



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

OFFICE OF THE CHAIR

September 18, 2018

The Honorable Rodney P. Frelinghuysen
Chairman
U.S. House of Representatives Committee on Appropriations
Washington, DC 20515

The Honorable Nita M. Lowey
Ranking Member

The Honorable Richard C. Shelby
Chairman
U.S. Senate Committee on Appropriations
Washington, DC 20510

The Honorable Patrick J. Leahy
Vice Chairman

Dear Chairmen Frelinghuysen and Shelby, Vice Chairman Leahy and Ranking Member Lowey:

The Explanatory Statement for the Financial Services and General Government Appropriations Act, 2018, directed the Chair of the Federal Election Commission to report to the Committees on Appropriations of the House and Senate on the FEC's role in enforcing the foreign national prohibition, including how it identifies foreign contributions to elections, and what it plans to do in the future to continue these efforts. *See Explanatory Statement*, 164 Cong. Rec. H2045, H2520 (Mar. 22, 2018).

To meet this reporting requirement, FEC staff prepared a report on the agency's enforcement of the foreign national prohibition that addresses each of the questions in the Explanatory Statement. Enclosed please find that report. Thank you for this opportunity to provide this information about the agency's work to the Committees.

Should you or your staff have any additional questions, please do not hesitate to contact any of the Commissioners or Duane Pugh, the FEC's Director of Congressional Affairs, at (202) 694-1002.

On behalf of the Commission,

A handwritten signature in black ink, appearing to read "Carrie C. Hunter".

Caroline C. Hunter
Chair

Enclosure

Letter to Appropriations Committees
September 18, 2018
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cc:

The Honorable J. Thomas Graves Jr.
Chairman
Subcommittee on Financial Services
and General Government
U.S. House of Representatives Committee on Appropriations
Washington, DC 20515

The Honorable Michael B. Quigley
Ranking Member

The Honorable James Lankford
Chairman
Subcommittee on Financial Services
and General Government
U.S. Senate Committee on Appropriations

The Honorable Christopher A. Coons
Ranking Member

The Honorable Derek C. Kilmer
Member of Congress



FEC Report to the Committees on Appropriations on Enforcing the Foreign National Prohibition

The Consolidated Appropriations Act, 2018, provided the Federal Election Commission (“FEC”) with an appropriation of \$71.25 million for Fiscal Year 2018.¹ The Explanatory Statement for this Act included a reporting requirement for the FEC, which states:

Foreign Contributions. Preserving the integrity of elections, and protecting them from undue foreign influence, is an important function of government at all levels. Federal law, for example, prohibits foreign campaign contributions and expenditures. With that in mind, the [FEC] Chairman is directed to report to the Committees on Appropriations of the House and Senate no later than 180 days after the enactment of this Act on the Commission’s role in enforcing this prohibition, including how it identifies foreign contributions to elections, and what it plans to do in the future to continue these efforts.²

The President signed the Consolidated Appropriations Act, 2018, on March 23, 2018, which makes this report due by September 19, 2018. This report was prepared by FEC staff to meet that requirement. Following a discussion of the legal background, this report addresses three points:

- I. The Commission’s Role in Enforcing the Foreign National Prohibition;
- II. How the Commission Identifies Foreign National Contributions or Donations; and
- III. The Commission’s Plans for Enforcing the Foreign National Prohibition.

Legal Background

The prohibition on foreign campaign contributions and expenditures referred to in the Explanatory Statement has been a provision of the Federal Election Campaign Act (“FECA”)³ since the Federal Election Campaign Act Amendments of 1976.⁴ In 2002, Congress strengthened and clarified the law governing foreign nationals’ participation in the electoral process as part of the Bipartisan Campaign Reform Act of 2002 (“BCRA”).⁵ Since then, FECA’s foreign national prohibition has read as follows:

It shall be unlawful for—

- (1) a foreign national, directly or indirectly, to make—

¹ *Consolidated Appropriations Act, 2018*, Public Law No. 115-141, 132 Stat. 348, 566 (Mar. 23, 2018).

² *Explanatory Statement*, 164 Cong. Rec. H2045, H2520 (Mar. 22, 2018).

³ *Federal Election Campaign Act of 1971*, Pub. L. No. 92-225, 86 Stat. 3 (Feb. 7, 1972) [“FECA”], *codified at* 52 U.S.C. §§ 30101 to 30145.

⁴ *Federal Election Campaign Act Amendments of 1976*, Pub. L. No. 94-283, § 112, 90 Stat. 475, 493 (May 11, 1976).

⁵ *Bipartisan Campaign Reform Act of 2002*, Pub. L. No. 107-155, § 303, 116 Stat. 81, 96 (Mar. 27, 2002) [“BCRA”]. BCRA also prohibited presidential inaugural committees from accepting foreign national donations. BCRA, § 308, 116 Stat. at 103-04, *codified at* 36 U.S.C. § 510.

- (A) a contribution or donation of money or other thing of value, or to make an express or implied promise to make a contribution or donation, in connection with a Federal, State, or local election;
 - (B) a contribution or donation to a committee of a political party; or
 - (C) an expenditure, independent expenditure, or disbursement for an electioneering communication (within the meaning of section 30104(f)(3) of this title); or
- (2) a person to solicit, accept, or receive a contribution or donation described in subparagraph (A) or (B) of paragraph (1) from a foreign national.⁶

Subsection (b) of this provision defines “foreign national,” as follows:

As used in this section, the term “foreign national” means—

- (1) a foreign principal, as such term is defined by section 611(b) of title 22, except that the term “foreign national” shall not include any individual who is a citizen of the United States; or
- (2) an individual who is not a citizen of the United States or a national of the United States (as defined in section 1101(a)(22) of title 8) and who is not lawfully admitted for permanent residence, as defined by section 1101(a)(20) of title 8.⁷

In 2002, to implement BCRA, the FEC revised its regulation on the foreign national prohibition.⁸ In those revisions, the FEC incorporated the revised statutory prohibition into its regulations.⁹

In addition, the FEC adopted related definitions,¹⁰ including a three-prong definition of a knowing standard to establish the degree of knowledge required to show a violation of the foreign national prohibition, which includes actual knowledge, a “reason to know” standard, and a willful blindness standard.¹¹ The revised regulation also sets forth categories of facts that are illustrative of the types of information that should lead a recipient to question whether a contribution or donation originated from a foreign national. These include contributors or donors who: (i) use a foreign passport; (ii) provide a foreign address; (iii) use a check drawn on a foreign bank or a wire transfer from a foreign bank; or (iv) reside abroad.¹² The Commission

⁶ FECA, § 319(a), *codified at* 52 U.S.C. § 30121(a).

⁷ FECA, § 319(b), *codified at* 52 U.S.C. § 30121(b).

⁸ See 11 C.F.R. § 110.20; 67 Fed. Reg. 69,928 (Nov. 19, 2002). The FEC adopted its first regulation on the foreign national prohibition in 1976, 41 Fed. Reg. 35,950 (Aug. 25, 1976), which was codified at 11 C.F.R. § 110.4(a). In 1989, the FEC revised its regulations concerning earmarked contributions to prohibit foreign nationals from being conduits and intermediaries and further revised the foreign national regulation to add an explicit prohibition on expenditures and to clarify that foreign nationals may not participate in the election-related activities of others. 54 Fed. Reg. 34,098 (Aug. 17, 1989); 54 Fed. Reg. 48,581 (Nov. 24, 1989). In the 2002 rulemaking, the foreign national regulation was revised and recodified to 11 C.F.R. § 110.20.

