

# FISCAL YEAR 2008 PERFORMANCE BUDGET FOR THE FEDERAL ELECTION COMMISSION (FEC)

Administering and Enforcing Federal Campaign Finance Laws

**SEPTEMBER 13, 2006** 

PRESENTED TO THE
OFFICE OF MANAGEMENT AND BUDGET (OMB)
PURSUANT TO GPRA AND OMB A-11
WITH CONCURRENT
SUBMISSION TO CONGRESS

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### 1.0 - EXECUTIVE SUMMARY

The mission of the Federal Election Commission (FEC) is to ensure that the campaign finance process is fully disclosed and that all federal campaign finance laws and FEC regulations are effectively and fairly enforced. The FEC fulfills its mission through education and outreach, conciliation, rulemaking, advisory opinions, and litigation.

This year's performance budget will be used as the baseline for developing a fully integrated strategic plan with measurable performance goals that carries the agency into FY 2010 and beyond. Further, the plan will be used to hold leadership publicly accountable for driving organizational excellence in achieving measurable performance outcomes by promoting greater emphasis on results and service quality while fostering the highest standards in ethics and integrity.

While the FEC is an independent regulatory agency, we are committed to modeling the best public and private sector practices. We are actively engaged in reaching out to various entities as we identify benchmarks for our future state. We are refining our structure, revising internal processes, and identifying automation enhancements to improve internal and external responsiveness. We are committed to ensuring that our human capital management processes make us an employer of choice, both within and outside of the public sector. Additionally, we are committed to ensuring that our annual information technology budget goes toward significantly improving our ability to serve citizens and that our systems are secure. And, finally, we are committed to ensuring that performance is routinely considered in management decisions and that programs achieve expected results and work toward continual improvement. In short, we are committed to a deliberate approach to using resources to achieve intended goals while holding managers accountable for achieving results.

With the support of our Congressional oversight committees, the agency has continued to perform successfully in spite of an extremely challenging operating environment. We will continue to refine our processes to ensure we meet the highest standards in responsiveness, professionalism, and accuracy of information provided.

A few of our noteworthy accomplishments in FY 2006 include:

- Negotiation of conciliation agreements for civil penalties amounting to more than \$5.4 million; an increase of more than \$2 million in civil penalties over the prior highest fiscal year's results (FY 2004), including the highest civil penalty obtained in Commission history.
- > Completion of work on 11 rulemaking proceedings.

### 1.0 - EXECUTIVE SUMMARY, CONTINUED

- ➤ Issuance of 29 advisory opinions to persons who have requested guidance from the Commission on the application of federal campaign finance laws to specific factual situations.
- Initiation of an expedited process to consider and issue Advisory Opinions on important and time sensitive issue.
- ➤ Enhancement of the Filenet Image and Content Management System hosting 13 million images of electronically filed campaign finance forms. These can be searched by the general public through a web interface that is updated daily.
- > Implementation of new legislative directives to protect private information and agency sensitive data
- Implementation of Pod-casting. This allows public access to downloadable audio from open sessions.
- Conversion of the paper Explanation and Justification for all FEC regulations and *Court Case Abstracts* into hypertext files available on the web.

Our FY 2008 budget request is \$60,395,036, an increase of \$3,257,036, or 5.7 percent, over the anticipated FY 2007 appropriation of \$57,138,000. While we are showing a 15 percent increase in our non-personnel costs, almost **68 percent** of this increase is attributable to an approximately \$1.6 million rent increase the agency will experience in FY 2008. The remainder is directly attributable to strategic information technology initiatives that will bring us into compliance with acceptable Government-wide standards for systems and data integrity. These initiatives are covered in more detail in Appendix A.

The requested level of funding will enable us to administer and enforce the three main components of the Federal Election Campaign Act of 1971 (FECA), as amended, which are:

- The disclosure of campaign finance information.
- > The enforcement of federal campaign finance laws.
- > The public financing of Presidential elections.

It is noteworthy that while FY 2008 is a Presidential election year, which will translate to a substantial workload increase for the agency, we are not requesting additional full time equivalents (FTE). In fact, our 2008 FTE level represents a decrease of 16 FTE from our authorized level of 391 in FY 2006. We believe that through restructuring, process improvements, and technology leveraging, we will improve our overall efficiency and effectiveness. However, it is vital that we be provided with this level of funding to ensure that we are able to continue to invest in our infrastructure to gain these efficiencies.

