

FEDERAL ELECTION COMMISSION

**FISCAL YEAR 2009
CONGRESSIONAL BUDGET JUSTIFICATION**



February 4, 2008

Congressional Submission

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Proposed Appropriation Language

FEDERAL ELECTION COMMISSION

SALARIES AND EXPENSES

For necessary expenses to carry out the provisions of the Federal Election Campaign Act of 1971, as amended, \$63,618,000 of which not to exceed \$5,000 shall be available for reception and representation expenses.

FEDERAL ELECTION COMMISSION

BUDGET REQUEST

EXECUTIVE SUMMARY

The FY 2009 budget request for the Federal Election Commission (FEC or Commission) is for \$63,618,000. This represents an increase of \$4,394,000 (7.4%) over FY 2008. This increase is being requested to ensure that the Commission remains equipped with the staff and information technology tools to effectively and efficiently meet an anticipated increase in responsibilities resulting from (1) recent changes in Federal campaign finance laws, (2) the continuing increase in the level of contributions to, and spending by, Federal candidates, and (3) the expanding timeframe that Federal candidates are engaged in their campaigns.

A brief summary of this request is presented below.

Table 1: Budget Summary			
Category:	FY 2008 Estimate	FY 2009 Request	Percent Change
Personnel	\$42,498,848	\$45,145,645	6.2%
Non-Personnel	\$16,725,152	\$18,472,355	10.4%
Total	\$59,224,000	\$63,618,000	7.4%

To successfully manage the continued increase in its responsibilities, the Commission would allocate funds from the requested budget increase to:

- Add 12 full-time equivalent (FTE) positions to work in areas that are most impacted by the increased demands;
- Invest in several technological advances, such as improvements to its public disclosure databases and internal compliance systems, that would allow the Commission to provide additional services to the regulated community and the public, while conducting business more efficiently; and
- Sufficiently address internal control weaknesses relating to financial management and systems previously identified through the annual audits of the Commission's financial statements.

A portion of the budget increase also supports the standard anticipated inflationary adjustments for salaries and benefits, as well as inflation-driven cost increases for non-personnel expenditures.

Table 2: Components of the Budget Request	
FY 2008 Appropriation	\$59,224,000
Built-in requirements to maintain current services	1,825,000
FY 2009 Current Services	\$61,049,000
Enhancements:	
Additional Staffing	1,151,795
Technological Initiatives	1,417,205
FY 2009 Budget Request	\$63,618,000

COMMISSION STRUCTURE

The FEC (www.fec.gov) is an independent regulatory agency with exclusive responsibility for administering, enforcing, defending and interpreting the Federal Election Campaign Act of 1971, 2 U.S.C. 431 *et seq.*, as amended by the Bipartisan Campaign Reform Act of 2002 (*BCRA*), Pub. L. 107–155, 116 Stat. 81 (2002) (*FECA* or the *Act*). The Commission is also responsible for administering the public funding programs (26 U.S.C.) for presidential campaigns and conventions, which includes certifying and auditing all participating candidates and committees, and enforcement of public funding legislation.

The agency is directed by six Commissioners appointed by the President with the advice and consent of the Senate. By law, no more than three Commissioners can be members of the same political party. Each Member serves a six-year term and two seats are subject to appointment every two years.¹ The Commissioners meet regularly to formulate policy and to vote on significant legal and administrative matters.

As part of its responsibilities, the FEC ensures transparency in the campaign finance system for Presidential and Congressional elections by enforcing the *Act's* requirement that all Federal candidates and Federal political committees file financial disclosure reports, and by making those disclosure reports readily available to the public through the Commission's Internet-based public disclosure system. The FEC also has exclusive responsibility for civil enforcement of the FECA, including the handling of civil litigation arising from any legal actions brought by or against the Commission. All fines or civil penalties received are deposited with the U.S. Treasury and are not available for the Commission's use. Additionally, the Commission promulgates regulations implementing the *Act* and issues advisory opinions responding to inquiries generally from the regulated community.

¹ The Commission is awaiting Senate confirmation of four of its six Commissioners. Accordingly, the FEC is currently operating with only two Commissioners.

MISSION STATEMENT

To prevent corruption in the Federal campaign process by administering, enforcing and formulating policy with respect to Federal campaign finance statutes.

The primary purposes of the *Act* are to:

- Prevent improper influence or the appearance of improper influence of Federal candidates by imposing contribution limits; and
- Provide transparency through mandatory disclosure of financial activity.

In order to prevent improper influence of Federal candidates that might result from large campaign contributions, the *Act* limits the amount that any one person or entity may contribute to a Federal political candidate. The *Act* also prohibits certain entities, such as corporations and labor unions, from making Federal political contributions altogether. Beyond contribution limits and prohibitions, the *Act* also requires accurate and comprehensive public disclosure by Federal candidates and Federal political committees of all contributions and expenditures. The Commission facilitates transparency in the Federal campaign finance system through a state-of-the-art Internet-based public disclosure system for all campaign finance activity.

The *FECA* reflects a belief that democracy works best when voters can make informed decisions in the political process, decisions based in part on knowing the sources of candidates' financial support – hence, the focus on transparency. Public confidence in the political process depends not only on laws and regulations to assure transparency, as well as on limits and prohibitions on the amounts and sources of contributions, but also on the knowledge that those who disregard those laws and regulations will face real consequences for non-compliance – hence the focus on effective and fair enforcement to maintain the integrity of campaign financing.

Despite a vigorous enforcement program designed to ensure compliance with the *Act's* contribution restrictions as well as its disclosure provisions, voluntary compliance with its requirements remains a principal focus of the Commission's efforts. Because of the large and rising number of political committees and the ever-growing number and complexity of financial disclosure reports filed with the FEC, it would be cost-prohibitive to enforce the requirements of the *Act* without significant voluntary compliance. Accordingly, the Commission devotes significant resources to encouraging voluntary compliance through the widespread dissemination to the public, the press, political committees, and to State election officials of educational materials related to the campaign finance laws.

STRATEGIC GOAL

As reflected in the strategic plan that has been updated for FY 2008 through 2012, the FEC's mission is supported by a single, overarching strategic goal. This goal, which is presented below, is intended to succinctly, yet simply, characterize the fundamental responsibility with which the Commission has been entrusted.

To protect the integrity of the Federal campaign process by providing transparency, enforcing contribution restrictions, and fairly administering the FECA and related statutes.

