



FEDERAL ELECTION COMMISSION

11 CFR Part 104

[NOTICE 2019-13]

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/fousers/>, 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

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

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

SUPPLEMENTARY INFORMATION: 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 CFR 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." Petition at 5.

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

In several advisory opinions, the Commission has determined that an exchange of equally valued mailing lists between political committees would not result in a contribution or an expenditure, and therefore, would not be reportable under the Act. Advisory Opinion 1982-41 (Dellums) at 2; *see also* Advisory Opinion 2002-14 (Libertarian National Committee) at 5 (concluding that exchanges of mailing lists of equal value would not be reportable event because “no ‘contribution, donation, or transfer of funds or any other thing of value’ takes place”).

The Petition argues that the Commission has improperly narrowed the scope of committees’ disclosure obligations “for lists that are received or disbursed as part of a purported equal-value exchange.” Petition at 3. The Petition requests that the Commission amend 11 CFR 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.” Petition at 5.

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

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

Dated: August 22, 2019.

On behalf of the Commission,

Ellen L. Weintraub,

Chair,

Federal Election Commission.

BILLING CODE: 6715-01-P

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