⁹ 11 C.F.R. § 110.20(b), (c), (e), (f) and (g).

¹⁰ 11 C.F.R. § 110.20(a).

¹¹ 11 C.F.R. § 110.20(a)(4).

¹² 11 C.F.R. § 110.20(a)(5).

adopted a narrowly tailored safe harbor with which political committees can satisfy their duty to investigate their receipts in order to confirm that they do not come from foreign sources. Based on practices the Commission observed, the safe harbor protects any person who seeks and obtains copies of current and valid U.S. passports for any contributors or donors who meet any of the four factual criteria enumerated above.¹³

The FEC's 2002 regulation also makes explicit that the foreign national prohibition applies to donations to political parties' building funds.¹⁴ The FEC determined that a rule that prohibits persons from knowingly providing substantial assistance to foreign nationals to circumvent FECA was necessary to effectuate its foreign national prohibition; consequently, to address the issue, the Commission included such a prohibition in its regulation.¹⁵ The Commission also decided to retain the prohibition in its previous version of this regulation on participation by foreign nationals in election-related decisions made by any person, including entities such as corporations, labor organizations or political committees.¹⁶ In 2004, the FEC amended its regulations to incorporate BCRA's prohibition on foreign national donations to inaugural committees into Commission regulations.¹⁷

I. THE COMMISSION'S ROLE IN ENFORCING THE FOREIGN NATIONAL PROHIBITION.

One of the FEC's primary responsibilities is enforcing FECA, including the foreign national prohibition. In fact, the FEC has exclusive jurisdiction over the civil enforcement of federal campaign finance laws, and it maintains an enforcement program to ensure that the campaign finance laws are fairly enforced. In exercising that authority, the Commission uses a variety of methods to uncover possible campaign finance violations. Complaints alleging noncompliance with the foreign national prohibition have been handled primarily as FEC enforcement cases, or Matters Under Review ("MURs").¹⁸ The Enforcement Division of the Office of General Counsel ("OGC") handles MURs through the FEC's traditional enforcement program pursuant to the procedures set forth in FECA.¹⁹ Part A of this section first briefly describes the MUR enforcement process, and then discusses some recently closed MURs that included allegations of foreign national prohibition violations.

Another Commission enforcement and compliance program is the Alternative Dispute Resolution ("ADR") Program, which seeks to resolve less complex matters more swiftly by

¹³ 11 C.F.R. § 110.20(a)(7).

¹⁴ 11 C.F.R. § 110.20(d).

¹⁵ 11 C.F.R. § 110.20(h).

¹⁶ 11 C.F.R. § 110.20(i).

¹⁷ 11 C.F.R. §§ 104.21(b)(1)(iii) and 110.20(j); *BCRA*, § 308, 116 Stat. at 103-04, *codified at* 36 U.S.C. § 510.

¹⁸ Another enforcement or compliance program not directly relevant to the foreign national prohibition but available to the Commission is the Administrative Fine Program, which addresses violations involving the late submission of FEC reports or failure to file reports.

¹⁹ *FECA*, § 309, *codified at* 52 U.S.C. § 30109.

encouraging settlement using a streamlined process that focuses on remedial measures for candidates and political committees. Part A of this section also discusses recently closed matters that were resolved in the ADR Program.

Because of the large number of political committees and growing number and size of financial disclosure reports filed with the FEC, voluntary compliance is essential to enforcing FECA. Accordingly, the Commission devotes considerable resources to encouraging voluntary compliance. One way the Commission does so is by issuing advisory opinions. FECA directs the Commission to issue advisory opinions to answer questions about the application of FECA and FEC regulations to specific factual situations. Advisory opinions promote voluntary compliance not only by the requestors, but also by others engaged in transactions or activities that are indistinguishable in all material aspects. Part B of this section reviews many of the Commission's advisory opinions that are related to the foreign national prohibition.

Another means of promoting voluntary compliance with FECA's requirements are the Commission's educational outreach efforts. The agency strives to reduce the number of inadvertent violations by issuing clear guidance to the public through information and outreach activities, such as compliance information available on the FEC website.²⁰ The agency maintains online resources to detail developments in the campaign finance law and Commission decisions and publishes a series of Campaign Guides and brochures written in plain language to help political committee representatives comply with the campaign finance laws.²¹ Part C of this section describes the guidance the Commission makes available on its website related to the foreign national prohibition.

The Commission's enforcement responsibilities include defending the constitutionality of the foreign national prohibition, which has been challenged in litigation. This section's final part, Part D, describes this aspect of the Commission's role in enforcing the foreign national prohibition.

A. Enforcement

The enforcement process begins when a complaint or referral is made alleging that a violation of the federal election campaign laws or FEC regulations has occurred or is about to occur. Any person can file a complaint, including individuals who make a voluntary submission indicating they themselves may have violated campaign finance laws, which are known as *sua sponte* submissions. Internal referrals for enforcement are made by the Commission's Reports Analysis Division and Audit Division in the normal course of exercising their supervisory responsibilities. External referrals come from another government agency.

²⁰ The FEC also hosts instructional conferences, seminars and webinars where Commissioners and staff explain FECA's requirements. Whenever prohibited contribution sources are discussed in conference materials and presentations, the foreign national prohibition is emphasized. Additionally, the agency maintains its own YouTube channel, which can be found at <https://www.youtube.com/FECTube>. Videos about contributions emphasize the foreign national prohibition.

²¹ See <https://www.fec.gov/help-candidates-and-committees/>.

A respondent is a person or entity who is the subject of a complaint, referral, or *sua sponte* submission that alleges the person or entity violated FECA, another statutory provision within the Commission's jurisdiction such as the inaugural committee foreign national provision, or an FEC regulation. Respondents are notified of the filing of a complaint or referral and have an opportunity to respond in writing. Professional staff in the Office of General Counsel review and analyze complaints, referrals, and *sua sponte* submissions; respondents' responses to them; and publicly available information to formulate a recommended course of action for the Commission. The Commission then reviews the General Counsel's report and recommendations, the complaint, referral, or *sua sponte* submission and any respondents' responses.

The Commission can find no reason to believe a violation occurred, or it may otherwise dismiss a complaint, referral or submission at any point during its consideration of the matter. If the Commission finds reason to believe a violation occurred, it may conduct an investigation to determine if there is probable cause that a violation has occurred or proceed, prior to a finding of probable cause, to negotiations to reach a conciliation agreement, which may include a monetary civil penalty. If the Commission finds probable cause to believe a violation occurred and if the Commission fails to conciliate with a respondent,²² it may file a civil lawsuit in U.S. District Court. In certain circumstances, the Commission may also refer a matter to the U.S. Department of Justice for criminal prosecution under FECA.

