FEC "Shut Down": How will it affect your campaign or PAC?

News reports indicate that Federal Election Commissioner Alan Dickerson is planning to leave the Commission at the end of April. Dickerson's departure will leave the Commission with only three Commissioners. This is notable because the Federal Election Campaign Act requires the votes of at least four Commissioners for nearly any official action.

Some reports are describing this situation as a "shutdown" of the agency, but that description is overwrought. In fact, most campaigns and PACs are unlikely to notice or experience any significant effects from the likely short-term loss of a statutory quorum.

What won't change?

Reports remain due on the regular schedule. FEC reports will continue to be due on their regular due dates regardless of the number of Commissioners in office. The Commission's Reports Analysis Division (RAD) will continue to review the reports as they are filed and will issue Requests for Additional Information (RFAI) for deficient reports. Reports that are not filed or that have significant errors will accrue audit points that increase the risk of an audit in 2027 or will be referred to the General Counsel's office for consideration of enforcement action. Reports filed late or filled with errors will be subject to penalties once the Commission's quorum is restored.

Enforcement actions will continue to be investigated by FEC staff. Anyone who believes a violation of federal campaign finance laws has been committed may file a complaint with the Commission. The General Counsel's office will continue to process and conduct preliminary analysis of complaints. Investigations that are already authorized will continue.
Audits that are ongoing or already authorized will continue. The FEC's audit division will continue to work on audits that are already underway or already authorized by the Commission.

What will change?

New audits and enforcement investigations will not be initiated. While staff can continue existing investigations and audits, they cannot open new matters without a vote of at least four Commissioners.

Existing enforcement cases and audits will not be finalized. Akin to the process of opening new matters, closing out audits and enforcement cases requires a vote of at least four Commissioners. Staff will process matters and prepare recommendations for final Commission action, but that final action will be postponed until there are at least four Commissioners to deliberate on those recommendations.

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New advisory opinions will not be issued. Anyone with business before the Commission may submit an advisory opinion request, and Commission staff will review and prepare draft answers to those requests. The Commission may even hold meetings to discuss those requests, but no advisory opinions may be issued without a vote of at least four Commissioners. A requester who finds the General Counsel's office and the three remaining Commissioners in agreement may take some comfort from that agreement, but they would lack the legal protection afforded by a formal opinion.

The Commission will not be able to exercise certain litigation authority. As with enforcement and audit matters, decisions for the FEC to initiate or defend litigation require four affirmative votes. This situation could be troublesome if litigants file new claims against the Commission while it lacks the votes to authorize a defense.

How long will this situation last?

We believe this situation will be resolved quickly, though no one can say for sure how long the lapse in the FEC quorum will last. We understand that the Trump White House has a potential Republican nominee ready to replace Commissioner Dickerson.

Moreover, because the Senate typically considers FEC nominees in cross-party pairs, we know that White House staff have been in contact with Senate Democratic Leader Schumer about a possible Democratic nominee. A Republican-Democratic nominee pair would likely accelerate Senate action on the nominees. While the Senate is not known for its speedy action, we believe that in these circumstances, the FEC quorum lapse can likely be resolved within a few months.

A few months without an FEC quorum in a non-election year will have negligible effects for most campaigns and PACs. A longer lapse in a quorum would cause cascading delays in audit and enforcement actions, but even those matters affect only handfuls of committees at any one time.

If you have specific questions about the effect of the FEC "shutdown" on your campaign or PAC, contact your Aristotle compliance or account manager.