# 2.0 - APPROPRIATION LANGUAGE (PROPOSED)

### FEDERAL ELECTION COMMISSION

### SALARIES AND EXPENSES

For necessary expenses to carry out the provisions of the Federal Election Campaign Act of 1971, as amended, \$60,395,036, of which not less than \$8,100,000 shall be available for internal automated data processing systems, and of which not to exceed \$5,000 shall be available for reception and representation expenses; Provided, That, the FEC is authorized to establish, modify, charge, and collect registration fees for FEC-hosted conferences; Provided further, That, notwithstanding 31 U.S.C. 3302, funds received from fees charged to attend the FEC-hosted conferences shall be credited to and merged with this account, to be available without further appropriation for the costs of carrying out these conferences.

### 3.0 - ORGANIZATIONAL HISTORY

As early as 1905, President Theodore Roosevelt recognized the need for campaign finance reform. He called for legislation to ban corporate contributions for political purposes and in 1907 proposed public funding of federal elections. From 1907 to 1966, Congress enacted several statutes to:

- Regulate spending in federal campaigns.
- Mandate public disclosure of campaign finances.

In 1971, Congress consolidated its earlier reform efforts in the Federal Election Campaign Act (FECA), instituting:

- More stringent disclosure requirements for federal candidates, political parties, and political action committees (PACs).
- The income tax check-off to provide for the financing of Presidential general election campaigns and national party conventions.

Even though Congress had carefully considered the appropriate legislation to ensure the fairness of our federal elections, enforcement of the laws was difficult without a central administrative authority. For a time, authority was split between the then General Accounting Office (GAO), the Clerk of the House, and the Secretary of the Senate, with criminal enforcement in the Department of Justice.

In response to reports of serious financial abuses during the 1972 Presidential campaign, Congress amended the FECA in 1974 to set limits on contributions by individuals, political parties, and PACs. Further, it established the Federal Election Commission (FEC) as an independent agency with central authority for the civil enforcement of the FECA.

Amendments to the Internal Revenue Code in 1974 established the matching fund program for Presidential primary campaigns. This program allowed taxpayers to indicate, without any increase to the taxpayer's bill, whether they wished to designate \$1 (\$2 on joint returns) to the Presidential Election Campaign Fund. The amount was tripled on 1993 returns to \$3 (\$6 on joint returns).

The Bipartisan Campaign Reform Act of 2002 (BCRA) amended the FECA further. It banned national parties from raising or spending non-federal funds (often called "soft money"), restricted funding of so-called issue ads, increased the contribution limits, and indexed certain limits for inflation.

### 4.0 PROGRAM GOALS AND OBJECTIVES

### Introduction

FY 2008 covers the major primary election period for the Presidential election year. We anticipate FY 2008 will result in record-level workload based on ever increasing political campaign finance activity and the lack of a Presidential incumbent.

Since 1976, total disbursements (spending) in federal elections have increased by more than 1,500 percent from \$310 million to \$4.8 billion in 2004.

Direct resulting workload increases from 1984 to 2004 include:

- ➤ A 32 percent increase in documents filed per cycle.
- ➤ A 465 percent increase in the number of transactions entered into the database.

Currently, the FEC receives information from approximately 8,000 committees filing over 96,000 reports and generating between 2 and 3 million itemized transactions each cycle. The FEC's electronic filing system eases the filing of these reports and the data analysis necessary to determine FECA compliance. Since the institution of mandatory electronic filing, the median time to process all documents has improved from 11 days in the 2000 cycle to 2 days in the 2004 cycle.

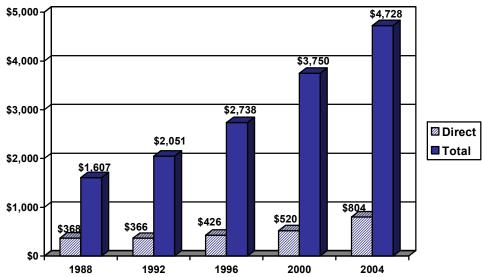
### Staffing and Workload

The FEC processed these record-level workloads with reduced staffing levels. While our workload has continued to increase over the years, we have relied upon management initiatives and technology advancements to meet the demands. We continue to provide high levels of service to the regulated community and the public, while continually exploring ways to operate more efficiently. For example, we are internally funding the Audit Division's administration of the matching fund program for the 2008 Presidential election.