STRATEGIC FRAMEWORK

This goal is pursued by three strategic objectives and underlying activities that guide the operations of the FEC. These are some of the many activities that constitute the day-to-day work of the agency's staff.

Objective A: Transparency – Receiving Accurate and Complete Campaign Finance Disclosure Reports and Making Them Available to the Public

- Creating and maintaining a state-of-the-art electronic filing system for collecting financial disclosure reports from Federal candidates and political committees;
- Making financial disclosure reports available to the public in a timely, efficient and useful manner;
- Reviewing financial disclosure reports to ensure that the reports are accurate and complete; and
- Encouraging candidates and political committees to correct inaccurate or incomplete reports.

Objective B: Compliance – Education and Enforcement

- Expanding awareness of the campaign finance laws by creating and disseminating educational materials, and through instructional conferences and workshops;
- Responding to complaints alleging violations of campaign finance laws;
- Imposing civil penalties for late-filed and non-filed disclosure reports;
- Conducting audits in a timely and efficient manner;
- Working with the Department of Justice regarding prosecution of criminal violations of the *Act*; and
- Making findings in completed compliance matters available to the public in a timely and useful manner.

Objective C: Development of the Law – Interpreting and Administering FECA

- Conducting rulemaking proceedings to promulgate Commission regulations consistent with revisions to the *Act* and judicial decisions;
- Issuing advisory opinions providing specific guidance to the regulated community;
- Defending challenges to the *Act*, Commission regulations or actions; and
- Certifying all presidential public funding payments in a timely and efficient manner.

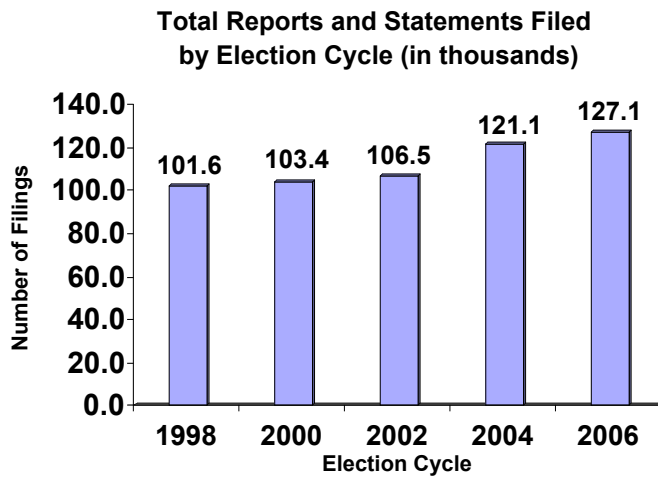
Management excellence is a key means to ensure that the FEC achieves these objectives in the most efficient and effective manner. Consistent with the *President's Management Agenda (PMA)*, the Commission is updating its human capital plan to better address the following elements: (1) strategic alignment; (2) workforce planning; (3) leadership development; and (4) knowledge transfer and results-oriented performance. In addition to investing in its people, the Commission believes strong financial management and up-to-date technology are critical to supporting the mission and business operations, thereby ensuring that controls and systems meet applicable standards and can accommodate changes in stakeholder expectations and needs.

Together these strategic objectives and management initiatives provide a strong foundation on which the FEC accomplishes its mission and plans for future challenges. The following section discusses the objectives mentioned above and presents brief descriptions of program activities, noteworthy trends and key accomplishments. Results achieved in carrying out these objectives and activities include (1) shorter processing times, (2) new procedures for informing the regulated community of the law, (3) an increase in the number and types of outreach activities, and (4) improved access to and the ease of use of the campaign finance data.

Objective A: Transparency

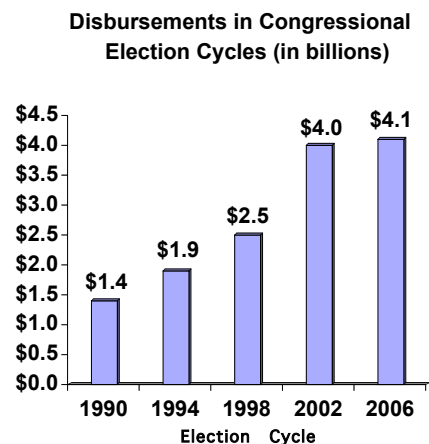
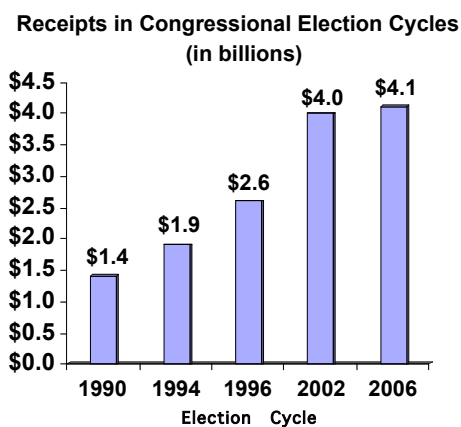
Receiving Accurate and Complete Campaign Finance Disclosure Reports and Making Them Available to the Public.

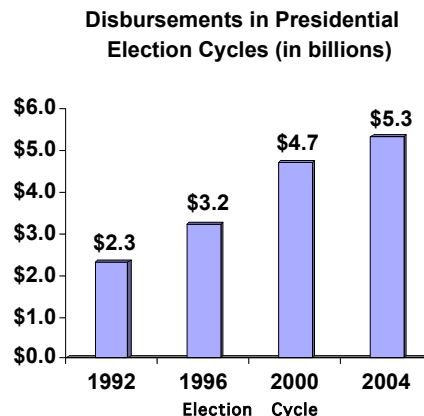
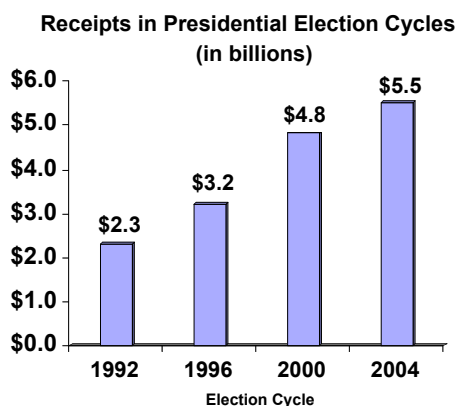
One of the FEC's most important responsibilities is to receive campaign finance reports, which detail the sources and amounts of funds used to finance Federal elections, and to make these reports available to the public in a timely and efficient manner. During the 2006 election cycle, the Commission received over 127,000 financial disclosure reports and statements, the equivalent of 3.9 million pages of financial data, disclosing approximately \$4.1 billion in spending related to Federal elections. This represents an increase of approximately five percent from the 2004 election cycle. The Commission anticipates that the 2008 election cycle will see an even greater increase, especially since there is no incumbent running for the Presidency. For example, as of August 2007, the Commission has received approximately seven percent more financial disclosure reports and statements than what was received relative to the same period before the 2004 presidential election.