While the Federal Election Commission has exclusive civil enforcement authority over the Federal Election Campaign Act, the U.S. Department of Justice has criminal enforcement authority over knowing and willful violations of FECA.²³ As a result, the Commission has an ongoing relationship with the Department of Justice through a formal Memorandum of Understanding, and, on occasion, exercises concurrent jurisdiction over certain matters. In furtherance of that relationship, the Memorandum of Understanding acknowledges the Commission's exclusive jurisdiction in the civil enforcement of the Act, and establishes a framework for the two agencies with respect to the discharge of their respective responsibilities.²⁴

The Commission has enforced the foreign national prohibition in a number of MURs. Some of the recently closed MURs that included allegations of foreign national prohibition violations are discussed below.

²² Following a finding of probable cause to believe that FECA was violated, FECA requires the Commission to attempt to conciliate the enforcement matter. *FECA*, § 309(a)(4)(A); *codified at* 52 U.S.C. § 30109(a)(4)(A). In addition, the Commission has promulgated regulations that provide for an earlier opportunity to resolve enforcement matters, which is known as pre-probable cause to believe conciliation. 11 C.F.R. § 111.18(d). The Commission provides an incentive to settle an enforcement matter earlier in the process by considering lower civil penalties at the pre-probable cause stage compared to the post-probable cause stage. *See Request for Comment on Enforcement Process*, 78 Fed. Reg. 4081 at 4086 (Jan. 18, 2013). All of the conciliation agreements described in this report were reached prior to a Commission finding of probable cause to believe a violation occurred.

²³ *See FECA*, § 309(d)(1); *codified at* 52 U.S.C. § 30109(d)(1); *Fieger v. U.S. Attorney General*, 542 F.3d 1111, 1116-17 (6th Cir. 2008).

²⁴ *See Memorandum of Understanding with Department of Justice*, 43 Fed. Reg. 5441 (Feb. 8, 1978).

1. Direct Foreign National Contributions. In certain instances, foreign national individuals or foreign national corporations have made direct contributions to candidates in violation of the ban on foreign national contributions.

In a matter that arose from an audit referral, the Commission reached a conciliation agreement with a membership organization's separate segregated fund that had violated the foreign national prohibition by knowingly receiving foreign national contributions. The committee disgorged \$13,242.14 to the U.S. Treasury, representing contributions identified by Commission auditors from a sample of committee records showing foreign resident addresses. The conciliated agreement, which, in addition to the foreign national issue, also redressed serious violations pertaining to the misstatement of financial activity in the PAC's disclosure reports, receipt of prohibited corporate contributions, and improper solicitation practices, included a \$300,000 civil penalty and an agreement to cease and desist from further violations.²⁵

The Commission conciliated another matter following a Commission audit that uncovered possible violations of the foreign national prohibition. In that matter, a federal candidate had accepted \$100,000 to his personal account from a Mexican corporation wholly owned by a Texas limited partnership controlled by the candidate and his family; the candidate then transmitted the \$100,000 from his personal account to his political committee. In a conciliated agreement, the candidate and his committee agreed to pay a civil penalty of \$22,500 and to cease and desist from violating the foreign national prohibition. Additionally, the foreign national corporation and the candidate's brother agreed to pay a civil penalty of \$40,000, to cease and desist from violating the foreign national prohibition, and to waive any right to refund of contributions.²⁶

In another instance, the Commission received a *sua sponte* submission from INVISTA, a Luxembourg-based corporation, in which it acknowledged that between November 2005 and October 2009, it made 12 campaign contributions totaling \$26,800 to seven nonfederal committees. The respondents agreed to pay a civil penalty of \$4,700 and cease and desist from violating the foreign national prohibition.²⁷

Another complaint alleged that an unregistered local Democratic party committee solicited and received a \$5,000 contribution from Canarx Services, Inc., a Canadian company.

²⁵ See MUR 6129 (American Resort Development Association Resort Owners Coalition PAC), <https://www.fec.gov/data/legal/matter-under-review/6129/>; see also Conciliation Agreement, MUR 6129 (Aug. 4, 2010), <http://eqs.fec.gov/eqsdocsMUR/10044273912.pdf>.

²⁶ See MUR 6919 (Canseco for Congress, *et al.*) Conciliation Agreement, <https://www.fec.gov/data/legal/matter-under-review/6919/>; see also Francisco Canseco and Canseco for Congress Conciliation Agreement, MUR 6919 (Apr. 29, 2016), <https://www.fec.gov/files/legal/murs/6919/16044394800.pdf>; Inmuebles Caza S.A. de C.V. and Jorge Canseco Conciliation Agreement, MUR 6919 (Sept. 3, 2016), <https://www.fec.gov/files/legal/murs/6919/16044394789.pdf>.

²⁷ See MUR 6473 (INVISTA), <https://www.fec.gov/data/legal/matter-under-review/6473/>; see also INVISTA S.A.R.L., Conciliation Agreement, MUR 6473 (June 2, 2011), <https://www.fec.gov/files/legal/murs/6473/11044293.pdf>.

In an ADR settlement agreement, the committee agreed to issue and distribute guidelines on prohibited contributions and pay a \$3,500 civil penalty.²⁸

In a *sua sponte* submission, Marsh & McLennan Companies, Inc., and its separate segregated fund (or “PAC”) admitted that an employee who is not currently a US citizen, permanent resident, or green card holder made four annual \$5,000 contributions for a total of \$20,000 to the PAC and that the PAC accepted those contributions, both violations of the foreign national prohibition. The PAC issued a refund to the employee. The matter was referred to ADR, and, in a settlement agreement, the respondents agreed to develop and circulate a policy on the eligibility and limitations on contributions to the PAC, to designate a compliance officer and to send a representative of the PAC to an FEC conference. The respondents also paid a civil penalty of \$3,000.²⁹

A recent complaint alleged that Jill Stein for President accepted foreign national donations in connection with the committee’s 2016 recount effort. The complaint cited Tweets from purported foreign nationals who stated they donated to the recount effort. Two Commissioners supported OGC’s recommendation to dismiss the allegation based on a possible low amount in violation, while two other Commissioners voted to open an investigation. The matter was therefore closed.³⁰

2. Domestic Subsidiaries of Foreign Parent Corporations. The Commission received several *sua sponte* submissions from domestic subsidiaries of foreign parent corporations that had made contributions or donations in violation of the foreign national prohibition; the Commission conciliated with these respondents. In MUR 6203 (Itinere North America), a domestic subsidiary of a Spanish corporation admitted making \$55,500 in nonfederal contributions to over 50 candidates or party committees with funds provided by its foreign parent. In the conciliated agreement, the respondents agreed to pay a civil penalty of \$10,000, cease and desist from violating the foreign national prohibition, and send follow up letters to each recipient who had not yet disgorged the contribution to the U.S. Treasury.³¹ Similarly, in MUR 6093 (Transurban Group), a domestic subsidiary of an Australian corporation admitted making \$180,750 in nonfederal contributions with funds provided by its foreign parent. In the conciliated agreement, the respondents agreed to pay a civil penalty of \$33,000, cease and

²⁸ See Schenectady County Democratic Committee Negotiated Settlement, ADR 458 (Nov 13, 2008), <http://eqs.fec.gov/eqsdocsADR/28190280134.pdf>.

²⁹ See Marsh & McLennan Companies Inc. PAC Negotiated Settlement, ADR 708 (Oct. 7, 2014), <http://eqs.fec.gov/eqsdocsADR/14190300025.pdf>.

