knowing and willful violation, an inadvertent mistake, a mistake based on the advice of counsel, etc.) the magnitude of the violation (*e.g.*, the amount of people or money involved), and the origin of the violation (*e.g.*, whether there were compliance procedures in place to prevent the violation, and if so, why these procedures failed to stop or deter the wrongful conduct). The FEC will also look at the investigative and corrective actions that were taken by the respondent, any post-discovery compliance measures, whether there was full disclosure to the Commission, and whether the respondent fully cooperated with the FEC once any violations were disclosed.

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Absent unusual circumstances, the Statement of Policy notes that the Commission will grant a civil penalty reduction of 50% to an organization that complies with the following steps:

- Respondents alert the Commission to potential violations before the violation had been or was about to be discovered by any outside party, including the Commission;
- The violation immediately ceased and was promptly reported to the Commission upon discovery;
- Respondents take appropriate and prompt corrective action(s) (e.g., changes to internal procedures to prevent a recurrence of the violation; increased training; disciplinary action where appropriate);
- Respondents amend reports or disclosures to correct past errors, if applicable;
- Any appropriate refunds, transfers, and disgorgements are made and/or waived; and
- Respondents fully cooperate with the Commission in ensuring that the *sua sponte* submission is complete and accurate.

Although indicating that the typical penalty reduction would be 50%, the Commission indicated that a reduction of up to 75% may be made available to respondents that undertake additional steps, such as hiring independent experts to conduct a thorough review, investigation, or audit, or conducting an equally comprehensive internal review, investigation, or audit. In order to qualify for the 75% reduction, however, all documentation of the experts' review, investigation or audit must be provided to the Commission. As an example of a "thorough" review, the Commission noted that an organization that has misstated financial information in its reports must conduct both an audit reconciling bank and internal records with FEC reports for at least a year prior to the error and a review specifically addressing internal controls and reporting procedures. A copy of the FEC's policy on self-reporting can be found at: http://www.fec.gov/law/cfr/ej_compilation/2007/notice_2007-8.pdf.