As illustrated in the chart above, the Commission has seen a continued increase in the total reports and statements filed over the past 10 years. Despite this increase, the Commission continues to improve on the timeliness with which reports are processed and made available to the public on the Commission’s website. For example, since the institution of mandatory electronic filing in 2000, the median time to process all documents has decreased from eleven to just two days.

In addition to the rising number and complexity of filings, the volume of transactions disclosed on campaign finance reports has also grown dramatically. As illustrated in the charts below, every election cycle since 1990 has seen a new record in total contributions and spending in Federal elections.



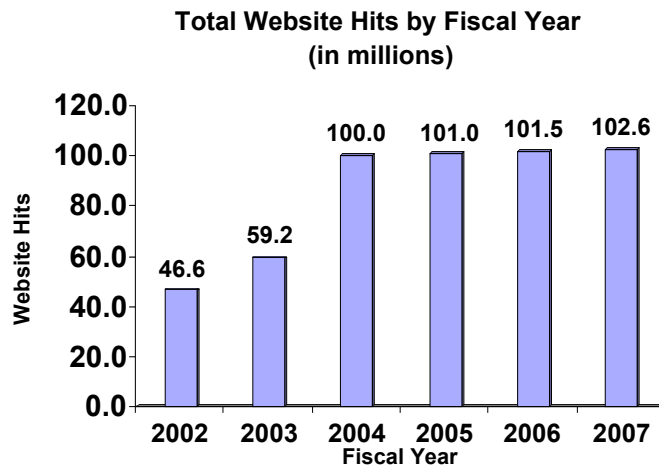


Not only does the FEC's Internet-based electronic filing system allow candidates and political committees to file electronically, it also permits the committees to disclose more detailed information than ever before. The rise in the volume of reported information and financial activity has placed an increased burden on the review and analysis that the Commission must perform to ensure completeness and accuracy for disclosure and compliance purposes.

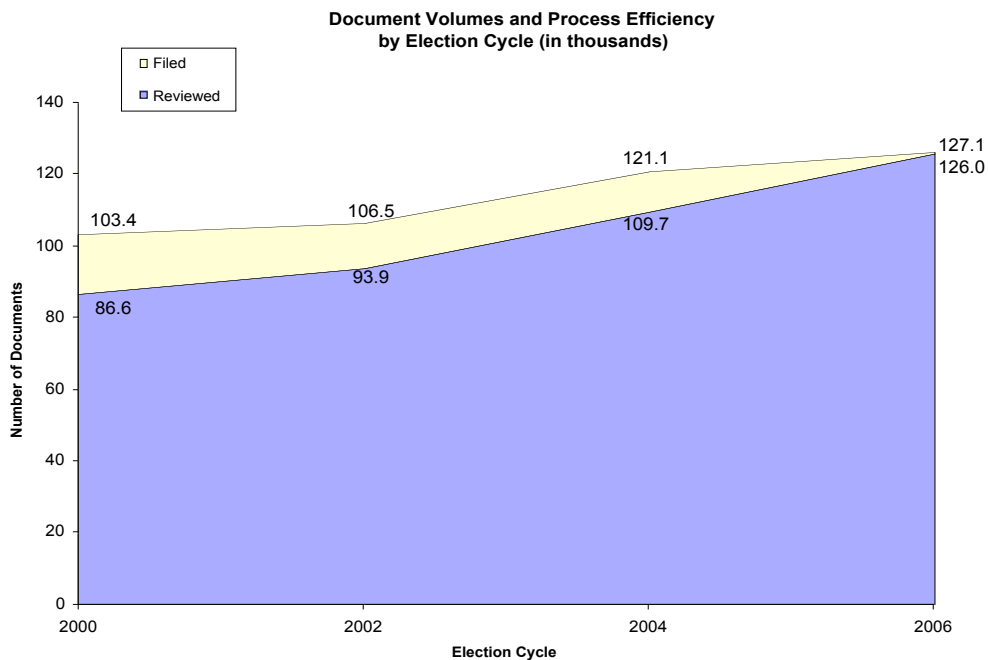
With the passage of mandatory electronic filing for the majority of committees, the FEC, political candidates and committees, and the public are experiencing the benefits of timeliness and work process improvements that a sophisticated system affords. For example, the Commission's electronic filing system provides a comprehensive on-line help feature to assist candidates and committees with preparation and filing of their disclosure reports. Furthermore, the system permits anyone with Internet access to view the following campaign finance information:

- A list of all disclosure reports and other forms filed by a Federal candidate or a political committee, as well as a link to copies of the reports.
- Summaries of financial activity, such as total receipts, disbursements, contributions to Federal committees, cash on hand and debts and obligations of a candidate or committee.
- A list of all documents filed by a candidate with a cross reference to reports filed by other political committees, which disclose contributions and other expenditures related to that candidate.
- An itemized list of each individual contribution to a candidate or committee.
- An itemized list for each political committee of contributions made to candidates, including independent expenditures for or against candidates.
- Documents related to FEC audits, enforcement actions and litigation regarding a candidate or political committee.
- Documents related to FEC advisory opinions.

In 2006, the FEC’s electronic disclosure database and website received 3.8 million unique visits and over 101 million page hits by users seeking campaign finance data and other information. Each day, the FEC website continues to receive an average of 10,000 visitors. When on the FEC website, these visitors have access to over 27,000 documents, plus hundreds of thousands of pages of campaign finance data that have been submitted by candidates and committees and posted on-line by FEC staff. In FY 2007, the FEC website received approximately 102.6 million hits, and as the 2008 presidential election nears, the Commission anticipates an even greater number of visits to the FEC website through FY 2009.



