

# FEC Formally Adopts Program to Resolve Legal Questions Arising During Audit Process or on a Request for Additional Information

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Following a year-long trial period, the Federal Election Commission (FEC) recently made permanent a program that allows committees and other entities registered with the FEC to obtain answers to certain legal questions arising during the audit process and in response to Requests for Additional Information (RFAs). (A registered committee or other entity may receive an RFA if the FEC's Reports Analysis Division (RAD) seeks further information regarding disclosure reports.)

A person or entity asked to take corrective action through an RFA or pursuant to a request from the FEC's Audit Division may seek FEC consideration of a legal question if a material dispute exists on a question of law. This request must come within 15 business days of a "determination" by RAD or the Audit Division and should identify the legal question; articulate a compelling argument as to why the FEC should consider it; and cite any relevant court decisions, policy statements or other arguments that will assist the FEC in making a final decision. The determination date for RAD matters is the date that RAD notifies the committee or entity of corrective action in an RFA, and the determination date for Audit Division matters is considered to be the end date of the exit conference response period following an audit.

In order for the request to be considered, the legal question must be material and meet one of the following criteria:

- The legal issue must be novel, or complex or pertain to an unsettled question of law;

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- There must be intervening legislation, rulemaking or litigation since the Commission last considered the issue; or
- The request to take corrective action must be contrary to or inconsistent with prior Commission matters dealing with the same issue.

Once a request is received, the FEC Commissioners will decide within five days whether to consider the legal question. If two or more Commissioners agree that the question should be considered, the FEC Office of General Counsel (OGC) will prepare a recommendation within 15 business days. A legal question will not be considered if two or more Commissioners do not agree that it should be considered.

If a Commissioner objects to the OGC recommendation, the legal question will be added to the agenda for the next Commission meeting. The affirmative vote of at least four Commissioners is required to resolve the legal question and provide guidance on how to proceed with the matter. If the Commission has not resolved the legal question within 60 business days, the Audit Division and RAD may proceed with the original request for corrective action.