Every election cycle since 1992 has set a new record in total spending in federal elections. Total candidate and committee disbursements for a non-Presidential election cycle increased from \$1.1 billion in 1986 to \$3.1 billion for the 2002 Congressional cycle. In Presidential election cycles, spending reached \$4.8 billion for the 2004 Presidential election cycle, compared to \$1.6 billion in the 1988 cycle. The tables on the following page reflect the total disbursements by federal committees and candidates in recent federal election cycles – with spending more than tripling for comparable cycles. These tables provide a graphical depiction of our ever-increasing workload demands.

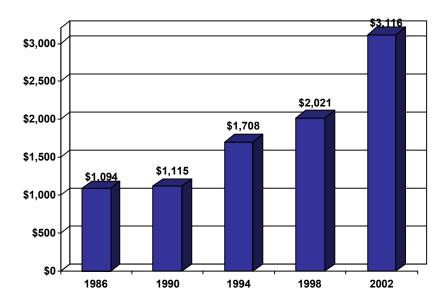
# 4.0 Program Goals and Objectives, continued

Table 4.1 – Disbursements during Presidential Election Cycles (\$ Millions)



Note: Direct disbursements are expenditures made by Presidential candidates, and total disbursements are all expenditures (including direct disbursements). The two totals are provided for comparison.

Table 4.2 – Disbursements during Congressional Election Cycles (\$ Millions)



# 4.0 Program Goals and Objectives, continued

### **Core Programs**

As previously mentioned, we will continue to rely upon internal efficiencies and technology leveraging to meet the demands associated with the increased workload.

To accomplish our mission, we have established three core programs:

- > Promoting disclosure.
- > Enforcing the FECA.
- Administering the public financing of Presidential elections.

We fully support the federal government-wide mandate for federal agencies to maximize efficiency and effectiveness to ensure the most responsible expenditure of taxpayer dollars. Toward that end, we have devoted considerable focus to facilitating voluntary compliance, which is our least resource intense program. We rely heavily on effective outreach and informational programs to reduce violations due to lack of understanding of the law. These outreach efforts – including the www.fec.gov website, 800 informational line, campaign finance workshops and seminars, and campaign guides and brochures – receive high marks from the regulated community, the media, and the public.

The following table identifies the resource requirements associated with each of our core programs:

Table 4.3 – Resource Requirements to Support Core Programs

Program	\$	FTE
Promoting disclosure	\$ 23,095,062	143.4
Enforcing the FECA	\$ 28,538,668	177.2
Administering the public financing of Presidential elections	\$ 8,761,306	54.4
Total	\$ 60,395,036	375.0

# 4.1 Promoting Disclosure

### **Overview**

Disclosure functions within the agency include processing incoming campaign finance reports from federal political committees and making the reports available to the public. These functions are very well received, and the available data resulting from our processing efforts often provide the foundation for analysis and further study by the media, elections interest groups, and the academic community.

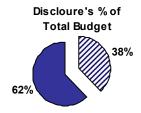
In addition to maintaining the in-person availability of FEC data, we are improving user-friendly access to our resources through the FEC website and other electronically provided data and publications. The FEC encourages the public to review the many resources available, which include computer indices, advisory opinions, and closed matters under review (MURs). In FY 2005, the FEC electronic disclosure database and website received 4.5 million visits and 103 million hits by users seeking campaign finance data and FEC documents.

While the Commission will continue to print and make available copies of brochures and publications, increasingly the needs of the regulated community, the public, and the press are served by electronically available educational and informational materials. During non-peak campaign seasons, we average more than 8,000 external visits per day. The number of visits goes up to an average of 10,000 visits per day during peak campaign seasons. A new "Tips for Treasurers" page that was launched in July 2006 received 3,200 visits during its first month of availability. The FEC continues to upgrade and enhance its website and electronic systems to adapt to public demand and legislative changes.

We continue to respond to many telephone and written requests for information, data, and assistance in filing reports. The Information Division 800 line and the Reports Analysis Division (RAD) analysts assigned to specific committees will continue to be an integral part of our efforts to inform and educate the regulated community and the public and to foster voluntary compliance with the FECA. The Public Records Office houses a library with ample work space and knowledgeable staff to help researchers locate documents and computer data.

# **Program Objectives**

Approximately 38 percent of the agency's budget is dedicated to promoting disclosure. Specific disclosure program objectives include:



- Making filed reports available to the public within 48 hours
- Accurately and timely reviewing and processing political committee financial reports.
- Responding to data requests within 72 hours.

