

# Federal Election Commission Nomination Background

April 5, 2022

The Senate is considering President Biden’s nomination of Dara Lindenbaum to the [Federal Election Commission](#) (FEC). The FEC currently has a full slate of six serving commissioners. The Senate most recently confirmed FEC nominees in [December 2020](#). This CRS Insight provides background information that may be relevant as the Senate considers the nomination and as Congress oversees the agency.

## Context for the Latest FEC Nomination

On January 21, 2022, the White House [announced](#) President Biden’s intention to nominate Lindenbaum. If confirmed, her term would expire on April 30, 2027.

[Lindenbaum](#) is an attorney with the [Sandler Reiff law firm](#). She [previously](#) provided [legal counsel](#) to Democratic political campaigns and at the [Lawyers’ Committee for Civil Rights Under Law](#). Lindenbaum served as a law clerk for FEC Commissioner (2008-2013) [Cynthia Bauerly](#).

If confirmed, Lindenbaum would occupy the seat currently held by Commissioner [Steven Walther](#). President George W. Bush initially [recess-appointed](#) Walther in 2006. The Senate [confirmed](#) him in 2008. Walther [has stated](#) that he plans to remain in office until a successor is confirmed.

## What the FEC Does

Unlike [other federal agencies](#) involved in elections, the FEC focuses on political campaigns. The FEC administers the [Federal Election Campaign Act](#) (FECA) and promulgates regulations concerning fundraising, spending, and disclosure surrounding campaigns for federal office. It also administers the [presidential public financing program](#). Six presidentially appointed commissioners, subject to Senate advice and consent, oversee the agency. [A staff director, a general counsel, and several offices](#) support commissioners in carrying out the FEC’s mission to enforce campaign finance law and administer disclosure designed to limit [quid pro quo](#) corruption. Since [FY2020](#), the FEC has had a full-time staff of approximately 300 employees.

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## Recent Legislative Background

Congress has not enacted major changes to campaign finance law [since 2014](#), when it permitted additional contributions to parties. During the 116<sup>th</sup> Congress, the Committee on House Administration received written testimony for a scheduled [FEC oversight hearing](#), and the Senate Rules and Administration Committee held [hearings on FEC nominees](#).

During the 117<sup>th</sup> Congress, the House has passed legislation, [largely devoted to election administration or voting](#), that also would affect the FEC's organization or enforcement processes (in addition to campaign finance policy issues not discussed here). The House passed H.R. 1, the For the People Act, in [March 2021](#). Most substantially for the FEC, the bill would restructure the agency to include five commissioners rather than six. Also during the first session of the 117<sup>th</sup> Congress, the Senate did not invoke cloture on the motion to proceed to versions of the For the People Act (S. 2093; see also S. 1). The Senate also did not invoke cloture on the motion to proceed on the [Freedom to Vote Act](#) (S. 2747). S. 2747 would amend the FEC enforcement process to include expanded authority for the general counsel, among other provisions.

FEC appropriations currently are included in annual Financial Services and General Government (FSGG) appropriations bills. The FY2022 FSGG Appropriations Act (Div. E, H.R. 2471; P.L. 117-103, the FY2022 Consolidated Appropriations Act) provides \$74.5 million for the FEC. The agency [received](#) \$71.5 million in FY2021. [Report language accompanying](#) the FY2022 FSGG bill (H.R. 4345) noted that, despite progress in processing disclosure data, "growth in workload has outpaced the FEC's resources and personnel." The House Appropriations Committee directed the FEC to provide a briefing on personnel planning to respond to those developments. In addition, the committee highlighted the FEC's actions regarding "dormant" or "zombie" campaign committees, including [prohibited personal use of campaign funds](#). In addition, in the [explanatory statement](#) regarding the FSGG FY2022 Act, the FEC "is directed to brief the Committees on the agency's management challenges."

## Selected Recent Commission Background

Changes in commission membership can affect [relations among members](#) and disposition of enforcement or policy issues. If confirmed, Lindenbaum is [not expected](#) to alter the agency's partisan balance, as Walther, despite his independent status, generally has voted with Democratic commissioners. Any new member would join an agency that has experienced substantial membership change recently. Four of six commissioners assumed their offices in 2020. The newly reconstituted commission could face traditional and new policy challenges, some of which are highlighted below.

- Much of the debate over FEC effectiveness focuses on commissioners' ability to reach consensus. FECA requires affirmative votes from [at least four commissioners](#) to authorize most policymaking or enforcement activity. Attention to "deadlocked" votes, which lack a four-vote consensus, is a recurring oversight theme. Measures of deadlocked votes vary based on methodology, time period, and actions examined. One recent [scholarly analysis](#) examined conflict in matter under review (MUR) and advisory opinion (AO) votes between 1990 and 2018. Consistent with some [previous research](#), the analysis found that commissioners reach consensus in most votes. It also found that deadlocks have increased since 2009, often occurring in partisan blocs. [Agency critics](#) argue that deadlocks show the FEC's [alleged dysfunction](#) and warrant [structural change](#) or even commission [elimination](#). Others [respond](#) that focusing on deadlocks overstates the agency's alleged dysfunction because they represent only one measure of performance, that [methodological differences](#) can affect deadlock statistics, that deadlocks are to be expected in some complex or novel cases due to differing policy or legal interpretations, or that the commission's structure is designed to require consensus. Overall, deadlocked votes provide a quantitative measure of agency activity, but, without additional

- information, do not provide qualitative information about how or why the commission deadlocked.
- The FEC appears to continue to work through a backlog of enforcement matters from the 2020 election cycle, some of which accumulated during two separate losses of the agency's [policymaking quorum](#). It also remains a party to [ongoing litigation](#). Additional rulemakings also are possible.
- The FEC has requested additional funding to support sharp increases in the number of filings it receives, which require review and disclosure. [According to the agency](#), during the 2020 election cycle, more than 16,000 [political committees and other filers](#) reported more than 600 million financial transactions—an increase of almost 400% compared to 2016.
- The FEC's latest [legislative recommendations](#) generally request additional statutory authority regarding disclosure and enforcement issues.

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