³⁰ See MUR 7205 (Jill Stein for President, *et al.*), <https://www.fec.gov/data/legal/matter-under-review/7205/>; see also Statement of Reasons, Vice Chair Ellen L. Weintraub (Sept. 7, 2018) https://www.fec.gov/files/legal/murs/7205/7205_1.pdf.

³¹ See MUR 6203 (Itinere North America, *et al.*), <https://www.fec.gov/data/legal/matter-under-review/6203/>; see also Conciliation Agreement, MUR 6203 (July 6, 2009), <https://www.fec.gov/files/legal/murs/6203/29044250632.pdf>.

desist from violating the foreign national prohibition, and send follow up letters to each recipient who had not yet refunded the contribution.³²

In a complaint-generated matter, the Commission considered whether foreign national individuals and corporations had violated the foreign national prohibition through funding or controlling several domestic subsidiary corporations' donations to a Beverly Hills, California, ballot measure committee. Consistent with OGC recommendations, the Commission found no reason to believe the foreign national prohibition had been violated because it appeared that the domestic subsidiaries' donations originated with domestic revenues and no foreign nationals participated in the decisions to make the donations.³³

3. Foreign Participation in Domestic Corporate Contributions. The Commission has also considered matters involving prohibited foreign national control or funding of corporate contributions outside of the domestic subsidiary context. The Commission received a *sua sponte* submission from Skyway Concession Company, LLC, and its foreign national CEO indicating that the CEO had authorized and signed checks for 30 contributions totaling \$13,085 from the domestic corporation to nonfederal political committees; the foreign national CEO also had made one \$2,000 contribution from himself to a federal political committee. The Commission conciliated with the respondents, who agreed to pay a civil penalty of \$4,000 and cease and desist from violating the foreign national prohibition.³⁴

The Commission also considered a complaint asserting multiple violations of law, including that an American citizen had used funds obtained from a Chinese national to make contributions through an intermediary to a federal independent expenditure-only political committee and that the committee had knowingly accepted the foreign national contribution. The Commission dismissed the matter after concluding that the record did not provide a sufficient evidentiary basis to support an inference that the funds contributed were from a foreign national, which was consistent with OGC recommendations.³⁵

4. Volunteer Activity. The Commission considered a complaint that the Australian Labor Party impermissibly paid the expenses of Australian volunteers to travel to the United States to work on the 2016 presidential campaign of Bernie Sanders and that Sanders's committee accepted the prohibited foreign national in-kind contribution. The Commission found reason to believe the Australian Labor Party made, and Sanders's committee accepted, a \$24,422

³² See MUR 6093 (Transurban Group, *et al.*) <https://www.fec.gov/data/legal/matter-under-review/6093/>; see also Conciliation Agreement, MUR 6093 (Jan. 9, 2009), <http://eqs.fec.gov/eqsdocsMUR/29044224176.pdf>.

³³ See MUR 7141 (Beverly Hills Residents and Businesses to Preserve our City, *et al.*)(Nov. 6, 2017), <https://www.fec.gov/data/legal/matter-under-review/7141/>.

³⁴ See MUR 6184 (Skyway Concession Company, LLC, *et al.*), <https://www.fec.gov/data/legal/matter-under-review/6184/>; see also Conciliation Agreement, MUR 6184 (Oct. 5, 2009), <http://eqs.fec.gov/eqsdocsMUR/29044252724.pdf>.

³⁵ See MUR 7081 (Floridians for a Strong Middle Class) (Sept. 20, 2017), <https://www.fec.gov/data/legal/matter-under-review/7081/>; see also Statement of Reasons, Commissioners Ellen L. Weintraub and Ann M. Ravel (Feb. 28, 2017), <https://www.fec.gov/files/legal/murs/7081/17044430165.pdf>, and Factual & Legal Analysis for Floridians for a Strong Middle Class (Sept. 25, 2017), <https://www.fec.gov/files/legal/murs/7081/17044430866.pdf>.

prohibited in-kind foreign national contribution. The Commission reached conciliation agreements with both the Australian Labor Party and Bernie 2016 pursuant to which each respondent agreed to pay a civil penalty of \$14,500 and to cease and desist from violating the foreign national prohibition.³⁶

5. Amount in violation as a basis for dismissal. The amount in violation can be a factor in whether the Commission pursues a foreign national contribution. In MUR 6976, the Commission considered whether the City Council Committee for Johnny W. Streets, Jr., accepted contributions totaling \$3,000 from three foreign corporations with addresses in Halifax, Nova Scotia. Three Commissioners supported OGC's recommendation to dismiss the allegation based on the low amount in violation, while three other Commissioners voted to pursue the matter.³⁷ In light of the disagreement, the matter was closed.

Another complaint alleged that a foreign entity made donations totaling \$100 to four candidates for local office in Texas. The Commission observed the *de minimis* amount at issue, the apparent refunds of the donations before the complaint was filed, and the uncertainty of whether the donor was in fact a foreign entity. Consistent with OGC's recommendations, the Commission exercised its prosecutorial discretion and dismissed the matter in consideration of Commission priorities.³⁸

In two related complaint-generated matters, the Commission considered an allegation that Project Veritas, its president James O'Keefe, and one of its employees assisted in the making of a contribution by a foreign national, and that Hillary Clinton and her presidential campaign committee solicited and received the contribution, in violation of the foreign national prohibition, when the Project Veritas employee used \$35 or \$45 from a self-identified Canadian citizen to purchase \$75 of Clinton campaign merchandise. The Commission found no reason to believe that Clinton or O'Keefe was involved in or aware of the transaction and dismissed the allegations against the remaining respondents.³⁹

A complaint alleged that the Committee to Re-elect Gary Jensen accepted a \$700 contribution from a foreign corporation in violation of the foreign national prohibition. The ADR Office negotiated a settlement agreement; however, the Commissioners disagreed about whether it should be approved because it did not include a civil penalty. Consequently, the

³⁶ See MUR 7035 (Australian Labor Party, *et al.*), <https://www.fec.gov/data/legal/matter-under-review/7035/>; see also Australian Labor Party Conciliation Agreement, MUR 7035 (Feb. 15, 2018), <https://www.fec.gov/files/legal/murs/7035/18044437382.pdf>; Bernie 2016 Conciliation Agreement, MUR 7035 (Feb. 15, 2018), <https://www.fec.gov/files/legal/murs/7035/18044437388.pdf>.

³⁷ See MUR 6976 (City Council Committee for Johnny W. Streets, Jr., (Dec. 6, 2016), <https://www.fec.gov/data/legal/matter-under-review/6976/>. Statement of Reasons, Vice Chair Hunter and Commissioners Goodman and Petersen (Feb. 14, 2017), <https://www.fec.gov/files/legal/murs/6976/17044405949.pdf>.

³⁸ See MUR 6944 (Farias) (dismissing a \$100 foreign national contribution) (Nov. 14, 2016), <https://www.fec.gov/data/legal/matter-under-review/6944/>.