To make campaign finance data contained in the disclosure reports filed with the Commission even more accessible to the public, in calendar year 2007, the FEC launched two new interactive maps at www.fec.gov/DisclosureSearch/mapApp.do that allow users to have immediate access to contribution information for both the 2008 presidential race and the 2008 Congressional candidates. With a simple click on a map, users can access the amount of funds raised on a state-by-state basis, with an option of viewing contributions to specific candidates, all candidates or all candidates from a particular political party. The maps provide convenient access to the total contributions to each candidate, along with each candidate’s cash-on-hand and the distribution of each candidate’s contributions by amount. The maps also allow the user to access lists of contributors by name, city, amounts of contributions and dates within the first three digits of their zip code, and can be sorted and downloaded to a spreadsheet format. Contribution data are updated within one day of the Commission’s receipt of electronically-filed presidential disclosure reports.



In the 2006 Congressional election cycle, nearly \$4.1 billion in campaign funds were disbursed by 8,000 committees that filed over 127,000 reports and statements. Together these reports contained information on 2.8 million separate campaign contributions and expenditure transactions. Despite an increase of nearly 15 percent in the number of reports reviewed between the 2004 and 2006 election cycles, and a continued increase in the amount of contributions and disbursements in the election cycles, the Commission was able to make significant improvements in the timeliness of the review of these reports.

Although the Commission has achieved significant success in its effort to improve the review time for routine matters, it continues to face challenges in its efforts to analyze more complex matters. These include potential fraudulent activities designed to circumvent the limits of the *Act*, such as embezzlement and multi-tiered conduit schemes for making contributions in the name of another person.

This budget request reflects the need for increased funding for staff with specialized expertise in identifying such complex, hard-to-detect schemes. The Commission also seeks funding to support this expertise through technological enhancements, such as data mining software. These resources will further assist the FEC in presenting financial data to the public and the regulated community in a manner that is even more transparent and beneficial to the public.

Objective B: Compliance

Education

The Commission continues to receive many telephone and written requests from the regulated community and the public for information, data and assistance in filing financial disclosure reports. Helping the regulated community understand its obligations under the *Act* is an essential component of improving voluntary compliance. One way the Commission continues to promote voluntary compliance with the law is by educating political committees and the public about the requirements of the *Act*.

During the past couple of years, the Commission implemented several policy statements providing the regulated community with additional guidance on certain submissions by candidates and political committees. These include statements (1) to clarify and encourage self-reporting of violations, (2) to offer guidance on disclosure efforts including descriptions for the purpose of disbursements, and (3) to outline the requirements to show “best efforts” by committees to obtain and report financial information.

The Commission also encourages voluntary compliance by hosting conferences in Washington, DC, and in other cities across the country, where Commissioners and staff explain how the *Act* applies to candidates and political committees. These conferences address recent changes in the campaign finance laws and focus on fundraising and reporting regulations.

For both political committees and the public, the Commission’s website has become the single-most important source of instantly accessible information about the *Act* and Commission regulations. While the Commission continues to make available printed copies of brochures and publications, documents related to all aspects of the FEC’s work are available at www.fec.gov. These range from documents such as informational brochures on specific topics and the FEC’s monthly newsletter, *The Record*, to copies of the *Act*, the Commission’s regulations, advisory opinions, and litigation documents. Documents related to enforcement matters, including audit reports, are also available. The website also includes a query function for accessing documents related to closed enforcement actions.

The Commission strongly believes in all aspects of transparency, including making its internal process more accessible to the public. Through its continued efforts to improve the accessibility of data, in March 2007, a new tool to search for advisory opinions was implemented on the FEC website. The new search engine allows for full-text searches of all Commission advisory opinions issued since 1990. When a specific opinion is selected, links to all related materials (e.g., the original request, Commission draft opinions and third-party comments) are also provided, making the system a quick and comprehensive research tool.

The Commission also recently expanded its information outreach on the Internet to include (1) online presentations; (2) hypertext versions of the *Explanations & Justifications* for all FEC regulations; and (3) a “*Tips for Treasurers*” page that allows political committee treasurers and other interested individuals to receive automatic updates, even without having to visit the FEC’s website. The Commission also recently transitioned to an e-mail distribution program for financial disclosure forms and other publications aimed at improving customer service, while simultaneously saving tax dollars by saving on costs associated with printing and postage. This program allows the Commission to distribute time-sensitive information to the regulated community more quickly and more efficiently than ever before. Furthermore, the FEC expanded its services by providing advance notices and reminders of filing deadlines.

These investments represent a significant first step to help improve compliance with the *Act* and enable additional educational and outreach efforts. This budget request seeks to build on these accomplishments.

Enforcement

Traditional Enforcement Program

Under the traditional enforcement program, the Commission learns of possible *FECA* violations primarily through:

- The complaint process, whereby anyone may file a sworn complaint alleging violations of the *Act*;
- The review of a committee’s reports or through audit;
- Voluntary self-reporting by candidates, political committees, and corporations who believe that they may have violated the *Act*; and
- The referral process, whereby other government agencies may refer possible violations of the *Act* to the FEC.

The FEC has exclusive jurisdiction over civil enforcement of violations of the *Act* and coordinates with the Department of Justice on criminal enforcement of the *Act*. Whether initiated by outside complaint or internal referral, the most complex and legally significant enforcement matters, or matters under review (MURs), are handled by the Enforcement Division of the Office of General Counsel (OGC).

The Enforcement Division:

- Recommends to the Commission whether it should find “reason to believe” that the *Act* has been violated, a finding that formally initiates an investigation;
- Investigates possible violations of the *Act* by requesting, subpoenaing, and reviewing documents and interviewing and deposing witnesses;
- Conducts settlement negotiations seeking to culminate in conciliation agreements with respondents;
- Recommends to the Commission whether it should find “probable cause” to believe the *Act* has been violated; and

- Recommends to the Commission whether suit should be brought against a respondent in Federal district court if conciliation cannot be reached through settlement negotiations.

If a conciliation agreement cannot be reached and the Commission votes to initiate civil litigation, it will file and prosecute a civil action in Federal district court to address the alleged violation of the *Act*. Depending on the size and complexity of the lawsuit, such cases may be resolved promptly or may require a significant amount of resources for several years.

In fiscal year 2007, the FEC closed 497 matters, the largest number since 2003, while the average time required to complete a case declined by nearly one third from earlier years. Over 85 percent of the agency's enforcement cases handled by OGC are now closed within 15 months, the fastest and most efficient processing of complaints in the Commission's history.

