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FEC Augments Advisory Opinion Procedures
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At its open meeting on June 25, 2009, the Federal Election Commission (FEC or Commission) adopted additional procedures for requesting and adopting advisory opinions. Under the Federal Election Campaign Act (FECA), organizations and individuals may seek an opinion from the FEC as to whether a proposed, non-hypothetical course of action is legally permissible under the FECA. The highlights of the new and augmented procedures are discussed below.

First, the FEC for the first time will allow persons requesting an advisory opinion to appear at the open meeting of the Commission at which the request is considered and answer questions asked by Commissioners. This appearance may be in person or remotely. The requestors will be limited to answering questions and will not be permitted to speak if no questions are asked. According to the Commission, no adverse inference will be drawn if a requestor chooses not to appear. Moreover, third-party commenters will not be permitted to appear before the Commission and answer questions.

Second, the Commission will attempt to apply an expedited advisory opinion schedule near elections for non-candidates. The statutory requirement is that the FEC must respond within 60 days of a request for an advisory opinion. There are existing rules for expedited responses to candidates for requests made within 60 days of an election. The Commission now proposes to answer within 30 days a request by any entity or individual made within 60 days of an election if that request concerns proposed public communications that reference a clearly identified candidate.

At the same meeting, the FEC issued new procedures for audits that permit hearings before the Commission. These new procedures and

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the procedures applicable to advisory opinions become effective after publication in the Federal Register.