³⁹ See MURs 6962 and 6982 (Project Veritas, *et al.*) (June 21, 2017), <https://www.fec.gov/data/legal/matter-under-review/6982/>.

settlement was not accepted and the case was closed.⁴⁰ Three commissioners issued a Statement of Reasons explaining their position.⁴¹

Another complaint alleged that three candidates for local office in the Bellingham, Washington-vicinity accepted contributions from three Canadian entities or individuals that totaled \$1,100. After referral to ADR and considering the circumstances of the matter, the Commission determined to exercise its prosecutorial discretion and take no action against the Respondents, which was consistent with the ADR Office recommendations.⁴²

A 2017 complaint alleged that Maricela Arteaga, a Mexican citizen, made political contributions in violation of the foreign national prohibition. In her response, Ms. Arteaga acknowledges that she made political contributions between October 2012 and April 2013 totaling \$70 to Obama for America and Organizing for Action prior to obtaining permanent resident status in the United States. Due to the low dollar amount, the Commission agreed with ADR Office recommendations and voted to exercise its prosecutorial discretion and dismiss the matter.⁴³

6. Screening for foreign national contributions. The Commission considered two complaints that alleged that Obama for America accepted thousands of dollars in foreign national contributions *via* the Internet. The Commission concluded that Obama for America used proper controls to screen for domestic-only contributions and found no reason to believe that Obama for America violated the foreign national prohibitions, which was a determination recommended by OGC.⁴⁴

7. Soliciting Foreign National Contributions. The Commission considered a complaint that during a broadcast on a Spanish language radio station, Rep. Christopher B. Cannon (Utah-3), his legislative aide, and the host of the program encouraged listeners to make political contributions even if they were foreign nationals, or make the contributions in the name of a citizen of the United States. The Congressional committee agreed in an ADR settlement agreement to have the committee treasurer and the legislative aide attend an FEC seminar for Congressional Candidates and Committees. In addition, the radio host agreed to make himself knowledgeable about information available from the Commission on the foreign national prohibition and agreed to host at least one additional radio program, within six months, in which

⁴⁰ See ADR 592 (Committee to Re-elect Gary Jensen, Mayor of Ferndale) (Jan. 24, 2012), <http://eqs.fec.gov/eqsdocsADR/12190292128.pdf>.

⁴¹ See ADR 592 (Committee to Re-elect Gary Jensen, Mayor of Ferndale), Statement of Reasons, Vice Chair Weintraub and Commissioners Bauerly and Walther (Feb. 27, 2012), <http://eqs.fec.gov/eqsdocsADR/12190292128.pdf>.

⁴² See ADR 447 (Watts, *et al.*) (Nov. 6, 2008), <http://eqs.fec.gov/eqsdocsADR/28190274175.pdf>.

⁴³ See ADR 822 (Arteaga) (June 9, 2017), <http://eqs.fec.gov/eqsdocsADR/17190304332.pdf>.

⁴⁴ See MURs 6687 and 6772 (Obama for America, *et al.*) (July 9, 2013), <https://www.fec.gov/data/legal/matter-under-review/6687/> and <https://www.fec.gov/data/legal/matter-under-review/6772/>.

he would provide his Spanish language speaking radio audience with the resources available from the Commission about campaign finance and the political process.⁴⁵

The Commission recently considered a complaint alleging that Donald J. Trump for President, Inc., solicited foreign national contributions in the form of several solicitation emails sent to members of foreign parliaments. Two Commissioners supported OGC's recommendation to find reason to believe, and two voted to dismiss. Accordingly, the matter was closed.⁴⁶

8. State Ballot Initiatives. The Commission considered a complaint that foreign nationals made donations to a local ballot initiative committee in Los Angeles, California, in violation of the foreign national prohibition. The first donation, in the amount of \$150,000, was made by MindGeek USA, a domestic subsidiary of a Luxembourg corporation, allegedly using foreign funds and under the direction of foreign national decision makers. The second donation, in the amount of \$75,000, was made by a Cypriot corporation. In this matter, the Commissioners disagreed on whether the foreign national prohibition on donations in connection with an "election" prohibited foreign national donations to state or local ballot initiatives. Commissioners issued statements of reasons explaining their positions, and the Commission closed the file.⁴⁷

B. FEC Advisory Opinions

Supporting its efforts to promote voluntary compliance with FECA, the Commission has provided compliance guidance regarding the prohibition on foreign national contributions in the context of advisory opinions, informational publications on the Commission's public website, and rulemaking matters.

Advisory opinions are Commission responses to particularized inquiries about how federal campaign finance laws apply to specific factual situations. FECA directs the Commission to render a written advisory opinion in response to any person's complete written request concerning the application of FECA or Commission regulations to a "specific transaction or activity of the requester."⁴⁸ The Commission has issued advisory opinions in several contexts in which it considered the foreign national prohibition.

⁴⁵ See ADR 207 (Cannon)(June 3, 2005), <http://eqs.fec.gov/eqsdocsADR/00004469.pdf>.

⁴⁶ See MURs 7094, 7096, & 7098 (Donald J. Trump for President, *et al.*), <https://www.fec.gov/data/legal/matter-under-review/7094/>; see also Statement of Reasons, Vice Chair Ellen L. Weintraub (Sept. 6, 2018), https://www.fec.gov/files/legal/murs/7094/7094_1.pdf.

⁴⁷ See MUR 6678 (MindGeek S.A.R.L.), <https://www.fec.gov/data/legal/matter-under-review/6678/>; see also Statement of Reasons, Chair Ravel (Apr. 22, 2015), <http://eqs.fec.gov/eqsdocsMUR/15044372954.pdf>; Statement of Reasons, Commissioner Weintraub (Apr. 23, 2015), <http://eqs.fec.gov/eqsdocsMUR/15044372958.pdf>; Statement of Reasons, Vice Chairman Peterson and Commissioners Hunter and Goodman (Apr. 30, 2015), <http://eqs.fec.gov/eqsdocsMUR/15044372963.pdf>; Statement of Reasons, Commissioner Goodman (May 1, 2015), <http://eqs.fec.gov/eqsdocsMUR/15044372967.pdf>.

⁴⁸ FECA, § 308, *codified at* 52 U.S.C. § 30108.

1. Fundraising by officeholders and candidates at events. The Commission has issued an advisory opinion addressing the scope of activities that federal candidates and officeholders may undertake at events raising money outside the federal source and amount restrictions. Federal candidates and officeholders may solicit federally permissible funds at certain nonfederal fundraising events, provided that the solicitation is limited to funds that comply with FECA's amount limitations and source prohibitions, including the foreign national prohibition.⁴⁹

2. State Ballot Initiatives. FECA provides that federal candidates and officeholders may not "solicit, receive, direct, transfer or spend" funds in connection with an election for federal office or any nonfederal election unless the funds comply with the FECA's amount limitations and source prohibitions.⁵⁰ Notwithstanding these restrictions, FECA also states that federal candidates and officeholders are permitted to "attend, speak, or be a featured guest at a fundraising event for a State, district, or local committee of a political party."⁵¹ The Commission has addressed questions in this area in the context of fundraising efforts by federal candidates and officeholders on behalf of state ballot initiatives.

In 2003, the Commission stated that all activities of a ballot measure committee "established, financed, maintained or controlled" by a federal candidate are "in connection with" a nonfederal election. This includes activity in the signature-gathering and ballot-qualification stage, as well as activity to win passage of the measure after it qualifies for the ballot. Accordingly, funds solicited by a federal candidate or officeholder in connection with such nonfederal elections must fall within the amount limitations and source prohibitions, including the foreign national prohibition.⁵²

The Commission has also concluded that the source and amount restrictions, including the foreign national prohibition, did not apply to a situation in which federal officeholders and candidates proposed to raise funds for ballot measure committees involved in a special election in which no federal candidates were on the ballot, and where the ballot measure committees were not directly or indirectly established, financed, maintained, or controlled by the federal officeholders or candidates.⁵³

3. Election Recounts. The Commission has concluded that the foreign national prohibition applies to funds raised and spent on election recount activities.⁵⁴

⁴⁹ See Advisory Opinion 2015-09 (Senate Majority PAC and House Majority PAC), <https://www.fec.gov/data/legal/advisory-opinions/2015-09/>.