Although swift resolution of enforcement matters is one of the Commission's highest priorities, efficiency cannot come at the expense of fairness to those regulated. The Commission remains focused on providing candidates and political committees with a fair opportunity to make appropriate presentations to the Commission in enforcement matters. As a result, the Commission recently adopted a program allowing oral hearings in enforcement cases.

The continued growth in the number and amounts of campaign contributions and disbursements, along with the increased volume in the number and length of reports filed with the Commission, has created an increased workload on enforcement programs. This is especially true in election cycles, such as 2008, where the Commission expects to receive a high volume of complaints associated with the presidential election. These demands are further compounded by the number of increasingly complex schemes aimed at evading the law. Although the Commission attempts to maximize the effectiveness of its compliance and enforcement programs through increased use of technology and putting into place management initiatives to better focus available resources, it is vitally important that the agency attract and retain additional staff with the expertise to detect and investigate such schemes.

Other FEC Enforcement Programs

Administrative Fine Program (AFP)

Based on the Commission's legislative recommendation and subsequent Congressional mandate, the FEC implemented an Administrative Fine Program (AFP) in July 2000. Through this program, the Commission addresses the timely filing of financial disclosure reports in a more streamlined fashion than permitted by the traditional enforcement process. Since its inception, the AFP has closed over 1,300 cases and assessed civil penalties totaling more than \$2.5 million for late-filed and non-filed reports. In FY 2007, the AFP assessed fines of approximately \$310,000 and closed 266 cases as compared to approximately \$200,000 and 89 cases in FY 2006.

In 2007, the Commission revised four aspects of its AFP regulations. One change completely replaces the “extraordinary circumstances” defense with a two-part “best efforts” defense. Another includes the addition of examples of circumstances that will meet the new “best efforts” test. These revised regulations became effective April 30, 2007, however the Commission has not yet had an opportunity to handle a sufficient number of cases under the new regulations to assess the long-term impact on staff workload and appeal review turnaround time.

Congressional approval for the program was initially provided through 2001. Since that time, it has been extended three times with the current extension through December 31, 2008. With the end of this extension approaching, the Commission recommends that Congress provides another extension to this program or makes permanent the authority for the Administrative Fine Program. By making the program permanent, Congress would ensure that the Commission would retain one of the most cost-effective and successful programs in its history.

Alternative Dispute Resolution (ADR) Program

The Commission implemented an Alternative Dispute Resolution (ADR) program in October 2001. This program is designed to promote compliance with the *Act* by encouraging settlements outside the traditional enforcement or litigation processes. The ADR program aims to expedite resolution of certain less complex enforcement matters and to reduce the cost of processing complaints through streamlined procedures. This program also promotes future compliance through settlements reflecting primarily remedial measures for respondents, such as training, audits and the hiring of compliance staff.

Since the inception of the ADR program, the Commission has concluded settlements with respondents in 232 cases and closed 322 cases, negotiating approximately \$400,000 in civil penalties. In FY 2007, the Commission negotiated nearly \$60,000 in civil penalties. Generally, all ADR cases have been closed within three months of referral to the ADR program, thus expediting this portion of the Commission’s enforcement caseload.

Both the AFP and the ADR programs allow the Commission to expand the reach of the enforcement process and to streamline case resolution for less complex matters. These programs focus current resources to ensure enforcement of the *Act* is performed as efficiently and effectively as possible.

Audit Program

The Commission also enforces the *Act* through audits of candidates and political committees. In FY 2009, the Commission expects to conduct 40 to 50 “for cause” audits, under Title 2, in those cases where political committees have failed to meet the threshold requirements for substantial compliance with the *Act* and have failed voluntarily to correct errors or omissions in their disclosure reports. In addition, the Commission

expects to conduct six to eight mandatory audits, under Title 26, for those presidential candidates who opt to receive presidential matching funds in the 2008 election. The Commission's audit presence not only contributes to the Commission's enforcement efforts but also encourages voluntary compliance within the regulated community.

Objective C: Development of the Law

Interpreting the *FECA*

The Commission provides formal interpretation of the *Act* through promulgation of regulations and the issuance of advisory opinions (AOs).

Regulations

Congressional action, judicial decisions, petitions for rulemaking or other changes in campaign finance law often necessitate that the Commission update or adopt new regulations. Consequently, the FEC undertakes rulemakings to either write new Commission regulations or revise existing regulations.

The Policy Division of OGC drafts Notices of Proposed Rulemaking (NPRMs) which, once adopted by the Commission, are published in the *Federal Register*. NPRMs are also made available on the FEC's website and on the U.S. Government website, www.regulations.gov. NPRMs provide an opportunity for members of the public and the regulated community to review proposed regulations, submit written comments to the Commission and testify at public hearings, which are conducted at the FEC when appropriate. The Commission considers the public comments and testimony and deliberates publicly regarding the adoption of the final regulations. The text of final regulations and the corresponding *Explanations and Justifications*, once adopted by the Commission, are published in the *Federal Register*.

The Commission has completed revisions to its regulations to comport with recent court decisions in the *Shays v. FEC* litigation, in which the court remanded certain regulations to the agency for further action. The Commission also just completed revisions to its regulations as required by the recent Supreme Court decision limiting the scope of the *Act* with respect to electioneering communications in *FEC v. Wisconsin Right to Life*. Currently, the Commission is devoting substantial resources to two separate rulemakings implementing the *Honest Leadership and Open Government Act* ("HLOGA").

Advisory Opinions

The Commission responds to questions from the regulated community about how the *Act* applies to specific situations by issuing AOs. When the Commission receives a request for an AO, it generally has 60 days to respond. For AO requests from candidates in the two months leading up to an election, the response time for the Commission is reduced to 20 days. Nevertheless, the Commission recently instituted an expedited process for handling certain time-sensitive requests in even shorter timeframes. Thus, the Commission is placing special emphasis on expediting the processing and consideration

of highly significant AO requests. Although the *Act* allows the agency 60 days to respond to most requests, the Commission issued some of its recent opinions within as little as two weeks.

Although the number of AO requests that the Commission receives is subject to cycles dependent on whether or not it is a presidential election year, the Commission has received a steady increase in the number of requests in comparison to analogous prior years. Additionally, the complexity of the topics addressed in these AOs has increased because of *BCRA*, which required a number of new Commission regulations, and recent litigation. Despite this increased workload, the time that the Commission has issued these advisory opinions has decreased markedly due, in part, to the expedited AO program. As more requestors seek expedited advisory opinions on close questions of law under *BCRA*, the Commission anticipates these trends to continue well beyond the 2008 presidential election. In addition, the Commission anticipates additional advisory opinion requests as a result of the *Wisconsin Right to Life* decision and *HLOGA*.

