





brochure devoted to the aggregate biennial limit. The FEC is fully aware of the aggregate biennial limit and has made every appearance of being serious about enforcement. What, then, explains the absence of a single FEC enforcement action for contributions given in excess



each record to a unique individual in order to track his or her giving behavior.<sup>10</sup> Our results detected over a thousand violations of the biennial limit in 2012 alone. We argue that the FEC should adopt similar technology as an automated method to alerting the agency to potential violations, thus streamlining centralized auditing in a highly cost efficient manner. In fact, a conservative estimate suggests that by failing to detect and enforce violations of the aggregate biennial limit, the FEC has left tens of millions in civil penalties on the table.

Second, although the above reform would provide a much more efficient method of auditing, it does not address fundamental problem with the FEC's enforcement model. Here, we propose a solution seemingly drastic but really quite basic. It is common to require registration for many legal activities, including what is often called the cornerstone of our democracy—voting. A more stringent reform here would be to implement a system by which individual donors would be required to

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action committees (PACs) and party committees than to candidates.  
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the biennial limit. It warns that “[e]xceeding the biennial limit is a violation of federal law<sup>29</sup> and that any “individual who exceeds the limit faces a potential penalty equal to the amount of the contributions involved (or up to twice this amount in the case of a knowing and willful violation).”<sup>30</sup> But if an individual “inadvertently exceeds the biennial limit, the Commission advises that [they] immediately take one or more of the steps listed below. Viewing such actions as mitigating circumstances, the Commission may decrease any potential civil money penalty.<sup>31</sup> The FEC then goes on to advise individuals to obtain a refund of the contributions that caused the individual to exceed the biennial limit, to reattribute joint contributions, or request that PACs and party committees transfer contributions that caused the individual to exceed the limit.”





D. Ong brought to the FEC's attention the fact that "he inadvertently exceeded in 1997 and 1999 the \$25,000 aggregate annual limit on individual contributions to federal election campaigns" by \$15,000.<sup>36</sup> In the negotiated settlement, Ong had to pay a civil penalty in the amount of \$15,000.<sup>37</sup> In 2005, Benson K. Whitney advised the FEC that in 2000 "he inadvertently made contributions to federal election campaigns and political committees that exceeded the annual aggregate limits for individuals that existed at the time the contributions were made" by \$5,000.<sup>38</sup> In this case, the negotiated settlement stipulated that the statute of limitations had expired, but Whitney nevertheless agreed to "demonstrate compliance with the FECA" by agreeing to pay the U.S. Treasury \$5,000, yet another case in which the contributor alerted the FEC, in 2005 Ambassador W.R. Timken, Jr. advised the FEC that four years earlier "he inadvertently made contributions to federal election campaigns and political action committees that exceeded the annual aggregate limits for individuals that existed at the time the contributions were made" by \$6,499.<sup>40</sup> Like the previous two contributors, Timken also agreed in his negotiated settlement to pay a fine of \$6,999.<sup>40</sup>

There are instances in which the parties have informed the FEC of contribution limit violations. These cases usually come about however, because of unrelated charges brought simultaneously

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Yet the Commission entered into conciliation agreements with those of the individuals and “decided to take no further action except send a letter of admonishment to [the] thirteen [] remaining conductors.”<sup>41</sup> It often appears that an FEC investigation is not triggered unless there is already scrutiny by another enforcement agency. Further, if there are other charges involved, the FEC will typically drop any ~~put~~ additional charges.

Also troubling is that the Commission often recommends to overlook what it might deem small violations. For example, in 2006, TheRestofUs.org alleged that William Bain Adams exceeded the federal aggregate contribution limit in 2002 by \$3,000.<sup>45</sup> TheRestofUs.org, after further research, concluded that Adams only exceeded the limit by \$500, but maintained their complaint.<sup>46</sup> The FEC, without explanation, recommended the complaint be dismissed, even after noting that a “Google search turned up [William Bain Adams] name in connection with possible illicit contributions to committees and a DOD contractor, Brent Wilkes and two former members of Congress, Randy Cunningham and Tom DeLay.”<sup>47</sup> But the Commission reasoned that these allegations are outside the scope of the complaint filed by TheRestofUs.org, and apparently are being ~~at 1041(e)-3.9(c)~~

her bank card associated with her checking account.<sup>49</sup>

In the end, Wilson accepted an admonishment from the Commission and agreed to “educate herself about the FECA [and to] maintain [] a list of all contributions made to candidates or to finance federal elections.”<sup>50</sup> Arguably, one can interpret the FEC’s willingness to extend leniency to both Wilson and the recipient committee, and to dismiss the violation as a mere technicality, as an implicit acknowledgment of a broken auditing model.

If the FEC is unable to detect violations from a set of disclosed records because of slight variation in how a name is reported—thereby causing one person to appear as three separate individuals—why should a committee be expected to have been aware of the same? Worse yet, the case in question reflects a failure to audit transactions between an individual and a committee, something far less challenging than auditing violations of the biennial limits.

#### PENALTIES (OR LACK THEREOF)

The illustrations of penalties from the previous examples are the norm. Typically, the FEC hands out what amounts to a slap on the wrist for the individual, if anything at all. Individuals that violate campaign finance laws are usually only subject to a monetary fine, generally equal to the amount of the excessive contribution, which is usually no larger than a few thousand dollars. These are relatively minor amounts for most donors.

Technically, the FEC can impose much harsher monetary



compliance requires knowledge of a complex set of rules, expertise pays. Such information costs are dealt with more efficiently by relying on campaign workers who are involved day-in and day-out with fundraising activities. Of course, to take the analogy of bank regulation compliance (b)(7)(c)6 Tw3.2(e)-4()-3.2(i)33.









businesses.<sup>61</sup> This speaks to a deep-rooted problem with the FEC's disclosure model. Insofar as auditing FEC records can take us, in many cases it remains nearly impossible to make a clear determination that a violation has occurred based solely on the publicly disclosed information the FEC makes available. Confirming that a set of contribution records originated from a single individual would require further investigation of the matter involving gathering additional information beyond what is included in the FEC records, much of which is not publicly available. In the remaining sections, we consider more aggressive solutions for dealing with the problem of detecting and enforcing campaign finance laws.

#### V. SUGGESTED REFORMS

The FEC could greatly increase detection by adopting automated entity resolution, auditing to identify potential violations, and implementing a manual auditing scheme to confirm that a violation has occurred. Compliance via self-auditing might increase significantly if the FEC signaled its intent to enforce the biennial limit by publicly issuing fines to a few dozen repeat offenders. The cost of such an approach stems from the negligible costs of implementation and the absence of the required changes to federal law or expansions of agency authority. Despite this, the difficulties with record-linkage and the ease with which violators can manipulate disclosure in order to evade detection make this at best a partial solution to a greater problem.

A comprehensive solution to the problem of detection would require donors to register with the FEC, which could then issue a unique individual identification number to each donor. This would accomplish three things. First, it would take advantage of the current penalty system and shift the responsibility of compliance from individuals to campaigns by helping to facilitate campaigns in screening for contributions from individuals who have exceeded the biennial contribution limits. Although the FEC's regulatory model of relying on self-auditing campaigns to ensure that their contributors are in compliance of the \$2,400 individual limit has been successful, applying a similar self-auditing scheme to biennial limit violations would require a unique identifier for each contributor that campaigns could use to track past contributions.

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61. See Appendix 2 (describing an example based on the Oden family)



means to screen contributors. Keeping records of the amount a donor gave to a single campaign is manageable and provides important information for future fundraising efforts, but tracking each donor's

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campaign finance issues, it is very likely that individuals and









