⁵⁰ See FECA, § 319, codified at 52 U.S.C. § 30121(e)(1)(A), (B); 11 C.F.R. §§ 300.61, 300.62.

⁵¹ See FECA, § 323, codified at 52 U.S.C. § 30125(e)(3); 11 C.F.R. § 300.64.

⁵² See Advisory Opinion 2003-12 (Flake), <https://www.fec.gov/data/legal/advisory-opinions/2003-12/>.

⁵³ Advisory Opinion 2005-10 (Berman/Doolittle), <https://www.fec.gov/data/legal/advisory-opinions/2005-10/>.

⁵⁴ Advisory Opinion 2010-14 (DSCC), <https://www.fec.gov/data/legal/advisory-opinions/2010-14/>.

4. Screening for Foreign National Contributions. The Commission has examined programs proposed by requestors in which contributions could be made through affinity programs, and later, over the internet and by text message. While foreign nationals' contributions were not the main focus of these advisory opinions, the proposals each included a requirement that potential contributors attest that they were not foreign nationals. The Commission noted in these opinions that while this was a reasonable manner to assist the recipient political committee in screening for prohibited contributions, the legal obligation not to accept foreign national contributions remained with the committee, rather than the provider of the program or the platform.⁵⁵

5. Changes in Nationality. The Commission has determined that when an individual's status as a foreign national changes, so does the individual's ability to make contributions. For example, individuals who were foreign nationals, and prohibited from contributing to at the time of an election may, if they are no longer foreign nationals, contribute to the candidate's later efforts to pay obligations related to that election. Further, if a person has actual knowledge that an individual was a foreign national at some time in the past, that person may not solicit that individual for contributions unless the person is able to determine through a reasonable inquiry that the individual is no longer a foreign national.⁵⁶

6. Volunteer Activity. Responding to questions regarding volunteer activity by foreign nationals, the Commission has concluded that foreign nationals may provide volunteer services to a political committee provided that they do not participate in the management of any political committee or the committee's decisions regarding its receipts and disbursements in connection with federal and nonfederal elections. The Commission has further concluded that the value of volunteer services provided by foreign nationals is exempt from the definition of "contribution" under the volunteer services exemption.⁵⁷

7. What constitutes a contribution. The Commission has concluded that goods and services provided to political committees at the usual and normal charge by foreign nationals are permissible and do not constitute contributions.⁵⁸

⁵⁵ See, e.g., Advisory Opinion 2016-08 (eBundler.com), <https://www.fec.gov/data/legal/advisory-opinions/2016-08/>; Advisory Opinion 2012-28 (CTIA The Wireless Association), <https://www.fec.gov/data/legal/advisory-opinions/2012-28/>; Advisory Opinion 2012-09 (Points for Politics), <https://www.fec.gov/data/legal/advisory-opinions/2012-09/>; Advisory Opinion 2006-08 (Brooks), <https://www.fec.gov/data/legal/advisory-opinions/2006-08/>.

⁵⁶ See Advisory Opinion 2016-16 (Gary Johnson 2012), <https://www.fec.gov/data/legal/advisory-opinions/2016-16/>; Advisory Opinion 2016-10 (Parker), <https://www.fec.gov/data/legal/advisory-opinions/2016-10/>.

⁵⁷ See Advisory Opinion 1987-25 (Otaola), <https://www.fec.gov/data/legal/advisory-opinions/1987-25/>; Advisory Opinion 2004-26 (Weller), <https://www.fec.gov/data/legal/advisory-opinions/2004-26/>; and Advisory Opinion 2014-20 (Make Your Laws PAC, Inc.), <https://www.fec.gov/data/legal/advisory-opinions/2014-20/>.

⁵⁸ See Advisory Opinion 2007-22 (Hurysz), <https://www.fec.gov/data/legal/advisory-opinions/2007-22/>; Advisory Opinion 2010-05 (Starchannel Communications, Inc.), <https://www.fec.gov/data/legal/advisory-opinions/2010-05/>.

8. ***Domestic Subsidiaries of Foreign Parent Corporations.*** The Commission has responded to questions regarding whether proposed activities by the domestic subsidiaries of foreign corporations would constitute prohibited foreign national contributions. Generally, the Commission has determined that domestic subsidiaries of foreign parent corporations may engage in certain election-related activities, so long as the funds used are not from foreign nationals, and no foreign nationals participate in the decision-making process concerning the activities in question.⁵⁹

9. ***Matching Funds.*** The Commission has concluded that a presidential candidate who was neither a naturalized citizen of the United States nor a natural born citizen was not eligible to receive matching funds under the Matching Payment Act because he did not meet the requirements to serve as President under Article II, Section 1, Clause 5 of the U.S. Constitution.⁶⁰

10. ***Miscellaneous Reminders About the Prohibition on Foreign National Contributions.*** Finally, in various advisory opinions regarding issues such as disaffiliation of organizations and payroll deductions to a separate segregated fund, the Commission has cautioned that contributions from foreign nationals may not be solicited or accepted as part of the proposed activity.⁶¹

C. Other Guidance

The Commission provides general public guidance regarding the foreign national contribution ban *via* its website.

In June 2017, the Commission’s brochure on foreign nationals, which provides a general primer on the foreign national prohibition, was updated and republished on the website.⁶²

Other pages on the Commission’s website provide information on specific questions about foreign national activities. These pages discuss the definition of “foreign national,” how to determine the nationality of a contributor, and address issues such as domestic subsidiaries of

⁵⁹ See Advisory Opinion 2006-15 (TransCanada Corp.), <https://www.fec.gov/data/legal/advisory-opinions/2006-15/>; Advisory Opinion 2009-14, (Mercedes-Benz USA LLC) <https://www.fec.gov/data/legal/advisory-opinions/2009-14/>.

⁶⁰ Advisory Opinion 2011-15 (Hassan), <https://www.fec.gov/data/legal/advisory-opinions/2011-15/>. This advisory opinion led to litigation in which Mr. Hassan’s claims were dismissed. See *Hassan v. FEC*, 2013 WL 1164506 (D.C. Cir. Mar. 11, 2013), https://transition.fec.gov/law/litigation/hassan_ac_order3.pdf.

⁶¹ See, e.g., Advisory Opinion 2011-22 (Virginia Poultry Growers Cooperative, Inc.) <https://www.fec.gov/data/legal/advisory-opinions/2011-22/>; Advisory Opinion 2007-12 (Tyco) <https://www.fec.gov/data/legal/advisory-opinions/2007-12/>; Advisory Opinion 2004-32 (Spirit) <https://www.fec.gov/data/legal/advisory-opinions/2004-32/>.