Administering the FECA

Defending Challenges to the Act

The Commission is the exclusive representative of the FEC before the Federal district and circuit courts, and the Supreme Court with respect to cases involving publicly financed presidential candidates. It also has primary responsibility for defending the *Act* and Commission regulations against court challenges. In the case recently decided by the Supreme Court, *FEC v. Wisconsin Right to Life*, the Commission defended against an "as applied" challenge to the electioneering communication provision of *BCRA*. In the aftermath of that decision, the Commission is likely to defend similar challenges based on the new standard the Court established. There may also be additional court challenges to the regulatory standard the Commission adopted to implement *Wisconsin Right to Life*.

In other ongoing litigation, the Commission continues to defend its regulations implementing *BCRA*. After initial litigation challenging more than a dozen regulations led to a decision by the D.C. Circuit and subsequent rulemaking, the case (known as *Shays III*) is again on appeal before the D.C. Circuit. The Commission has recently prevailed in a challenge to its "political committee status" rulemaking, and no appeal was sought. More recently, a challenge was brought by Citizens United to the Act's disclosure provisions as applied to certain electioneering communications. A three-judge district court denied a request for a preliminary injunction, and the plaintiff is appealing that decision to the Supreme Court.

Public Funding

In addition to administering the *FECA*, the Commission is responsible for administering the public funding of presidential elections, as outlined in Title 26. Public funding of presidential elections has been an important part of the Nation's presidential election system since 1976. The program is funded by the \$3 income tax check off and

administered by the FEC. Through the public funding program, the Federal government provides (1) matching funds to candidates seeking their party's presidential nomination, (2) financing for presidential nominating conventions, and (3) grants to presidential nominees for the general election campaigns.

Under the presidential public funding program, the Commission certifies a candidate's eligibility to participate in the program, establishes eligibility for payments, and conducts a thorough examination and audit of the qualified campaign expenses of every candidate who receives payments under the program. For the 2004 presidential elections, the Commission certified the eligibility of ten candidates, with certified payments totaling \$28,433,886 in the primary elections. The Commission also certified, and the Treasury disbursed, a total of \$29,904,000 for the convention committees. Finally, a total of \$149,240,000 in grants to presidential nominees for the general election campaigns was certified.

Thus far for the 2008 election, the Commission has certified the eligibility of seven candidates and has certified them as being eligible for a total of \$19,287,505 in payments. The Commission has also certified, and the Treasury has disbursed, a total of \$32,712,000 in payments from the Presidential Election Campaign Fund for the fall 2008 conventions of the two major political parties.

Impact of Request for Increase

The requested increase of \$4,394,000 will enable the Commission to keep pace with the ever-increasing demands being placed on it by (1) changes in the campaign finance laws and regulations, (2) improvements in technology, (3) mandated reporting requirements; and (4) the need to maintain a clean audit opinion and sound internal controls. This increase will also provide for current services, adjusted for inflation. Today's changing technological advances and growth in campaign financing activity necessitate that the Commission employ additional staff with specialized skills and abilities to investigate complex issues and apply sophisticated legal expertise to interpret and defend the law. Misappropriation of campaign funds continues to be a special concern, and corruption allegations are among the most complex, sensitive and serious matters brought before the Commission. Such allegations must be investigated quickly, fairly, and accurately.

Request for Additional Staffing

The FEC's employees are its most valuable resource and sound workforce planning and management are critical to its operations. The President's Management Agenda requires agencies to assess their organizational structures and develop organizational plans to streamline operations and business processes. Even though the Commission has implemented a number of management and organizational initiatives over the past several years to increase the efficiency of processing enforcement matters, additional resources are needed to address the continued growth and complexity of finance campaign activity. This means building a human capital infrastructure that can fulfill its mission. Without these additional resources, the Commission's ability to maintain its current level of responsiveness would be jeopardized. Provided below is a more specific description of

the Commission's request for \$1,151,795 in additional funding for an increase of 12 FTEs.

The Office of General Counsel (OGC). The Commission requests a budget increase to support five additional FTE for OGC. The post-*BCRA* trend of more complex factual scenarios and legal issues continues to be presented in complaints, advisory opinion requests and litigation. Examples of these include complaints alleging embezzlement, complex conduit schemes, and attempts to evade the Commission's heightened enforcement of activity by unregistered political committees.

Also, in FY 2009, the Commission projects that OGC will face a significant increase in workload demands because of the large volume and increased complexity of matters arising from the 2008 election cycle. Typically, presidential election years present peak workload demands for OGC. With an open presidential race and record-setting early fundraising by the candidates, the Commission expects an even greater volume of complaints and overall activity for the 2008 cycle.

During presidential election years, the Commission typically receives the highest number of complaints over the four-year election cycle. In each of the past two presidential election years, OGC processed over 400 complaints each cycle. In contrast, OGC receives approximately 180 complaints during non-presidential election cycles. The expected record-level of complaints stemming from the 2008 presidential elections will add a considerable strain on OGC's ability to prepare cases for activation and handling by attorneys. For example, in FY 2002, it took 197 days on average to activate a case. By the midpoint of FY 2007, that time was reduced by more than half to 89 days. If historical averages hold, the Commission projects that it will see over 180 complaints filed from July 2008 through December 2008. Additional FTE are required to continue the Commission's progress in streamlining the activation process and to maintain the overall efficiency of the Commission's enforcement docket.

Once cases are reviewed and activated, they are assigned to attorneys for handling, including making recommendations to the Commission about how to proceed at various stages of the enforcement process. Over the past several years, significant strides have been made in reducing the time it takes to prepare recommendations at the various enforcement stages and to complete enforcement matters. In FY 2002, it took, on average, 730 days to close an enforcement matter. By fiscal year 2006, the Commission reduced this number by 230 days to an average of 500 days. With additional FTE resources, OGC would be able to activate cases even more quickly and increase the total number of cases that are active at any one time. The Commission will also be able to close cases even more quickly so that the regulated community has the benefit of Commission decisions as soon as possible during an election cycle.

