

**RECEIVED**

By Office of the Commission Secretary at 4:26 pm, Jul 24, 2019



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

AGENDA DOCUMENT NO. 19-36-A  
AGENDA ITEM  
For meeting of July 25, 2019  
**SUBMITTED LATE**

July 24, 2019

**MEMORANDUM**

TO: The Commission

FROM: Lisa J. Stevenson *LJS*  
Acting General Counsel

Neven F. Stipanovic *NFS*  
Acting Associate General Counsel

Esther D. Gyory *EDG*  
Acting Assistant General Counsel

Anthony T. Buckley *ATB*  
Attorney

SUBJECT: Notification of Availability for REG 2019-01 (Adding Valuable Information to Definition of Contribution)

On April 29, 2019, the Commission received a Petition for Rulemaking from Sai, Fiat Fiendum, Inc., Make Your Laws PAC, Inc., and Make Your Laws Advocacy, Inc. The petition asks the Commission to amend 11 C.F.R. Part 100, Subpart B, by adding a new section 100.57 to include within the definition of contribution certain “valuable information.”

The Office of the General Counsel has examined the petition and determined that it meets the requirements of 11 C.F.R. § 200.2(b). Therefore, we have drafted the attached Notification of Availability (“NOA”) seeking comment on whether the Commission should initiate a full rulemaking on the proposal in the petition. The NOA will be published in the *Federal Register* pursuant to 11 C.F.R. § 200.3(a)(1).

In keeping with the Commission’s usual procedure, the NOA does not address the merits of the petition. Instead, it states that consideration of the merits will be deferred until the close of the comment period.

The Office of the General Counsel requests that this draft be placed on the agenda for the Open Meeting on July 25, 2019.

Attachment

DRAFT

**FEDERAL ELECTION COMMISSION**

**11 CFR Part 100**

**[NOTICE 2019-XX]**

**Rulemaking Petition: Amending the Definition of Contribution to Include “Valuable Information”**

**AGENCY:** Federal Election Commission.

**ACTION:** Rulemaking Petition: Notification of Availability.

**SUMMARY:** On April 29, 2019, the Federal Election Commission received a Petition for Rulemaking asking the Commission to amend the existing regulation defining “contribution.” The Commission seeks comments on the petition.

**DATES:** Comments must be submitted on or before [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** All comments must be in writing. Commenters are encouraged to submit comments electronically via the Commission’s website at <http://sers.fec.gov/fosers/>, reference REG 2019-01. Alternatively, commenters may submit comments in paper form, addressed to the Federal Election Commission, Attn.: Esther Gyory, Acting Assistant General Counsel, 1050 First Street NE, Washington, DC 20463.

Each commenter must provide, at a minimum, his or her first name, last name, city, and state. All properly submitted comments, including attachments, will become part of the public record, and the Commission will make comments available for public viewing on the Commission’s website and in the Commission’s Public Records Office. Accordingly, commenters should not provide in their comments any information that they do not wish to make public, such as a home street address, personal email address, date of birth, phone number, social

DRAFT

1 security number, or driver’s license number, or any information that is restricted from disclosure,  
2 such as trade secrets or commercial or financial information that is privileged or confidential.

3 **FOR FURTHER INFORMATION CONTACT:** Ms. Esther Gyory, Acting Assistant General  
4 Counsel, or Mr. Tony Buckley, Attorney, Office of the General Counsel, 1050 First Street NE,  
5 Washington, DC 20463, (202) 694-1650 or (800) 424-9530.

6 **SUPPLEMENTARY INFORMATION:** On April 29, 2019, the Commission received a  
7 Petition for Rulemaking (“Petition”) from Sai, Fiat Fiendum, Inc., Make Your Laws PAC, Inc.,  
8 and Make Your Laws Advocacy, Inc. (collectively “Petitioners”). The Petitioners ask the  
9 Commission to amend 11 CFR Part 100, Subpart B, by adding a new section 100.57 to include  
10 within the definition of contribution certain “valuable information.” Petition at 3.