⁶² See Foreign National Brochure, <https://www.fec.gov/updates/foreign-nationals/>.

foreign corporations and the provision of substantial assistance to a foreign national making a contribution.⁶³

Other FEC webpages provide guidance about foreign national volunteers providing services to, but not participating in the decision making of, political committees; the ability of “super PACs” and the non-contribution accounts of “hybrid PACs” to raise funds outside the contribution limits and source prohibitions, *except* for the foreign national prohibition (and certain other FECA source prohibitions); and similarly, the fact that state, district and local political party committees when accepting donations for the purpose of constructing or purchasing a national party building are not under any donation limitation, but must abide by the foreign national prohibition (along with certain other FECA source prohibitions).⁶⁴

Finally, another FEC webpage states that federal candidates may not solicit funds for nonfederal elections, outside of the limits and source prohibitions of FECA and Commission regulations. This page also provides guidance for federal candidates attending events raising funds for nonfederal elections.⁶⁵

D. Litigation

The Commission has also successfully defended constitutional challenges to the foreign national prohibition and other provisions of FECA that enable detection of violations of that prohibition. In *Bluman v. FEC*, the three-judge court upheld FECA’s prohibition on foreign nationals making contributions and expenditures in connection with elections as applied to the activities planned by the plaintiffs in that case. The plaintiffs sought to “donate money to candidates in U.S. federal and state elections, to contribute to national political parties and outside political groups, and to make expenditures expressly advocating for and against the election of candidates in U.S. elections.” The court found that “the government (federal, state, and local) may exclude foreign citizens from activities that are part of democratic self-government in the United States.” The federal ban at issue thus “readily passes constitutional muster,” the court further found, and the Supreme Court summarily affirmed the decision.⁶⁶

⁶³ See Who can and cannot contribute, <https://www.fec.gov/help-candidates-and-committees/candidate-taking-receipts/who-can-and-cannot-contribute/>.

⁶⁴ See Volunteer Activity, <https://www.fec.gov/help-candidates-and-committees/candidate-taking-receipts/volunteer-activity/>; Contributions to super PACs and hybrid PACs, <https://www.fec.gov/help-candidates-and-committees/taking-receipts-pac/contributions-to-super-pacs-and-hybrid-pacs/>; Donations to political party building funds, <https://www.fec.gov/help-candidates-and-committees/taking-receipts-political-party/building-fund-donations-party/>.

⁶⁵ See Federal candidate participation in nonfederal fundraising for party committees, <https://www.fec.gov/help-candidates-and-committees/making-disbursements-political-party/federal-candidates-participation-nonfederal-fundraising-party-committees/>.

⁶⁶ *Bluman v. FEC*, 800 F. Supp. 2d 281, 282-83 (D.D.C. 2011), *aff’d*, 565 U.S. 1104 (2012).

In other cases, the Commission has defended the constitutionality of disclosure provisions that assist the detection of violations of FECA's contribution limitations including the foreign national prohibition.⁶⁷

II. HOW THE COMMISSION IDENTIFIES FOREIGN NATIONAL CONTRIBUTIONS OR DONATIONS.

The Reports Analysis Division ("RAD") of the FEC's Office of Compliance reviews all federal campaign finance reports to track compliance with FECA and to ensure that the public record provides a full and accurate representation of reported campaign finance activity.⁶⁸ If the review identifies an apparent violation or raises questions about the information disclosed on a report, RAD sends a request for additional information ("RFAI") to the filer, affording an opportunity to take remedial action or correct the public record, if necessary.⁶⁹ RFAIs sent to filers are made public, as are the filers' responses. If the filer is able to resolve the FEC's concerns, it may avoid an enforcement action. If not, the Commission has several tools available to it, including referring the filer for an audit or to the traditional enforcement program.

The Reports Analysis Division bases its review of reports on Commission-approved *Review and Referral Procedures* that have categories of review with specific thresholds for determining when an RFAI should be sent to a filer. These procedures are updated and approved by the Commission every two years, with content based on input from both staff and Commissioners.⁷⁰ The *RAD Review and Referral Procedures* include instructions to review reported receipts for contributions that may be excessive, prohibited or otherwise impermissible as Standard 5 of the *RAD Review and Referral Procedures*. FECA's foreign national prohibition is among the prohibitions considered, and the *RAD Review and Referral Procedures* specify that contributions be examined to identify those from contributors with a foreign address on an FEC report. If a RAD analyst identifies contributions with reported foreign addresses on a filer's reports in excess of the dollar amount or percentage threshold, an RFAI will be sent. Depending on the circumstances, a filer that receives such an RFAI might respond by noting that the contributor is a citizen of the United States who has a foreign address. If the filer further

⁶⁷ See, e.g., *Buckley v. Valeo*, 424 U.S. 1, 67–68 (1976) (*per curiam*) (“[R]ecordkeeping, reporting, and disclosure requirements are an essential means of gathering the data necessary to detect violations of the contribution limitations”); *SpeechNow.org v. FEC*, 599 F.3d 686, 698 (D.C. Cir. 2010) (*en banc*) (“[R]equiring disclosure of such information deters and helps expose violations of other campaign finance restrictions, such as those barring contributions from foreign corporations or individuals.”); *Indep. Inst. v. FEC*, 216 F. Supp. 3d 176, 191 (D.D.C. 2016), *aff’d*, 137 S. Ct. 1204 (2017) (“[D]isclosures help the Commission to enforce existing regulations and to ensure that foreign nationals or foreign governments do not seek to influence United States’ elections.”) (internal citations omitted).

⁶⁸ FECA, § 311(b), *codified at* 52 U.S.C. § 30111(b).

⁶⁹ In Fiscal Year 2017, for example, RAD reviewed 87,848 documents that totaled nearly 35 million pages. During that year, 77 percent of the reports were reviewed within 90 days of receipt, and 88 percent of the RFAIs issued were sent within 40 days of the report review. Thus, FEC performance on both measures exceeded the goals of 75 percent.

⁷⁰ *RAD Review and Referral Procedures for the 2017-2018 Election Cycle*, subject to limited redactions, are available on the FEC website: https://transition.fec.gov/pdf/2017-2018_rad_review_referral_procedures.pdf.

responds by indicating that filer routinely obtains copies of current and valid U.S. passports for such contributors pursuant to the safe harbor regulation at 11 C.F.R. § 110.20(a)(7), then no further RFAs on this issue will be sent for the remainder of the two-year election cycle. For responses to RFAs that are not sufficient to resolve an issue, the *RAD Review and Referral Procedures* provide thresholds for further Commission action, including assessment of audit points (which could result in a referral for an FEC audit), referral for enforcement action to the Alternative Dispute Resolution Office or to the Office of General Counsel.

