CREW
CITIZENS FOR RESPONSIBILITY & ETHICS IN WASHINGTON

October 1, 2021

Federal Election Commission
Lisa J. Stevenson, Acting General Counsel
Office of General Counsel
1050 First Street, NE
Washington, D.C. 20463

Re: REG 2021-02, Subvendor Reporting

Dear Ms. Stevenson:

Citizens for Responsibility and Ethics in Washington ("CREW") respectfully submits this Comment in response to the Notification of Availability published August 5, 2021 (86 Fed. Reg. 42753), concerning subvendor reporting transparency. We firmly believe that the Federal Election Commission ("FEC" or the "Commission") should grant the Petition for Rulemaking filed by the Campaign Legal Center and the Center on Science & Technology Policy at Duke University ("Petitioners"). We also affirm our support for the Petitioners' proposal which, if adopted, would increase reporting transparency in a manner consistent with the true intent of the Federal Election Campaign Act ("FECA") and further help the "electorate to make informed decisions."[1]

The FECA and FEC regulations require political committees to disclose on public reports the name and address of each person to whom they make disbursements and expenditures totaling more than $200 in a year, along with the date, amount, and purpose of the spending.[2] Filers reporting independent expenditures and electioneering communications also must disclose each person to whom expenditures made in connection with those activities are made.[3] In 1983, however, the Commission issued an Advisory Opinion which deviated from the Commission's established rules requiring this itemized disclosure.[4] In the opinion, the Commission found that a political committee was not always required to separately itemize a vendor's payments to a subcontractor where such payments "are made to purchase services or products used in performance of [the vendor's] contract with the Committee."[5] From this Advisory Opinion the subvendor reporting loophole was born. Since then, political committees and other reporting entities have consistently relied on this loophole to justify their failure to disclose the ultimate recipients of expenditures and disbursements. The Petitioners' proposed amendments will directly address this issue and close the

[1] *Citizens United v. FEC*, 558 U.S. 310, 371 (2010).
[2] 52 U.S.C. § 30104(b)(5)-(6); 11 C.F.R. § 104.3(b)(3)-(4).
[3] 52 U.S.C. §§ 30104(b)(6)(B)(iii), 30104(c)(2), 30104(f)(2)(C); 11 C.F.R. §§ 104.20(c)(4), 109.10(e)(1).
[4] FEC Advisory Op. 1983-25 (Mondale) (Dec. 22, 1983), https://saos.fec.gov/aodocs/1983-25.pdf.
[5] *Id*.

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loophole by requiring itemized disclosure of certain expenditures or disbursements made by vendors and subvendors to others on behalf of or for the benefit of a reporting entity.

The need for the Commission to address this glaring loophole by revising the current rules has grown with every election cycle. That in the 2020 election cycle alone, over 570 political committees directed over 50 percent of their spending to a single vendor - which was then presumably distributed among anonymous third party "subcontractors" - makes evident the need to remedy this obvious lack of transparency.[6] By failing to require disclosure of these subcontracted payments, the FEC is depriving voters and donors of information about exactly how campaigns and committees are spending their money. For instance, voters are entitled to know that a political campaign has routed large sums of campaign funds through shell corporations which could benefit or enrich a candidate or the candidate's family members.[7] Voters should also be aware of whether political campaigns are funding opposition research under the guise of run of the mill legal expenses paid to law firms.[8] Scam PACs also exploit the subvendor loophole, frequently lining the pockets of the committee's operators instead of using its funds for political activity.[9] Given the ability to empower themselves with increased spending information, voters and donors will have the opportunity make informed choices and hold accountable candidates who seek the public trust.

Although there are several obvious and well-documented examples of political committees and campaigns abusing the subvendor reporting loophole, these instances only scratch the surface of how often this loophole is exploited. Oftentimes, the presence of these efforts to evade transparency remain hidden until brought to light through FEC enforcement actions, including several brought by CREW. For example, many "previously unknown subvendors" who produced and placed advertisements for the Commission on Hope, Growth and Opportunity ("CHGO") were revealed through the Office of General Counsel's investigation into millions of undisclosed dollars CHGO spent to influence the 2010 federal elections.[10] Similarly, an enforcement action against Americans for Job Security, the American Future Fund, the 60 Plus Association, and other respondents, revealed that Noble Associates, a company owned by the executive director of the dark money group Center to Protect Patient Rights, both provided funding to the respondents and acted as a subcontractor for media firms used by the respondents for placing targeted

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[6] Anomaly Tracker, *More than 50 Percent of a Committee or Candidate's Spending Is Paid to a Single Vendor, 2020 Cycle*, Open Secrets, https://bit.ly/2XEtpYl.
[7] Bess Levin, Oops: Jared Kushner Reportedly Created a Shell Company to Secretly Pay Trump Family Members and Spend Half the Campaign's Cash, *Vanity Fair*, Dec. 18, 2020, https://bit.ly/3nVwHRF.
[8] John Breslin, Allegations That Clinton Campaign Funded Trump-Russia Research Still Pending at Now-Closed FEC, *Forbes*, Jan. 15, 2019, https://bit.ly/2XyhBGL; Adam Entous, Davlin Barrett, and Rosalind S. Helderman, Clinton campaign, DNC paid for research that led to Russia dossier, *Washington Post*, Oct. 24, 2017, https://wapo.st/2W0hFPh.
[9] Joseph Tanfani and Jarrett Renshaw, How 'Scam PACS' fall through the cracks of U.S. regulators, *Reuters*, Jan. 29, 2020, https://reut.rs/3EGloCU; *see also* Scam PACs are on the Rise: Do Your Research Before Giving to Candidates and Causes, FBI.gov, Apr. 15, 2021, https://bit.ly/3nTgPze.
[10] *See* MURs 6391 & 6471 (Commission on Hope, Growth & Opportunity), https://www.fec.gov/data/legal/matter-under-review/6471/; *see also* Third General Counsel's Report, Sept. 24, 2015, https://www.fec.gov/files/legal/murs/6471/15044381224.pdf.

campaign advertisements.[11] This egregious violation of the FECA's disclosure requirements served as a major factor in the respondents' resulting conciliation agreements with the Commission.[12]

Given the substantial evidence of abuse of the subvendor reporting loophole, it could not be clearer that the Commission must take action to reverse the growing opacity surrounding disbursements made by political campaigns and committees to subcontracted vendors. These failures of transparency leave American voters essentially in the dark about who profits from the political committees' spending.

Conclusion

Based on the foregoing, CREW strongly urges the Commission to grant the Rulemaking Petition and revise its current regulations on disbursement reporting. As these rules stand today, political campaigns and committees are successfully acting to subvert the FECA's disclosure requirements, resulting in serious harm to voters and their right to transparency in elections.

Sincerely,

Noah Bookbinder
Executive Director

Laura Iheanachor
Staff Counsel

[11] *See* MUR 6816 (60 Plus Association), https://www.fec.gov/data/legal/matter-under-review/6816/; *see also* Second General Counsel's Report, Feb. 12, 2016, https://www.fec.gov/files/legal/murs/6816/16044397329.pdf.
[12] *Id*.