11 Commission regulations define a “contribution” as “any gift, subscription, loan . . .  
12 advance, or deposit of money or anything of value made by any person for the purpose of  
13 influencing any election for Federal office.” 11 CFR 100.52(a). “Anything of value” includes  
14 all in-kind contributions, such as the provision of goods and services without charge or at a  
15 charge that is less than the usual and normal charge. 11 CFR 100.52(d)(1). Commission  
16 regulations further identify the following as contributions: payment for attendance at a  
17 fundraiser, political event, or the purchase price of a fundraising item sold by a political  
18 committee (11 CFR 100.53); compensation by a third party for personal services an individual  
19 provides unpaid to a political committee (11 CFR 100.54); an extension of credit, unless the  
20 extension is extended in the ordinary course of a person’s business and under terms and  
21 conditions that are substantially similar to credits extended to nonpolitical entities (11 CFR  
22 100.55); and anything of value given to a national party committee for the purchase or  
23 construction of an office building or facility (11 CFR 100.56).

1           The Petition proposes to define “Valuable Information” as information that: 1) is not  
2 freely available to the public; 2) is provided to a person regulated by the Federal Election  
3 Campaign Act, 52 U.S.C. 30101-45 (the “Act”), at a cost less than the market rate or by a person  
4 not hired by the recipient to generate such information; 3) would cost a non-trivial amount for  
5 the recipient to obtain at their own expense; and 4) is information that would likely have the  
6 effect of influencing any election for federal office or that parties or candidate committees have  
7 traditionally expended money to obtain. Petition at 3.

8           The proposal sets out two types of “Valuable Information” that would require special  
9 treatment: “Foreign Information” and “Compromising Information.” *Id.* “Foreign Information”  
10 would include any information that comes from a source that is prohibited from making  
11 contributions under the Act. *Id.* “Compromising Information” would include “any information  
12 that could be used to blackmail or otherwise compromise any candidate for Federal office  
13 (including indirect coercion, such as of a candidate’s family), regardless of source.” *Id.*

14           The Petition would require any person who receives “Foreign” or “Compromising  
15 Information,” or is offered any “Foreign” or “Compromising Information,” to notify the  
16 Commission in writing within three days. Petition at 3-4. Any “Compromising Information” the  
17 Commission received would have to be maintained under seal unless the information was  
18 otherwise available to the public, or all persons against whom the information could be used had  
19 consented to the information being made public. *Id.*

20           Under the Petitioners’ proposal, upon learning of any “Foreign” or “Compromising  
21 Information,” the Commission would be required, automatically and without a vote of the  
22 Commission, to: (1) initiate investigations pursuant to 11 CFR 111.3 and 111.10; (2) provide a  
23 report to the Federal Bureau of Investigation; and (3) in the case of “Compromising

DRAFT

1 Information,” provide a report to every reasonably identifiable person against whom such  
2 information could be used, or whose private information is disclosed by such information. *Id.*  
3 The Petitioners’ proposal would also require the Commission, upon learning of any “Foreign” or  
4 “Compromising Information,” to: 1) immediately provide a report to any other law enforcement  
5 entity with likely jurisdiction over the matter; 2) within 14 days, publicly issue a report on the  
6 matter, redacting any material under seal and any material the disclosure of which could  
7 compromise an ongoing law enforcement investigation; and 3) within 30 days after the  
8 conclusion of any law enforcement investigation, issue a public report on the matter, redacting  
9 any material under seal. *Id.*

10 The Commission seeks comments on the Petition. The public may inspect the Petition on  
11 the Commission’s website at <http://sers.fec.gov/fosers/>, or in the Commission’s Public Records  
12 Office, 1050 First Street NE, 12<sup>th</sup> Floor, Washington, DC 20463, Monday through Friday, from  
13 9 a.m. to 5 p.m.

14 The Commission will not consider the Petition’s merits until after the comment period  
15 closes. If the Commission decides that the Petition has merit, it may begin a rulemaking  
16 proceeding. The Commission will announce any action that it takes in the *Federal Register*.

17 On behalf of the Commission,

18  
19  
20 Ellen L. Weintraub,  
21 Chair,  
22 Federal Election Commission  
23  
24

25 DATED: \_\_\_\_\_