The increased activity in the 2008 election cycle also will have an impact on the potential number of litigation matters. Over past cycles, there has been a sharp increase in the number of litigation cases handled by OGC. For example, by the middle of FY 2005, the litigation workload increased by approximately 20 percent compared with the number of cases being handled the previous year. OGC anticipates similar increases for the 2008

cycle. While it is too early to know what the exact impact of the recent *Wisconsin Right to Life* decision will be on the litigation workload over the next several years, the Commission expects at least a modest increase in the number and complexity of challenges that will arise. Similarly, the Commission expects that rulemaking proceedings, necessitated both by anticipated changes in the *Act* and by final judicial decisions in challenges to the *Act* and to Commission regulations, will have a significant impact on OGC's workload.

The Commission also anticipates an increase in the number of advisory opinion requests in the run-up to the presidential election, particularly requests for expedited advisory opinions. For example, in 2002, a non-presidential election year, the Commission received a total of 15 advisory opinion requests. In 2006, another non-presidential election year, the number of advisory opinion requests increased to 38. However, in 2004, a presidential election year, the Commission received a total of 45 advisory opinion requests. Accordingly, for the 2008 presidential election year, the Commission projects that it will receive an even greater volume than in 2004. Also, the complexity of the topics addressed in these AOs has increased because of *BCRA*, such as the Millionaires' Amendment which increases the permissible contribution limits for the opponents of self-funded candidates. As more requestors seek expedited advisory opinions on close questions of law under *BCRA* and as the Commission begins to receive AO requests on questions of law under *HLOGA*, the Commission anticipates these trends to continue well beyond the 2008 presidential election. In addition, the Commission anticipates additional advisory opinion requests as a result of the Supreme Court's recent *Wisconsin Right to Life* decision.

Since early 2006, new statutes and Executive Orders have added to the Commission's responsibilities in administering the *Freedom of Information Act* (FOIA) and *Privacy Act*, resulting in an increase in workload for the FEC without an accompanying increase in FTE.

Specifically, Executive Order 13392 required the Commission to:

- Appoint a Chief FOIA Officer, a role served by a senior-level OGC manager;
- Establish a FOIA Service Center for the intake and initial processing of FOIA requests;
- Appoint a "FOIA Public Liaison," who is an official "to whom a FOIA requester can raise concerns about the services a FOIA requester has received from the Center;" and
- Develop a plan to ensure that agency administration of FOIA complied with the law, and report the plan to OMB and the Attorney General.

During FY 2007, increasing demands were placed on OGC as a result of newly promulgated government-wide requirements related to the *Privacy Act* and the *Freedom of Information Act*.

Consistent with these requirements, OGC is responsible for processing and coordinating responses to all FOIA requests, not merely those that present legal issues under the FOIA. Moreover, demand for Commission services under FOIA is increasing, as a total of 85

requests were received by the agency in FY 2007 compared to 49 FOIA requests received in FY 2006.

Similarly, in the privacy area, new legislation and directives from OMB have created new responsibilities for OGC. Specifically, Section 522 of the *2005 Consolidated Appropriations Act*, OMB Memorandum M-05-08, *Designation of Senior Agency Officials for Privacy*, and other authorities impose more than a dozen new responsibilities and reporting requirements on the Commission. The Commission has determined that these duties will be overseen by co-Chief Privacy Officers, one of whom is a senior-level OGC manager.

The Office of the General Counsel has seen a large increase in demand for its full range of services without any corresponding increase in FTE. In part as a response to these increased demands, and in part as an effort to improve the overall operations, OGC has instituted management and process improvements that have resulted in handling matters as quickly and efficiently as possible with the current level of staffing. While there still remains room for additional improvements that may produce further benefits, the Commission believes it has done most, if not all, that it can to increase OGC's operational efficiency without additional staffing.

The Alternative Dispute Resolution (ADR) Office. The Alternative Dispute Resolution Office seeks one additional FTE to address the anticipated growth in complaints that will be handled within this program, thereby freeing up other Commission resources for other, more complex enforcement matters. In the last several years, the ADR program has handled 60 to 100 cases per year, with each staff member handling 30 to 45 cases. The additional FTE will allow the ADR program to handle between 120 and 160 cases per year and to focus on ways to further expedite case processing.

The Office of the Inspector General (OIG). The Commission requests a budget increase to support two additional FTEs in the Office of the Inspector General. One FTE would be an investigator and the other would be an auditor. The OIG has faced a considerable increase in workload in the past several years without an increase in staff. For example, since FY 2004, the OIG has been responsible for the oversight of the FEC's annual financial statement audit, as required by the *Accountability of Tax Dollars Act of 2002*, a new legislative requirement for the FEC. In addition, the OIG has experienced a significant increase in internal hotline complaints, some of which have resulted in criminal and administrative investigations. The increase in reporting requirements (e.g., FOIA, Privacy Act) places an additional burden on the OIG to conduct internal audits (1) to ensure compliance with applicable policies and procedures, and (2) to prevent and to detect fraud, waste and abuse in FEC operations.

The Office of Equal Employment Opportunity (EEO) and Programs. The Commission requests two additional FTEs bringing the Commission's EEO staff to three. Staffing the EEO office at three FTE will further build upon the Commission's support of and commitment to equal opportunity and diversity by ensuring a strong and effective program. These resources will enable the Commission to conduct educational programs and other proactive measures to help prevent unlawful discrimination, to expeditiously address all cases that arise, and to meet all regulatory and statutory reporting requirements to the Office of Personnel Management and the Equal Employment

Opportunity Commission (EEOC). In pursuit of these commitments, the Commission is also striving to attain the status of a model EEO program, as prescribed by EEOC guidelines under CFR 1614, in implementing Title VII, *Age Discrimination in Employment Act*, the *Rehabilitation Act* programs, and relevant Executive Orders and policy guidance.

The Office of Communications (OC). The Commission requests a budget increase for one additional FTE in the Office of Communications. The additional FTE would enable the OC to expand its online educational initiatives, thereby reaching the segment of the regulated community that is unable to attend FEC regional conferences. For example, the Commission recently purchased software to develop new, interactive online training exercises for the regulated community. The software would allow the OC to create web-based training for the regulated community that is easy to navigate, available on demand and always up-to-date with new Commission regulations and initiatives. This new training initiative represents a fundamental change in the Commission's outreach efforts, and will provide the regulated community with 24-hour access to campaign finance training. However, at current staffing levels, development of these new exercises is often delayed by the staff's need to focus on maintaining existing services. An additional FTE would enable the Commission to move forward with this and other initiatives at an accelerated pace, providing better service to the public and the regulated community.

