

“extraordinary circumstances” defense. Neither of the commenters addressed this issue.

In the final rules that follow, the Commission adds to section 111.35(b)(4) two more examples of circumstances that are not considered extraordinary. Specifically, paragraph (b)(4)(iii) of 11 CFR 111.35 is being amended to include, in addition to staff illness, staff “inexperience” and “unavailability.” The revision also clarifies that the term “staff” includes the treasurer. The Commission strongly encourages political committees to name an assistant treasurer so that their financial activities will not be disrupted, thus avoiding violating the reporting requirements when their treasurer is unavailable.

11 CFR 111.43 What are the Schedules of Penalties?

1. Revised Civil Money Penalty Schedules

The NPRM proposed amendments to the civil money penalty schedule for election sensitive and non-election sensitive reports that would have lowered civil money penalties for all late- and non-filed reports. The Commission was concerned that, based on its experience with the administrative fines program, the published fines schedules for political committees with lower levels of financial activity, generally below \$50,000 in a reporting period, may have been too high. Committees in this category are often those of candidates who have lost an election or who have withdrawn from the race and fail to continue filing the required disclosure reports until they are eligible to terminate. Fines for these committees can be relatively high due to their failure to file because the civil money penalties are calculated using the estimated level of activity from previously filed reports. Therefore, the fines may create a hardship for some authorized committees and their treasurers since many unsuccessful campaigns lack fundraising ability and their treasurers, who are sometimes volunteers, are legally liable for the fines.

The Commission was also concerned that the civil money penalty schedules at all levels of activity may result in fines that are substantial compared with civil penalties for other types of FECA violations that the Commission approves in conciliation agreements reached through the traditional enforcement process. *See* 2 U.S.C. 437g(a). The concern was exacerbated by the fact that the 25% recidivist factor

was beginning to take effect for repeat violations.

The Commission sought comment in the NPRM on the impact of lowering civil money penalties across the board, specifically: Whether the proposed reductions would still provide an incentive for committees to file timely their reports and not become merely a cost of doing business, and whether reductions would affect committees’ decisions to challenge reason-to-believe findings and proposed civil money penalties. The Commission specifically sought comment on two alternatives to lowering the civil money penalties across the board: Lowering the penalties only for committees with levels of financial activity below \$50,000 per report, or lowering the penalties only for non-election sensitive reports.

One of the commenters generally agreed with more lenient treatment for committees with minimal financial activity during a reporting period because such committees are often “defunct, moribund or winding down and are often staffed by volunteer treasurers who are not able to deal with complex federal election laws and regulations.” This commenter did not specifically address reducing fines overall but rather urged a change in calculating the “level of activity” on which the administrative fines are based. (See below).

The other commenter generally disagreed with lowering the civil money penalties “until an adequate administrative record can be established.” The commenter rejected as a justification for lowering fines across the board the concern that civil penalties in the administrative fines program were high relative to civil penalties approved in conciliation agreements for other types of FECA violations. The commenter argued that this disparity could also be interpreted as evidence that civil penalties in conciliation agreements are too low. The commenter also suggested that the recidivist factor could be lowered if the Commission was concerned it might contribute to disproportionately high civil penalties. This commenter further urged that the standard applied in adjusting the fines should be whether the fines are higher than necessary to serve as incentive to file reports timely. The commenter referred to an April 25, 2002, Commission press release that credited the administrative fines program with reducing the percentage of late filers from 24% to 11% between 1998 and 2000. The commenter noted that, although 11% non-compliance is still too high, these gains in disclosure should not be undermined without

substantial justification. Finally, the commenter urged that if the Commission reduced the fines, it should selectively target the reduction at committees with lower levels of financial activity where, according to the NPRM, the most undesirable results have occurred.

Neither commenter opined on whether lowering the fines would affect committees’ decisions to challenge reason-to-believe findings or proposed civil money penalties.

Based on its continued experience with the administrative fines program, the Commission has decided to target the reductions in the civil money penalty schedules to committees with levels of financial activity below \$50,000 per report. As of January 31, 2003, 60% of the political committees against whom the Commission made reason-to-believe findings and proposed a civil money penalty had under \$50,000 of financial activity on the late- or non-filed report. As noted in the NPRM, many committees in this category are winding down, or are established by candidates who have lost, or have withdrawn from, an election. The concern that a reduction in fines will serve as a disincentive to file timely future reports is not as relevant for such committees. Moreover, the fact that these committees still face a fine continues to provide an incentive for them to file a final report.

Although the Commission has decided not to reduce civil money penalties “across the board,” it notes that it has revised its method of calculating the “level of activity” to exclude receipts and disbursements for unauthorized committees that report a non-Federal share of allocated Federal/non-Federal activity. This change, discussed below, will effectively lower “across the board” penalties faced by certain unauthorized committees that allocate expenses between Federal and non-Federal accounts. This will result in penalties that are more reflective of a committee’s level of participation in Federal elections.

Accordingly, the final rules at amended 11 CFR 111.43 include two sets of civil money penalty schedules. Paragraphs (a)(1) and (b)(1) maintain the previous penalty schedules for non-election sensitive and election sensitive reports, respectively, with due dates before the effective date of these rules. Paragraphs (a)(2) and (b)(2) include new schedules that reduce civil money penalties for non-election sensitive and election sensitive reports of committees with less than \$50,000 in activity. These new schedules will apply to reports that