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FEDERAL ELECTION COMMISSION
Washington, DC 20463

AGENDA DOCUMENT NO. 20-04-A
AGENDA ITEM
For meeting of June 18, 2020
SUBMITTED LATE

June 12, 2020

MEMORANDUM

TO: The Commission

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

Neven F. Stipanovic *NFS*
Associate General Counsel

Robert Mark Knop *RMK*
Assistant General Counsel

Heather Filemyr *HFF*
Attorney

SUBJECT: Notice of Availability for REG 2020-02 (Transfers from Candidate's Authorized Committee) - Draft Notification of Availability

Attached is a proposed draft of the subject Notice of Availability ("Notice").

On April 8, 2020, the Federal Election Commission received a Petition for Rulemaking ("Petition") from Citizens United and Citizens United Foundation. The Petition asks the Commission to amend its regulations to limit the amount that the authorized committee of a federal candidate may transfer to a national political party committee.

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 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 of the June 18, 2020 open meeting.

Members of the public may view the virtual Commission meeting at which the draft will be considered.

For more information about how to attend the virtual Commission meeting, go to <https://www.fec.gov/meetings/?tab=open-meetings>.

Attachment

1 **FEDERAL ELECTION COMMISSION**

2 **11 CFR Part 113**

3 **[NOTICE 2020-XX]**

4 **Rulemaking Petition: Transfers from Candidate's Authorized Committee**

5 **AGENCY:** Federal Election Commission.

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

7 **SUMMARY:** On April 8, 2020, the Federal Election Commission received a Petition for
8 Rulemaking asking the Commission to amend its regulations to limit the amount that the
9 authorized committee of a federal candidate may transfer to a national political party committee.
10 The Petition proposes to limit these transfers so that a self-funded candidate cannot transfer
11 funds derived from the candidate's personal funds to a national political party committee if the
12 transferred funds would exceed the annual limit on an individual's contributions to a national
13 party committee. The Commission seeks comment on the Petition.

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

16 **ADDRESSES:** All comments must be in writing. Commenters may submit comments
17 electronically via the Commission's website at <http://sers.fec.gov/fosers/>, reference REG 2020-
18 02.

19 Each commenter must provide, at a minimum, his or her first name, last name, city, and
20 state. All properly submitted comments, including attachments, will become part of the public
21 record, and the Commission will make comments available for public viewing on the
22 Commission's website. Accordingly, commenters should not provide in their comments any
23 information that they do not wish to make public, such as a home street address, personal email

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

4 **FOR FURTHER INFORMATION CONTACT:** Mr. Robert Knop, Assistant General
5 Counsel, or Ms. Heather Filemyr, Attorney, Office of the General Counsel, at
6 CommitteeTransfers@fec.gov.

7 **SUPPLEMENTARY INFORMATION:** On April 8, 2020, the Commission received a
8 Petition for Rulemaking from Citizens United and Citizens United Foundation (“Petition”). The
9 Petition asks the Commission to amend 11 CFR 113.2(c) “to limit the amounts that an authorized
10 committee of a federal candidate may transfer to a committee of a national political party in
11 order to prevent a self-funded candidate from transferring campaign funds derived from his or
12 her personal funds in amounts that exceed the annual limits imposed on an individual’s
13 contributions to a national party committee.” Petition at 1.

14 The Petition involves several statutory and regulatory provisions. The Federal Election
15 Campaign Act, 52 U.S.C. 30101-45 (“FECA”), provides that a “contribution accepted by a
16 candidate, and any other donation received by an individual as support for activities of the
17 individual as a holder of Federal office, may be used by the candidate or individual . . . for
18 transfers, without limitation, to a national, State, or local committee of a political party.” 52
19 U.S.C. 30114(a)(4). Similarly, Commission regulations state: “funds in a campaign account . . .
20 [m]ay be transferred without limitation to any national, State, or local committee of any political
21 party.” 11 CFR 113.2(c). In addition, generally “candidates for Federal office may make

1 unlimited expenditures from personal funds” and so may contribute unlimited amounts from
2 personal funds to their authorized committees.¹ 11 CFR 110.10.

3 The Petition asserts that in March 2020 “a major loophole came to light” in how
4 unlimited transfers from candidates’ authorized committees to party committees interact with the
5 allowance for candidates to contribute unlimited personal funds to their campaigns. Petition at 2.
6 Citing a news report, the Petition states that Michael Bloomberg, recently a candidate for
7 president, transferred 18 million dollars from his authorized committee to the Democratic
8 National Committee (“DNC”) at the conclusion of his campaign and that the transferred funds
9 “derived from the candidate’s personal funds, which are not subject to any contribution limits.”
10 *Id.* The Petition further states that the reported 18 million dollar transfer from Mr. Bloomberg’s
11 campaign account “is more than 500 times greater than the amount that he could directly
12 contribute to the DNC.” *Id.* at 3. Further, the Petition claims that under the Commission’s
13 current regulations, “[w]ealthy individuals could: declare their candidacy for any federal elected
14 office; contribute untold millions of dollars of his or her own money to the campaign; promptly
15 withdraw his or her candidacy after spending a token sum; and thereafter transfer the balance of
16 the campaign’s funds to the national party committee of his or her choice.” *Id.* According to the
17 Petition, “[t]his is clearly not what was intended when Congress authorized the transfer surplus
18 campaign funds to national party committees.” *Id.* To address this possibility, the Petition
19 proposes that the Commission revise 11 CFR 113.2(c) to “limit the amount that a campaign
20 committee can transfer to a national political party committee to the sum total of contributions

¹ Certain limitations apply to presidential candidates receiving funds from the Presidential Election Campaign Fund or the Presidential Primary Matching Payment Account. *See* 11 CFR 110.10.

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1 received by the committee that” are subject to FECA’s amount limitations “on contributions by
2 individuals, multi-candidate PACs and party committees.” *Id.*

3 The Commission seeks comment on the Petition. The public may inspect the Petition on
4 the Commission’s website at <http://sers.fec.gov/fosers/>.

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

8

9 Dated: _____

10

11 On behalf of the Commission,

12

13 Caroline C. Hunter,

14 *Chair,*

15 *Federal Election Commission*

16 BILLING CODE: 6715-01-P