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FEDERAL ELECTION COMMISSION
Washington, DC 20463

AGENDA DOCUMENT NO. 22-50-A
AGENDA ITEM
For meeting of October 20, 2022

October 13, 2022

MEMORANDUM

TO: The Commission

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

Neven Stipanovic *NFS*
Associate General Counsel

Amy Rothstein *ALR*
Assistant General Counsel

Tony Buckley *TB*
Attorney

SUBJECT: Notice of Availability for REG 2022-05 (Conduit Reporting Threshold)

On August 22, 2022, the Federal Election Commission received a Petition for Rulemaking ("Petition") from WinRed, Inc. The Petition asks the Commission to amend its existing regulations regarding the threshold amount at which conduits forwarding contributions to political committees must identify the contributors to the recipient political committees and the Commission.

The Office of 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 General Counsel requests that this draft be placed on the agenda for the October 20, 2022 open meeting.

Attachment

1 **FEDERAL ELECTION COMMISSION**

2 **11 CFR Part 110**

3 **[NOTICE 2022-XX]**

4 **Rulemaking Petition: Conduit Reporting Threshold**

5 **AGENCY:** Federal Election Commission.

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

7 **SUMMARY:** On August 22, 2022, the Federal Election Commission received a Petition for
8 Rulemaking asking the Commission to amend its existing regulations regarding the threshold
9 amount at which conduits forwarding contributions to political committees must identify the
10 contributors to the recipient political committees and the Commission. The petitioner requests
11 that the Commission establish an itemization threshold equal to the contribution amount at which
12 political committees must report the identification of contributors.

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

15 **ADDRESSES:** All comments must be in writing. Commenters may submit comments
16 electronically via the Commission's website at <http://sers.fec.gov/fosers/>, reference REG
17 2022-05.

18 Each commenter must provide, at a minimum, his or her first name, last name, city, and
19 state. All properly submitted comments, including attachments, will become part of the public
20 record, and the Commission will make comments available for public viewing on the
21 Commission's website and in the Commission's Public Records Office. Accordingly,
22 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. Amy Rothstein, Assistant General
5 Counsel, or Mr. Tony Buckley, Attorney, Office of the General Counsel, at threshold@fec.gov.

6 **SUPPLEMENTARY INFORMATION:** On August 22, 2022, the Commission received a
7 Petition for Rulemaking (“Petition”) from WinRed, “a non-connected political action committee
8 (“PAC”) registered with the FEC that largely operates as an intermediary through which donors
9 may make earmarked contributions to the political committees of the donors’ choosing.”

10 Petition at 1. The Petition asks the Commission to amend its regulations at 11 C.F.R. § 110.6 to
11 include an itemization threshold consistent with 11 C.F.R. § 104.3(a)(4) for reports of earmarked
12 contributions filed by conduit political committees.

13 The Petition notes that the Federal Election Campaign Act and Commission regulations
14 require each treasurer of a political committee to file reports of receipts and disbursements which
15 disclose, *inter alia*, “the identification of each person (other than a political committee) who
16 makes a contribution to the reporting committee during the reporting period, whose contribution
17 or contributions have an aggregate amount or value in excess of \$200. . . together with the date
18 and amount of any such contribution . . .” Petition at 2 (citing 52 U.S.C. § 30104(b)(3)). The
19 Petition further notes that Congress set the reporting threshold “in excess of \$200” to “simplify
20 reporting requirements for candidates and committees” and to “reduce the marginal intrusion on
21 personal privacy resulting from disclosure of individual contributions.” Petition at 2-3.

22 Commission regulations require a conduit to report to the Commission and to the
23 recipient candidate or authorized committee, the name and mailing address of each contributor.

1 See 11 CFR 110.6(c)(1)(i), (iv)(A). Commission regulations do not specify a threshold below
2 which a conduit need not report the source information.

3 The Petition asserts that most of the contributions made through WinRed are for less than
4 \$25, with many as low as one dollar, and that current Commission regulations require that every
5 single receipt must be itemized, since the \$200 itemization threshold applicable to reports filed
6 by the recipients of earmarked contributions is not similarly in effect for conduit PAC reports.
7 Petition at 5. According to the Petition, “this leads to the incongruous result whereby the name
8 and address information of small-dollar donors who make earmarked contributions is disclosed
9 on conduit PAC reports but that information is not subsequently included on the reports of the
10 recipients of those same earmarked contributions.” *Id.* The Petition argues that this “lack of
11 consistency in how the itemization threshold applies to conduit PAC reports and reports of
12 recipient committees defeats the threshold’s underlying purposes—namely, easing administrative
13 burdens related to reporting and protecting the privacy interests of small-dollar donors.” *Id.*

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

16 The Commission will not consider the Petition’s merits until after the comment period
17 closes. If the Commission decides that the Petition has merit, it may begin a rulemaking

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1 proceeding. The Commission will announce any action that it takes in the *Federal Register*.

2

3 Dated: October XX, 2022

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5 On behalf of the Commission,

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8 **Allen Dickerson,**

9 *Chairman,*

10 *Federal Election Commission.*

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12 BILLING CODE: 6715-01-P