

**APPENDIX F**

**ALTERNATIVE DISPUTE RESOLUTION (ADR) PROGRAM**

**MARCH 20, 2003**

**Submitted to Congress/OMB**

The ADR Program was initiated to provide the Commission with an alternative method for resolving complaints and referrals of election law violations. The Program aims to expedite the resolution of enforcement matters through expanded use of negotiations with respondents and, when necessary, mediation. The Program, established in October 2000 as a pilot, is designed to enable respondents and the Commission to negotiate mutually agreeable resolutions that would reduce the costs of processing complaints and referrals while promoting compliance with the Federal Election Campaign Act (FECA) and the Commission's regulations.

The FEC enforcement goals, established in the FEC Strategic Plan and the Annual Performance Plans, seek to activate more enforcement cases and to reduce the number dismissed without substantive action. These goals build upon the FY 2000 record when the FEC closed over 70% of the cases processed with some form of substantive action and over 50% of the average monthly caseload was actively being processed. Since 1995, all enforcement cases have been triaged through the Enforcement Priority System (EPS), and cases are held in the Central Enforcement Docket (CED) until activated.

The ADR Program, which was made a permanent part of the Commission in October 2002, enables the FEC to expand the reach of the enforcement process by including cases that previously were not activated or concluded without substantive action. The ADR program also permits the Commission to devote its resources to more substantive cases and thereby improve the timeliness of FEC compliance actions.

The ADR Program promotes compliance with the FECA by focusing the respondents' attention on correcting the procedures or behavior that caused the violation. By facilitating settlements outside the traditional enforcement process, the Office enables respondents to design settlements that they can support and subsequently implement and as a result enhance compliance with Federal election law. The Program also affords the respondents the opportunity to resolve matters more rapidly—since the inception of the Program in October 2000 through March 7, 2003, seventy-three (73) matters have been formally settled in the ADR process, requiring an average of 119 days from the time ADR received the case until the Commission approves the negotiated settlement.

Through March 1, 2003, the ADR Office (ADRO) received 111 cases of which 39 were returned to OGC as inappropriate for ADR or due to rejection of the ADR option (there were 4) on the part of respondents. Of the remaining 72 cases assigned to ADR, 49 were concluded with negotiated settlement agreements, 16 were in various stages of negotiations as of March 1, 2003, four cases were under review and two were awaiting assignment to ADRO. The Commission dismissed one case.

The Commission collected civil penalties totaling \$74,142 from 30 out of the 73 settlement agreements (41%) negotiated by the ADR Office through March 7, 2003. Many of the cases resolved by ADRO result in multiple agreements—to date the 49 cases concluded resulted in 73 negotiated agreements. The Commission approved all but four of the agreements negotiated by ADRO.

A detailed analysis of the 49 cases concluded with negotiated settlement agreements from the inception of the program through March 1, 2003, is provided below.

## **Sources of Cases**

The vast majority of cases reviewed by ADRO, prior to assignment, were from complaints, i.e., Matters Under Review, or MURs, filed with the Commission. MURs, forwarded from OGC, represented 85% of the cases reviewed for appropriateness for ADR processing. Referrals from Audit and the Reports Analysis Divisions each accounted for eight cases. Eight cases, out of the total forwarded from OGC, resulted from respondents themselves as *sua spontes* or from other federal or state agencies. Multiple respondents were involved in a third of the cases. Two cases were bifurcated due to a rejection of the ADR option, while other respondents accepted the invitation. In those instances, respondents who rejected the option were returned to OGC for appropriate action.

## **Issues**

The 49 cases resolved by ADRO since the inception of the program cover an array of issues and violations of the FECA. The four most frequently referenced violations of the FECA, i.e., 2 U.S.C., include:

1. limitations on contributions and expenditures – violations of § 441a;
2. contributions or expenditures by corporations, banks or labor organizations – violations § 441b;
3. reporting requirements of political committees – violations of § 434(b); and
4. reporting and filing responsibilities of committee treasurers – violation of § 434(a).

The aforementioned issues accounted for more than two-thirds of the cases resolved by the ADR Office. The remaining cases dealt with: the requirement for disclaimer statements on publications, public advertising, etc., §441d; definitional related issues, § 431; contributions in the name of another, § 441f; and an array of other issues.

## **Processing Time**

The forty-nine cases resolved by the ADR Office through March 1, 2003, were concluded on average in 119 days—counting the period from the time the case is assigned to the ADR Office by the Commission until the negotiations are concluded and the agreement is signed by the respondent/s and approved by the Commission. The ADR Office's goal is to reduce this processing time and complete the process in 90 days.

## **Terms of Settlement**

Since the inception of the program, approximately 41% of the settlements negotiated by the ADR Office provided for civil penalties. The amount of the penalty varied considerably and was dependent on the nature of the violation, the amount of the violation and what other issues were included in the case. The vast majority of settlements involved both monetary and non-monetary terms while ten percent called only for the payment of a civil penalty.

Twenty-five percent of the settlements approved by the Commission contained terms that required respondents to attend a seminar, conduct an internal education program, or attend a FEC briefing—provisions developed to assist a committee’s or campaign’s staff to better understand the requirements of the FECA. These efforts are designed to assist respondents to correct some behavior or procedure that precipitated the violation.

Approximately eighteen percent of the agreements approved by the Commission contained provisions dismissing the complaint after the ADR Office concluded that the alleged violation was unsubstantiated. Other settlement terms called on committees to appoint a FEC compliance officer or for a corporation to adopt and distribute to their employees or staff guidance noting the prohibition regarding contributions to Federal election campaigns.

### **Program Evaluation**

During the summer of 2002, the ADR Program was evaluated by a national conflict management and resolution firm. The purpose of the evaluation was to provide the Commission with an independent evaluation to assist them in determining if the Pilot Program met its goals and should be made a permanent part of the FEC. The evaluation team interviewed respondents and members of the election bar and concluded, based on responses from those interviewed, that the Pilot Program had achieved its stated goals. The study found that 90 percent of the interviewed respondents believed they saved time and money using the Program and that, based on their initial experience with the Program, they would be more likely to request or choose to use the process in the future. The evaluation also concluded that the Program saved respondents dollars in legal fees and enabled the Commission to increase significantly the number of cases processed.