# 4.1 Promoting Disclosure, continued

# **Program Objectives, continued**

➤ Educating the regulated community, public, and media about the legal requirements associated with the core elements of federal election campaign finance law – disclosure, contributions limits and prohibitions, and the public financing of Presidential elections.

### **Program Goals**

To meet our disclosure program objectives, we will achieve the following goals identified as part of our overarching disclosure processes.

# **Review and Processing of Reports**

To achieve the accurate and timely review and processing of reports, we will:

- \* Facilitate the electronic filing of reports by all political committees reaching a certain threshold, excluding Senate committees and the national parties' Senate campaign committees.
- \* Meet the deadlines for placing reports filed by political committees on the public record.
- Review for accuracy and complete disclosure 100 percent of reports filed.
- Request additional information from filers to facilitate voluntary correction of the public record.
- Code and enter into the FEC database the information contained in 95 percent of reports within 45 days of receipt.

### Public Disclosure and Dissemination of Campaign Finance Data

To ensure that campaign finance data is widely disseminated and publicly available, we will:

- Provide through the Internet public access to our disclosure database and digital images of reports (except those of Senate candidates).
- ❖ Operate a Public Records Office where face-to-face assistance is available, as well as access to all of our available data.

# 4.1 Promoting Disclosure, continued

# Public Disclosure and Dissemination of Campaign Finance Data, continued

- Operate a Press Office to facilitate media coverage of agency activity.
- Provide statistical information on the reports filed by political committees.

### **Education about the Law**

To promote understanding by the public, media, and campaign community and ready-access to information about the law, we will:

- Staff a toll-free telephone number to answer phone inquiries accurately, timely, and professionally, as well as dedicate staff to respond to email and written inquiries.
- Produce and distribute educational and informational publications.
- \* Ensure electronic and paper availability of all FEC publications.
- \* Conduct technical workshops on the law throughout the country.
- Provide policy guidance through the timely release of advisory opinions (AOs).
- Review and revise regulations to ensure clarity of federal election laws.

# 4.2 Enforcing the FECA

### Overview

The FEC exercises its enforcement authority by investigating potential violations, making appropriate findings, attempting conciliation, and when conciliation is unsuccessful, filing suit in federal district court. The FEC coordinates its enforcement activities with the Department of Justice, U.S. Attorney's Offices, and state and local agencies. In the last several years, the FEC has dealt with certain kinds of enforcement matters through its Administrative Fine and Alternative Dispute Resolution Programs. We maximize the effectiveness of our compliance and enforcement programs through technology and management initiatives to more strategically focus available resources. Because of the modest size of our compliance and enforcement programs relative to our mission requirements, any reduction in staffing will have a significant and substantial adverse effect on our ability to meet the most basic program objectives.

# **Enforcement Program**

With the exception of matters handled by the Administrative Fine and Alternative Dispute Resolution Programs, all other enforcement matters are handled pursuant to the procedures set forth in 437g of the FECA. Enforcement matters, referred to as Matters Under Review ("MUR"), are initiated through sworn complaints filed by individuals and entities; referrals from other agencies, both federal and state; self-reports from individuals and entities seeking to cooperate with the Commission; and internal referrals from other offices within the agency. The majority of cases (65 percent since 1995) are the result of complaints filed by individuals outside of the agency.

Over the past five years, the General Counsel has initiated a number of management and organizational changes to increase the quality and efficiency of the Commission's enforcement work, and has implemented policy initiatives to facilitate the processing of MURs. The result is a fairer and more expeditious process, with meaningful penalties and other remedies proportionate to the violation. Among other reforms, the Commission has published a policy statement on the liability of committee treasurers, eased respondents' access to deposition transcripts, and revised its standard confidentiality admonition to clarify that witnesses may, if they wish, provide factual information to respondents and their counsel.

In terms of efficiency, cases closed on average 36 percent faster in FY 2006 compared to FY 2003, and the Commission is on pace to resolve by year's end all but a small number of complaints that allege violations pertaining to the 2004 elections that were received either before or within several months after the election. Importantly, the General Counsel has eliminated the practice of dismissing "stale" cases, that is, cases that remained on the docket for lengthy periods without action. From FY 1995 to 2000, the FEC dismissed 21 percent of its cases as "stale." FY 2006 was the third year in a row in which the FEC did not dismiss a single case as stale.