The Office of the Chief Financial Officer (OCFO). The Commission requests a budget increase to support one additional FTE in the Office of the Chief Financial Officer to strengthen financial management. The Commissioners recently restructured the role of the CFO to significantly enhance the CFO's responsibilities and to report directly to the Commission. The change was made to afford the Commission a higher level of oversight of financial management throughout the agency. The complexity and additional reporting requirements, such as the annual financial statement audit, have increased the visibility of the Commission's financial operations. Accordingly, the Commission believes having the CFO directly report to the Commissioners strengthens the internal controls surrounding financial management.

This additional FTE would enhance the Commission's ability to properly address the underlying internal control weaknesses that resulted in a qualified audit opinion on the Commission's FY 2006 financial statements. Furthermore, resources would be allocated to maintain and update financial management policies and procedures, and provide training to FEC staff on these policies and procedures, such as travel, procurement, budget, and accounting matters.

The increase would ensure that the CFO will be able to perform a higher-level review and analysis, thereby improving overall internal controls. The additional FTE also would facilitate succession planning to adequately prepare for the upcoming retirement of finance personnel; thereby reducing the risk of financial and payroll transactions not being processed timely or accurately. Finally, additional staffing also enables the CFO to communicate more effectively with the Commission and agency management.

Request for Additional Technological Initiatives

The Commission requests a budget increase of \$1,417,205 to maintain a secure, flexible, and modern information technology system that fully supports the collection, analysis, and dissemination of campaign finance information. The Commission is in the early stages of developing a complete, integrated enterprise architecture consisting of infrastructure and applications that serve the Commission's business needs. To further build and implement this architecture, additional funds are needed to increase support for applications and systems development projects. These resources will be used to manage enhancements, modifications, and deployments of FEC systems. These include, but are not limited to:

- eReview (electronic review of campaign finance filings);
- Electronic document management;
- Enhancing detection and analysis capabilities of compliance data (e.g., data mining); and
- Enabling the public to search, view, download, and comment on Federal agency rulemaking documents in one central online system.

Consistent with the President's Management Agenda, the Commission has begun to define requirements for an integrated financial management system. An integrated system will provide management and technical capabilities for an agency-wide implementation of standard systems and processes necessary to support financial management and human resource (HR) activities. Currently, the Commission does not have an integrated financial management system, which was noted as an internal control weakness in the financial statement audit. To address this weakness, the Commission intends to outsource its financial and HR operations to an approved line of business (LOB) provider. This will allow the FEC to provide timely, consistent, and reliable information for leadership and management decisions, as well as to be compliant with OMB requirements. Furthermore, the LOB is expected to provide an accounting structure to enable the FEC to achieve a "clean" audit opinion on its financial statements, and to resolve several of the internal control weaknesses identified in the Commission's past financial statement audits. Maintaining an effective financial management system includes:

- Ensuring adequate internal controls;
- Conducting risk assessments;
- Implementing a back-up disaster recovery and continuing operations plan; and
- Upgrading of security and systems to keep up with changes in technology, as well as changing regulations and reporting requirements.

The Commission understands the importance of strong internal controls. Without additional funding, the Commission will be unable to adequately address its internal control weaknesses to fully resolve these issues.

The FEC also continues to upgrade and enhance its website, electronic filing and review systems, and other electronic systems, and to adapt to changes in the law or to technological advances. In order to address the more complex requirements of the campaign finance process and allow for transparency, the FEC needs to build additional tools and a supporting infrastructure to tap into the data that is being collected from the regulated community. The four cornerstones serving as the foundation for better tools and access to data include:

- Integrated enterprise application architecture;
- Enterprise content management;
- Enterprise search/data mining capabilities; and
- Robust and secure enterprise infrastructure.

Several of these improvements will serve to effectively respond to the internal control weaknesses noted in the past several audits of the Commission's operations. These functions will also facilitate the FEC's mission to provide the public with a transparent campaign finance system by providing useful and accessible website enhancements.

Combined with the responsibility to provide transparency in the campaign finance process and the public's Internet-driven expectation of instant access to the very latest information, these growing demands are projected to soon push the Commission's technology beyond its current capabilities. Therefore, additional resources are essential for the Commission to successfully achieve its mission and serve the public and regulated community.

Table 3: Budget Request by Object Class

Personnel		FY 2007 Estimate	FY 2008 Estimate	FY 2009 Request
1110	Full Time Permanent	\$28,909,914	\$31,909,311	\$33,579,996
1130	Other than Permanent	550,000	775,000	850,000
1150	Premium Pay, Overtime	65,000	85,000	90,000
1152	Cash Awards	427,659	550,000	600,000
1181	Witnesses	5,000	8,500	8,500
1210	Personnel Benefits	8,297,145	9,171,036	10,017,148
	Subtotal, Personnel	\$38,254,718	\$42,498,848	\$45,145,645
2101	Travel	389,689	397,483	415,000
2201	Transportation of Things	20,077	21,000	22,000
2311	Rent	3,513,877	4,726,125	4,773,094
2331	Equipment Rental	181,000	185,000	188,500
2332	Telephones	199,591	200,000	202,000
2335	Postage, Printing and Microfilm	459,540	462,000	467,500
2511	Training and Tuition	293,503	299,374	305,361
2512	Administrative Expenses	114,018	116,298	119,500
2513	Depositions and Transcripts	34,308	34,000	34,000
2514	IT Contracts	4,984,717	4,265,260	5,713,130
2521	Other Contracts	1,400,144	1,400,000	1,475,000
2523	Repair & Maintenance	168,398	165,000	175,000
2531	Federal Agency Services	957,940	960,000	967,000
2541	Facilities Maintenance	285,000	290,000	295,000
2572	Software and Hardware	1,345,296	1,283,157	1,375,000
2601	Supplies	190,856	170,000	170,000
2602	Publications	544,132	560,456	577,270
3101	Equipment Purchases	174,815	175,000	178,000
3102	Capitalized IT Equipment	848,897	850,000	855,000
3103	Non-Capitalized IT Equipment	167,000	165,000	165,000
	Subtotal, Non Personnel	\$16,272,798	\$16,725,152	\$18,472,355
	TOTAL	\$54,527,516	\$59,224,000	\$63,618,000