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FEDERAL ELECTION COMMISSION
Washington, DC 20463

AGENDA DOCUMENT NO. 17-17-B
AGENDA ITEM
For meeting of November 8, 2017
SUBMITTED LATE

MEMORANDUM

TO: The Commission

FROM: Steven T. Walther
Chairman *Walther*

RE: FEC Email Management Policy

DATE: November 7, 2017

I appreciate the efforts of Acting Deputy Staff Director Ed Holder and several other staff members in developing the Commission's Email Management Policy. Although the Commission was not able to approve a final policy when last discussed at the March 23, 2017 open meeting, I believe that most of the relevant issues have since been ironed out and that we are very close to completing this project.

The primary issue to be resolved at this time appears to be which staff members should be designated as "Capstone Officials," and, as result, have their emails retained by the Commission for 25 years and then transferred to National Archives. Under the approach in Mr. Holder's memorandum dated November 9, 2016, the list of Capstone Officials would include only the Commissioners, the Staff Director, the General Counsel, and the Chief Financial Officer (and, for the last three, anyone designated as acting in those capacities).

As Commissioner Weintraub noted her memorandum dated May 25, 2016, a more expansive approach may be warranted under the guidance provided in the National Archives and Records Administration's (NARA) Bulletin 2013-02 (Aug. 29, 2013). That document suggests that it may be appropriate to include – in addition to the heads of agencies – deputies, division or office directors, assistants to high level officials, and other individuals who "by virtue of their work, office, or position, are likely to create or receive permanently valuable Federal records." See Bulletin 2013-02 at Sec. No. 6. Accordingly, Commissioner Weintraub proposed adding several other positions to the list of FEC Capstone Officials.

While I appreciate the need for the Commission to carefully consider expanding the list of Capstone Officials to better align with NARA's guidance, I would advocate for a middle-ground approach that focuses primarily on which email accounts, regardless of position, would be most likely to include emails of such value as to justify a longer retention period. To that end, I have created a chart (attached) that compares the three approaches based on each position up for consideration, including the numerical totals.

As shown in the chart, the proposed list of Capstone Officials would be increased from 10 positions in Mr. Holder's memorandum to approximately 47 in Commissioner Weintraub's proposal. I believe that a middle-ground approach that covers 23 positions would more appropriately address the Commission's obligations under NARA's guidelines without being over or under inclusive. For example, although the Commissioners' Executive Assistants (which have numbered as many as 16 in recent years) may create or receive emails that are valuable in that they often reflect high-level decisions and actions made by their respective Commissioners, it is very unlikely that such emails would not already be preserved in the accounts of those Commissioners, not to mention the fact that email distribution groups that already include Commissioners and their respective staffs (e.g., "Commissioner Offices" and "[*name of Commissioner*] Office") are also subject to the same retention policy.

As another example, while I believe that the accounts of deputies of FEC division heads should be included based on the potential for creating or receiving high level emails, I do not think that the accounts of other positions – such as those that have no or few employees reporting to them (e.g., the heads of the Office of Administrative Review and the Office of Alternative Dispute Resolution) – would be likely to contain valuable emails that would not already be captured for preservation in the accounts of other Capstone Officials.

I therefore propose that the list of FEC Capstone Officials consist of the positions identified in the last column of the attached chart, which would also include anyone designated as acting in those positions.

Attachment

Capstone Officials – Retention of Emails

Title	Acting Deputy Staff Director Holder memo of Nov. 9, 2016	Commissioner Weintraub memo of May 25, 2016	Chairman Walther alternative
Commissioners (6)	Capstone	Capstone	Capstone
Executive Assistants (approx. 16)	Non-Capstone	Capstone	Non-Capstone
General Counsel (1)	Capstone	Capstone	Capstone
Deputy General Counsels (2)	Non-Capstone	Capstone	Capstone
Associate General Counsels (3)	Non-Capstone	Capstone	Capstone
Staff Director (1)	Capstone	Capstone	Capstone
Deputy Staff Directors (4)	Non-Capstone	Capstone	Capstone
Assistant Staff Directors (4)	Non-Capstone	Capstone	Non-Capstone
Commission Secretary (1)	Non-Capstone	Capstone	Capstone
Chief Compliance Officer (1)	Non-Capstone	Capstone	Non-Capstone
Reviewing Officer, Office of Administrative Review (1)	Non-Capstone	Capstone	Non-Capstone
Director, Office of Alternative Dispute Resolution (1)	Non-Capstone	Capstone	Non-Capstone
Director, Congressional, Legislative & Intergovernmental Affairs (1)	Non-Capstone	Capstone	Capstone
Chief Information Officer (1)	Non-Capstone	Capstone	Non-Capstone
Deputy CIOs (2)	Non-Capstone	Capstone	Non-Capstone
Chief Financial Officer (1)	Capstone	Capstone	Capstone
Director of Accounting / Deputy CFO (1)	Non-Capstone	Non-Capstone	Capstone
Inspector General (1)	Capstone	Capstone	Capstone
Deputy Inspector General (1)	Non-Capstone	Non-Capstone	Capstone
Total Capstone officials (approx.):	10	47	23

Capstone officials: Non-culled emails transferred to National Archives after 25 years
 Non-Capstone officials: Non-culled emails deleted after 10 years