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FEDERAL ELECTION COMMISSION
Washington, DC 20463

AGENDA DOCUMENT NO. 19-38-A
AGENDA ITEM
For the meeting of August 22, 2019

August 7, 2019

MEMORANDUM

TO: The Commission

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

Neven Stipanovic *NFS*
Associate General Counsel

Esther D. Gyory *EDG*
Acting Assistant General Counsel

Anthony T. Buckley *ATB*
Attorney

SUBJECT: Notice of Availability for REG 2019-03 (Mailing List Exchange)

On June 28, 2019, the Commission received a Petition for Rulemaking from the Campaign Legal Center ("Petition"). The Petition asks the Commission to amend 11 C.F.R. § 104.3 to clarify that a political committee's receipt or disbursement of a membership or other valuable list must be reported, even when the list was received or disbursed as part of a purported equal value list swap.

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 Notice of Availability ("Notice") seeking comment on whether the Commission should initiate a full rulemaking on the proposal in the Petition. The Notice 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 Notice 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 August 22, 2019.

Attachment

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FEDERAL ELECTION COMMISSION

11 CFR Part 104

[NOTICE 2019-XX]

Rulemaking Petition: Requiring Reporting of Exchanges of Email Lists

AGENCY: Federal Election Commission.

ACTION: Rulemaking Petition: Notification of Availability.

SUMMARY: On June 28, 2019, the Federal Election Commission received a Petition for Rulemaking asking the Commission to amend its existing regulation requiring political committees to report receipts and disbursements to specify that the regulation also applies to the receipt and disbursement of a mailing list or other valuable list, even if such a list is received or disbursed as part of an equal-value exchange. 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 2019-03. 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

1 public, such as a home street address, personal email address, date of birth, phone number, social
2 security number, or driver’s license number, or any information that is restricted from disclosure,
3 such as trade secrets or commercial or financial information that is privileged or confidential.

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

7 **SUPPLEMENTARY INFORMATION:** On June 28, 2019, the Commission received a
8 Petition for Rulemaking from the Campaign Legal Center (“Petition”). The Petition asks the
9 Commission to amend 11 CFR 104.3 to clarify that “a political committee’s receipt or
10 disbursement of a membership or other valuable list must be reported, even when the list was
11 received or disbursed as part of a purported equal-value list swap.” Petition at 5.

12 The Federal Election Campaign Act, 52 U.S.C. 30101-45 (the “Act”), and Commission
13 regulations require a political committee to report its receipts and disbursements. 52 U.S.C.
14 30104(a); 11 CFR 104.3(a) (reporting of receipts), (b) (reporting of disbursements). The Act
15 lists specific categories of receipts and disbursements that must be reported, such as
16 contributions, expenditures, and transfers to and from other political committees, as well as
17 “other forms of receipts,” 52 U.S.C. 30104(b)(2)(J), and “any other disbursements,” 52 U.S.C.
18 30104(b)(4)(G), (b)(4)(H)(v). Political committees must also report the total amount of all
19 receipts and all disbursements. 52 U.S.C. 30104(b)(2), (b)(4). The Commission’s regulations
20 implementing these statutory provisions require that political committees report contributions,
21 expenditures, and other specified categories of receipts and disbursements, as well as “other
22 receipts” and “other disbursements.” 11 CFR 104.3(a)(2)(viii), (b)(1)(ix), (b)(2)(vi).

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DATED: _____