The FEC's Audit Division conducts audits of committees that, according to the *RAD Review and Referral Procedures*, have not substantially complied with the law. As required by the public funding statutes, the FEC also audits all Presidential campaigns that receive public funds. All of these audits include an analysis of receipts that seeks to identify contributions or donations from foreign nationals.⁷¹ Subject to Commission-approved thresholds, receipt of prohibited contributions or donations can result in a referral to OGC Enforcement or to the ADR Office. Recent audit referrals of foreign national prohibition issues that resulted in enforcement proceedings are discussed above in Part A of Section I. Earlier audits identified apparently prohibited foreign national contributions, but generally due to the refunded, small dollar amounts at issue, enforcement matters were not pursued against the audited committees. Nonetheless, publicly available FEC Audit Reports documented the Commission's finding and circumstances that resulted in no further action.⁷²

III. THE COMMISSION'S PLANS FOR ENFORCING THE FOREIGN NATIONAL PROHIBITION.

The Commission plans to continue the work described in this report to enforce the foreign national prohibition and to promote voluntary compliance with it. Specifically, complaints, referrals and *sua sponte* submissions will continue to be addressed by the Commission and its OGC Enforcement Division and the ADR Office. The Commission intends to meet its statutory obligation to answer advisory opinion requests related to the foreign national prohibition. No specific revisions are planned at this point for the guidance the agency offers on the foreign national prohibition, which was revised in June 2017, although all such guidance is regularly reviewed for any necessary revisions. The work of the Reports Analysis Division and the Audit Division will continue, as discussed in Part II above.

With respect to enforcement matters, the Commission has issued an instruction related particularly to the foreign national prohibition. Timely resolution of any enforcement matters

⁷¹ In addition, as part of the public funding program, the Audit Division reviews the receipts of Presidential primary committees that seek matching funds to look for indications of foreign national contributions.

⁷² See Friends of Corrine Brown, Final Audit Report (Nov. 17, 1994), <https://transition.fec.gov/audits/1992/Authorized/92CorinneBrownDFL.pdf>; LaRouche Campaign Audit Report (Oct. 29, 1985) (evidence of U.S. citizenship for all contributors at issue), <https://transition.fec.gov/audits/1984/Title26/84LyndonLaRouche.pdf>; National Committee for an Effective Congress, Final Audit Report (Dec. 14, 1979), <https://transition.fec.gov/audits/1978/Unauthorized/78NCEC.pdf>; Claude Pepper Campaign Committee, Audit Report (June 5, 1978), <https://transition.fec.gov/audits/1976/Authorized/ClaudePepperFLD76.pdf>.

involving allegations of prohibited activity by foreign nationals remains a particular priority for the FEC. In fact, at the Commission’s public meeting on September 15, 2016, FEC Commissioners unanimously directed the Office of General Counsel to prioritize cases involving allegations of foreign influence.⁷³ As a follow-up, at the Commission’s public meeting on May 25, 2017, then-Chairman Steven T. Walther called upon the FEC staff to apply their resources to continue to fulfill the prioritization of any such enforcement matters and to further the Commission’s regulatory, educational, and enforcement work in this area.⁷⁴

The Commission is also currently engaged in a rulemaking proceeding concerning potential revisions to the regulations on disclaimers required on certain internet communications, which could have implications related to the foreign national prohibition.

Disclaimers on paid digital and internet-based advertisements are one tool used to expose prohibited expenditures by foreign nationals. Disclaimers “provide the electorate with information and insure that the voters are fully informed about the person or group who is speaking,” to enable people “to evaluate the arguments to which they are being subjected.”⁷⁵ Disclaimers serve this important function even on communications paid for by persons, like foreign nationals, prohibited from engaging in electoral expenditures; complaints about disclaimer violations can result in conciliation of violations of both disclaimer and prohibited source rules.⁷⁶

Commission regulations require disclaimers on political committees’ mass emails, publicly available websites, and public communications, including communications by political committees that are placed for a fee on another person’s website; disclaimers are also required on any electioneering communication by any person and on any public communication, including communications placed for a fee on another person’s website, by any person containing express advocacy or a solicitation for contributions.⁷⁷

In four advisory opinions, the Commission considered the application of the general disclaimer regulations in the context of paid digital and internet advertisements.⁷⁸ The Commission also sought public comment regarding whether it should take broader action and revise its disclaimer rules for paid internet communications, as described below.

⁷³ See FEC Press Release (May 25, 2017), <https://www.fec.gov/updates/fec-approves-amended-audit-division-recommendation-memorandum-approves-advisory-opinion-and-agrees-commence-work-party-rulemaking/>.

⁷⁴ *Id.*

⁷⁵ *Citizens United v. FEC*, 558 U.S. 310, 368 (2010) (internal quotations and alterations removed).

⁷⁶ *Accord* Conciliation Agreement at 10, MUR 5158 (Brady Campaign to Prevent Gun Violence) (Feb. 16, 2005), <http://eqs.fec.gov/eqsdocsMUR/0000370E.pdf> (conciliating violation of disclaimer and corporate expenditure rules on express advocacy communications by a then-prohibited corporate payor).

⁷⁷ See 11 C.F.R. § 110.11(a).

⁷⁸ See Advisory Opinion 2002-09 (Target Wireless), <https://www.fec.gov/data/legal/advisory-opinions/2002-09/>, Advisory Opinion 2010-19 (Google), <https://www.fec.gov/data/legal/advisory-opinions/2010-19/>, Advisory Opinion 2011-09 (Facebook), <https://www.fec.gov/data/legal/advisory-opinions/2011-09/>, and Advisory Opinion 2017-12 (Take Back Action Fund), <https://www.fec.gov/data/legal/advisory-opinions/2017-12/>.

In 2011, the Commission issued an Advance Notice of Proposed Rulemaking (“ANPRM”) to seek public input on whether to open a rulemaking revising its disclaimer regulations for paid online communications.⁷⁹ The Commission re-opened the comment period on this ANPRM twice, in 2016 and 2017.⁸⁰ In response to the 2017 re-opening of the comment period, the Commission received more than 149,000 comments.

On March 26, 2018, the Commission issued a Notice of Proposed Rulemaking (“NPRM”) requesting comment on revisions to the definition of “public communication” and on two alternative proposals to amend its regulations concerning disclaimers on public communications on the internet that contain express advocacy, solicit contributions, or are made by political committees.⁸¹ By the close of the comment period, the Commission received more than 165,000 comments on the NPRM, which showed very strong public interest in vigorous enforcement. The Commission held a public hearing on June 27 and 28, 2018, at which it received testimony from 18 persons who had requested to appear.⁸² The Commission is currently considering the comments and testimony it has received in order to consider a final rule.

Conclusion

This report was prepared for the approval of the FEC in order to meet the reporting requirement in the Explanatory Statement for the Consolidated Appropriations Act, 2018. FEC staff are available to answer questions about the contents of this report or discuss other information related to the FEC’s efforts to enforce the foreign national prohibition. The Commissioners submitted this report to the Appropriations Committees on September 18, 2018.

⁷⁹ See Internet Disclaimer Communications, 76 Fed. Reg. 63,567 (Oct. 13, 2011), <http://sers.fec.gov/fosers/showpdf.htm?docid=353587>.

⁸⁰ See Internet Communication Disclaimers, 81 Fed. Reg. 71,647 (Oct. 18, 2016), <http://sers.fec.gov/fosers/showpdf.htm?docid=353586> ; Internet Communication Disclaimers, 82 Fed. Reg. 46,937 (Oct. 10, 2017), <http://sers.fec.gov/fosers/showpdf.htm?docid=357882>.

⁸¹ See Internet Communication Disclaimers, 83 Fed. Reg. 12,864 (Mar. 26, 2018), <http://sers.fec.gov/fosers/showpdf.htm?docid=373521>.

⁸² See Agenda, June 27-28, 2018 Public Hearing: Internet Communication Disclaimers and Definition of “Public Communication,” available at <https://www.fec.gov/updates/june-27-28-2018-public-hearing/>.