# 4.2 Enforcing the FECA, continued

# **Enforcement Program, continued**

During the past five fiscal years, the General Counsel has steered resources to the most significant violations, leading to a steep increase in civil penalties for serious violators. From FY 1995 to FY 2000, OGC negotiated conciliation agreements with respondents providing for civil penalties totaling \$6.82 million. From FY 2001 to date, OGC negotiated conciliation agreements providing for civil penalties totaling more than \$13.92 million. In FY 2006 alone, OGC obtained civil penalties amounting to more than \$5.5 million; an increase of more than \$2 million in civil penalties in comparison to the prior highest fiscal year's results. This marks the fifth consecutive year with more than \$1 million in civil penalties. The high civil penalties in FY 2006 include the \$3.8 million civil penalty negotiated in one matter, which is not only more than four times greater than any civil penalty obtained in Commission history, it alone is more than the aggregate amount obtained in any previous year.

### **Administrative Fine Program**

In response to a legislative mandate, we implemented an administrative fine program in July 2000. This program has served to reduce resource requirements associated with addressing failures to timely filing disclosure reports. The program facilitates more expeditious resolution of these relatively straightforward violations and allows the agency to devote more resources to addressing more complex cases. Since its inception, we have closed 1,273 cases and assessed more than \$2.6 million in fines through the program.

# **Alternative Dispute Resolution Program**

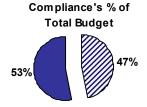
We implemented an Alternative Dispute Resolution (ADR) Program in FY 2001 to facilitate settlements outside of the traditional enforcement or litigation processes. The program's primary objective is to enhance the agency's overall effectiveness through more expeditious resolution of enforcement matters with fewer resources required to process complaints and internal referrals. Since program inception, we have formally closed 259 cases, with substantive action taken in 73 percent of those cases.

As previously mentioned, we anticipate that FY 2008 will result in record-level workload based on the growth and decentralization of campaign funding, as well as the increased enforcement responsibilities that a Presidential election year entails. The requested level of funding is critical to meeting the challenges this will pose.

# 4.2 Enforcing the FECA, continued

# **Program Objectives**

Approximately half of the agency's budget is dedicated to enforcing the FECA. Specific compliance and enforcement program objectives include:



- Audit those committees whose reports fail to meet threshold requirements for substantial compliance with the FECA.
- Take appropriate enforcement action with respect to potential violations.

# **Program Goals**

To meet our compliance program objectives, we will seek to achieve the following goals identified as part of our overarching compliance processes.

### **Audits**

- Conduct 40-45 audits "for cause" for the 2004 election cycle, pursuant to 2 U.S.C. §438(b), in those cases where committees have failed to meet the threshold requirements for substantial compliance with the FECA and have failed voluntarily to correct errors or omissions on their reports.
- Establish a "stand alone" Title 2 Audit "For Cause" Program. This technology initiative improves auditing capabilities and facilitates continuity of audit operations even during Presidential election cycles.

### **Enforcement of the FECA**

- Continue progress in shortening case processing times.
- Close between 75 and 100 cases, with at least 60 percent closed through substantive Commission action.
- Defend BCRA against constitutional and other legal challenges.
- ❖ Initiate civil actions in federal court to enforce the FECA/BCRA in accordance with 2 U.S.C. 437g(a)(6) and defend against all actions in federal court challenging the Commission's determinations under the Administrative Fine Program pursuant to 2 U.S.C. 437g(a)(4)(C)(iii) and all actions challenging the disposition of enforcement matters.
- Maintain and revise, as necessary, the Enforcement Priority System (EPS), a system that is used to prioritize the enforcement docket and assist in determining whether matters are appropriate for ADR.

# 4.3 Administering the Public Financing of Presidential Elections

### **Overview**

Public funding of Presidential elections means that qualified Presidential candidates may receive federal government funds to pay for the qualified campaign expenses of their political campaigns in both the primary and general elections. National political parties also receive federal money for their national nominating conventions.

The Federal Election Commission administered the first public funding program in 1976. Eligible Presidential candidates used federal funds in their primary and general election campaigns, and the major parties used public funds to pay for their nominating conventions. Legislation for public financing of Presidential candidates was first proposed, however, in 1907. In his State of the Union message that year, President Theodore Roosevelt recommended public financing of federal elections and a ban on private contributions. In 1966, Congress enacted the first public funding legislation, but suspended it a year later. That law would have made U.S. Treasury funds available to eligible nominees in the Presidential general election through payments to their political parties. Funds would have come from a Presidential Election Campaign Fund in the U.S. Treasury consisting of dollars voluntarily checked off by taxpayers on their federal income tax returns. A subsidy formula would have determined the amount of public funds available to eligible candidates.

