

Level of activity in report	Civil money penalty for late-filed election sensitive reports due before April 16, 2003.	Civil money penalty for late-filed election sensitive reports due on or after April 16, 2003.
\$1–\$4,999.99 .....	$[\$150 + (\$25 \times \text{Number of days late})] [1 + (.25 \times \text{Number of previous violations})]$ .	$[\$50 + (\$10 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$
\$5,000–\$9,999.99 .....	$[\$150 + (\$25 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$ .	$[\$100 + (\$10 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$
\$10,000–\$24,999.99 .....	$[\$150 + (\$25 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$ .	$[\$150 + (\$10 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$
\$25,000–\$49,999.99 .....	$[\$300 + (\$50 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$ .	$[\$300 + (\$25 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$

Election sensitive reports are deemed not filed if they are not filed prior to four days before an election. The final rule at 11 CFR 111.43(b)(2)(iii) reduces the base penalty for these reports with levels of activity of \$1–\$4,999.99 from

\$1,000 to \$500; for levels of activity of \$5,000–\$9,999.99 from \$1,000 to \$600; for levels of activity of \$10,000–\$24,999.99 from \$1,000 to \$900; and for levels of activity of \$25,000–\$49,999.99 from \$2,000 to \$1,400. Reductions in the

civil money penalties for non-filed election sensitive reports with less than \$50,000 of activity range between 10% and 50%. A chart illustrating the penalty reductions for non-filed election sensitive reports follows:

Level of activity in report	Civil money penalty for election sensitive non-filed reports due before April 16, 2003.	Civil money penalty for election sensitive non-filed reports due on or after April 16, 2003.
\$1–\$4,999.99 .....	$1,000 \times [1 + (.25 \times \text{Number of previous violations})]$ .	$500 \times [1 + (.25 \times \text{Number of previous violations})]$
\$5,000–\$9,999.99 .....	$1,000 \times [1 + (.25 \times \text{Number of previous violations})]$ .	$600 \times [1 + (.25 \times \text{Number of previous violations})]$
\$10,000–\$24,999.99 .....	$1,000 \times [1 + (.25 \times \text{Number of previous violations})]$ .	$900 \times [1 + (.25 \times \text{Number of previous violations})]$
\$25,000–\$49,999.99 .....	$2,000 \times [1 + (.25 \times \text{Number of previous violations})]$ .	$1,400 \times [1 + (.25 \times \text{Number of previous violations})]$

## 2. Revised Calculation of the “Level of Activity” and “Estimated Level of Activity”

The Commission calculates civil money penalties by applying the civil money penalty schedules at 11 CFR 111.43 to a political committee’s “level of activity.” Under the previous rule at 11 CFR 111.43(d), the “level of activity” is defined as the “total amount of receipts and disbursements for the period covered by the late-filed report.” If the report is not filed, the “level of activity” is based on the “estimated level of activity,” which is an estimate of total receipts and disbursements based on previously reported amounts.

The NPRM reflected the Commission’s concern, based on its experience with the administrative fines program, that using total receipts and disbursements as the basis for the penalty calculation may have unfairly resulted in higher fines for political committees that finance non-Federal activity through their Federal accounts. For example, unauthorized committees that finance activities in connection with both Federal and non-Federal elections must allocate disbursements for those activities between their Federal and non-Federal accounts and must pay for those expenses from their Federal account or from a separate Federal allocation account. *See generally* 11 CFR 106.6 and 106.7. Non-

Federal funds must be transferred into the Federal accounts to pay for the non-Federal share of the activity, thereby resulting in higher total receipts and disbursements for those committees than for political committees that do not have allocable activity.

The NPRM sought comment on whether the Commission should alter the way it calculates the level of activity. 67 FR 20463. The Commission sought comment generally on whether the level of activity should exclude all receipts or disbursements that are not for the purpose of influencing a Federal election. In addition to the receipt of non-Federal transfers to pay for the non-Federal share of allocable activity, the Commission asked whether other types of disbursements should be excluded and gave several examples, such as disbursements by an authorized committee made to influence the election of candidates to State or local office.

One of the commenters urged the Commission to exclude from the “level of activity” definition those disbursements for the non-Federal portion of allocated Federal/non-Federal activity, such as certain generic get-out-the-vote drives, as well as the receipt of non-Federal fund transfers to pay for those disbursements. The commenter maintained that including these receipts and disbursements “unfairly punished” State and local political party

committees, whose activities are focused more on State and local elections. The commenter illustrated this point by using an example of a local party committee. Using a similar example under the current allocation regime for State and local party committees, depending on the election cycle, only 15% to 36% of allocable activity under 11 CFR 106.7 is considered Federal. Under the Commission’s allocation regulations, such a committee must make disbursements from its Federal account to cover the 64% to 85% of the activity that is attributable to non-Federal elections and then reimburse the Federal account via transfers from its non-Federal account. Under the prior rules, the civil money penalty was based on the total of Federal and non-Federal activity since both are reported. As an alternative to changing the way “level of activity” is calculated, the commenter argued that the Commission should create a separate, more lenient schedule for committees that allocate expenses.

The other commenter disagreed with that approach. It noted that the Explanation and Justification (“E&J”) for the administrative fines rules issued in May 2000 rejected a suggestion that the “level of activity” be based on contributions and expenditures rather than total receipts and disbursements. The E&J noted that 2 U.S.C. 437g(a)(4), which permits the Commission to