In 1971, Congress adopted similar provisions, which formed the basis of the public funding system in effect today. Under the 1971 Revenue Act, the nominee, rather than the party, receives the public funds accumulated through the dollar checkoff. The Revenue Act also placed limits on campaign spending by Presidential nominees who receive public money and a ban on all private contributions to them.

In a parallel development, Congress passed the 1971 Federal Election Campaign Act, which required full, detailed reporting of campaign contributions and expenditures by all federal candidates, including Presidential candidates. The 1974 Amendments to the Federal Election Campaign Act completed the system we now have for public financing of Presidential elections. Those Amendments extended the public funding provisions of the Revenue Act to Presidential primary elections and the Presidential nominating conventions of national parties. Court challenges to the expenditure limits followed soon after Congress passed the 1974 Amendments. However, the Supreme Court, in two separate suits, first implied and later affirmed that expenditure limits for publicly funded Presidential candidates are constitutional. In 1976, Congress made minor changes to the public funding provisions and in 1979 and 1984 increased the public funding entitlement and spending limit for national nominating conventions.

# 4.3 Administering the Public Financing of Presidential Elections, continued

### **Program Components**

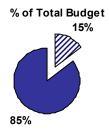
Public funding of Presidential elections has three components:

- Matching funds for qualified Presidential primary candidates.
- ➤ Public grants for the Presidential nominees of major and minor parties.
- Public grants to major parties to run their national Presidential nominating conventions.

Administering the public financing program effectively requires significant activity before, during, and after Presidential election cycles. Responsibilities include reviewing matching fund submissions from eligible candidates, certifying eligibility, and auditing of reports.

### **Program Objectives**

Approximately 15 percent of the agency's budget is dedicated to administering the public financing of Presidential elections. Specific program objectives include:



- ➤ Certifying, on a timely basis, the eligibility of Presidential candidates and committees for payments.
- Ensuring timely U.S. Treasury payments to certified committees.
- Promoting public trust by ensuring that all public monies are accounted for and expended in compliance with the FECA.

### **Program Goals**

To reach the objectives described above, the Commission will seek to:

- Process certifications and transfers of funds timely and accurately.
- \* Conduct comprehensive and thorough audits and reviews of campaigns receiving public funds within the statutory time limits.
- ❖ Vigorously enforce compliance with the statutory requirements governing use of such funds.

### 5.0 Performance Budget Summary

As noted in the Executive Summary, the net increase for FY 2008 from FY 2007 is \$3,257,036, or 5.7 percent.

For our personnel costs, the increase is due to the application of the OMB-indicated 2.2 percent inflation factor. It is worth mentioning again that our FTE level for FY 2008 actually represents a decrease by 16 FTE from our FY 2006 authorized staffing level despite the upward workload trends associated with Presidential election campaign peak seasons. This staffing level is absolutely critical to our meeting the indicated performance goals outlined in this request.

While we are showing a 15 percent increase in our non-personnel costs, almost **68 percent** of this increase is attributable to an almost \$1.6 million rent increase the agency will experience this year. While for some larger agencies this increase would represent a fairly modest amount to absorb, it represents a significant portion of our annual allocation and has a substantial and direct impact on our ability to invest in continuous process improvement and systems modernization initiatives.

Similar to other agencies, we will continue to absorb the costs associated with new mandated requirements, such as those imposed by Presidential Directive HSPD-12, OPM's e-OPF initiative, new security requirements on the protection of sensitive Agency data, and annual climate surveys. Again, implementation of these types of initiatives has a disproportionate impact on our ability to meet program goals than on larger agencies because of the relatively small non-personnel funding allocation.

The following table summarizes the FY 2008 request and the differences from FY 2007.

<i>Table 4.3 –</i>	<b>Comparison</b>	of FYs 200'	7 and 2008	Budgets

Category	FY 2007	FY 2008	Increase	Percent Increase
Personnel	41,584,000	42,498,848	914,848	2.2%
Non-Personnel - Rent	4,017,000	5,603,846	1,586,846	39.5%
Non-Personnel - Other	11,537,000	12,292,342	755,342	6.1%
Total	57,138,000	60,395,036	3,257,036	5.7%

Given the mitigating factors identified throughout this document, we feel it is absolutely critical that we be granted the requested level of funding. Anything less will have a direct and measurable impact on our ability to administer and enforce the FECA.