Oct. 4, 2021

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

Re: REG 2021-02 Subvendor Reporting

Dear Ms. Stevenson,

This comment is respectfully offered on behalf of OpenSecrets to the Federal Election Commission (FEC) for use during its consideration of a rulemaking proceeding based on the Petition for Rulemaking submitted by the Campaign Legal Center and the Center on Science and Technology Policy at Duke University.

OpenSecrets is a nonpartisan, nonprofit research organization tracking money in U.S. politics and its effect on elections and public policy. Our vision is for Americans across the ideological spectrum to be empowered by access to clear and unbiased information about money's role in the U.S. political system, and to use that knowledge to strengthen our democracy.

Federal campaign finance law requires political groups to disclose spending to the FEC but imposes few restrictions on merely disclosing payments to opaque firms or shell companies that channel money to ultimate vendors whose identities remain hidden.

Despite FECA's requirement that political committees itemize all disbursements over $200, the FEC has imposed few restrictions on merely disclosing payments to opaque firms or shell companies that funnel money to ultimate vendors performing the services whose identities remain hidden and millions of dollars in spending reported to the FEC now consists of large payments to a small number of firms that do not divulge where political money is ultimately going.[1]

[1] 11 C.F.R. § 104.3(b)(4)(i).

Increasing disclosure of sub-vendors would increase transparency of that spending.

I. Political committees paying a dominant vendor is increasingly common

It is increasingly common for political committees to route the majority of their spending through a single vendor. OpenSecrets' anomaly tracker shows at least 577 political committees routed over half of their overall spending to a single dominant vendor in the 2020 election cycle alone, totaling more than $2.2 million. Just 486 political committees disclosed paying around $819 million to dominant vendors during the 2018 election cycle and 341 political committees cumulatively paid around $698 million to dominant vendors during the 2016 election.[2]

Many of those vendors are media consulting firms that then make payments to media buyers, online ad platforms or other vendors on behalf of the committee. However, the ultimate payees are often not disclosed in FEC reports.

The top vendor of the 2020 election cycle was American Made Media Consultants LLC, a firm created by aides of former President Donald Trump's campaign to act as a clearinghouse for its spending. The firm routed more than $759 million of the campaign and its joint fundraising committee's spending, hiding information about the identities of some individuals being paid by the campaign, how much money changed hands and when those payments took place.[3]

While it is impossible to know how many of those vendors routed payments to other vendors without additional disclosure, piecing together information from resources outside of the FEC revealed multiple examples of political committees' vendors paying undisclosed sub-vendors.

FEC advisory opinions instruct political committees to include an "adequate description of the purpose of each expenditure," meaning that the services provided by a vendor or subvendor must at least match the purpose of disbursements disclosed by a political committee. However, the purposes disclosed in FEC reports memos are often vague and provide little information about the ultimate payee performing the services.

The FEC has determined that political committees must itemize payments to sub-vendors under certain circumstances, such as when the immediate vendor receiving the itemized disbursement

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[2] Anomaly Tracker, *More than 50 Percent of a Committee or Candidate's Spending Is Paid to a Single Vendor, 2020 Cycle,* OpenSecrets, https://www.opensecrets.org/resources/learn/anomalytracker?cycle=2020&type=V#anomaly (last visited Oct. 4, 2021).

[3] *See* Anna Massoglia, Trump 2020 campaign used a shell company to pay ad buyers at the center of alleged illegal coordination scheme with NRA, OpenSecrets, https://www.opensecrets.org/news/2018/12/trump-2020-campaign-coordination/ (last visited Oct. 4, 2021). *See also* Anna Massoglia, Shell companies and 'dark money' may hide details of Trump ties to DC protests, OpenSecrets, https://www.opensecrets.org/news/2021/01/trump-tied-to-dc-protests-dark-money-and-shell-companies/ (last visited Oct. 4, 2021).

does not have an "arm's-length" relationship with the committee, or when the immediate vendor is merely acting as a "conduit" for disbursements to sub-vendors.[4]

II. The FEC's current rules makes questionable activities more difficult to parse out

The breadth of the subvendor reporting loophole makes violations and other dubious activities more difficult to detect, providing further cover for so-called "scam PACs" while making it difficult for donors and even campaigns to see how their money is being spent.[5]

Even in instances where a political committee's disbursements are not primarily routed through a single dominant firm, additional disclosure of sub-vendors could shine light on how funds are being spent.

The disclosure loophole makes it difficult to determine if spending is in violation of the personal use ban and can also disguise evidence of shared vendor coordination between a campaign committee and outside groups supporting them.

Since political committees only disclose payments to first-order vendors, it becomes difficult to detect the use of shared vendors that may be facilitating illegal coordination or payments to vendors with controversial records.[6]

Even when committees stay within legal lines, the American public may be deprived of vital information about the money being spent to influence their votes.

So-called "firewall" entities affiliated with firms can be used as a way to distance teams of buyers from campaigns so there is no appearance of coordination. These entities often have little or no public-facing facade and share employees with the firm they are attempting to distance themselves from.[7]

This structure has enabled political committees to avoid disclosing precise details about spending, and has allowed them to report millions of dollars in disbursements to a firm without ever disclosing the identities of any underlying sub-vendors to the FEC.

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[4] *See, e.g.,* MUR 3847 (Stockman), https://www.fec.gov/data/legal/matter-under-review/3847/; MUR 4872 (Jenkins), https://www.fec.gov/data/legal/matter-under-review/4872/; MUR 6724 (Bachmann for President), https://www.fec.gov/data/legal/matter-under-review/6724.

[5] *See* Matthew S. Raymer, Scam PACs: Fraudulent Political Fundraising in the Age of Super PACs, 66 SYRACUSE L. REV. 239 (2016). *See also* Meagan Flynn & Michael Scherer, *Donors gave a House candidate more than $8 million. A single firm took nearly half of it.* The Washington Post. https://www.washingtonpost.com/local/md-politics/klacik-gop-campaign-donations/2021/03/02/76300fde-7077-11eb-85fa-e0ccb3660358_story.html (last visited Oct. 4, 2021).

[6] 52 U.S.C. § 30116(a)(7)(B)(i); 11 C.F.R. § 109.21(d)(4).

[7] Ad Data, OpenSecrets, https://www.opensecrets.org/ad-data/ (last visited Oct. 4, 2021).

Investigations using FCC political ad records unearthed campaigns and political committees across the political spectrum routing funds to sub-vendors.[8]

II. Digital advertising disclosure

Digital advertising is playing an increasingly important role in U.S. elections but can be difficult to track under the FEC's current disclosure regime that does not require sub-itemization of vendors or hold digital ads to the same disclosure standards as other more traditional advertising.

As noted in the Petition for Rulemaking submitted by the Campaign Legal Center and the Center on Science and Technology Policy at Duke University, the subvendor reporting loophole contributes to the opacity of online political advertising spending and makes it "nearly impossible for researchers and academics to monitor digital political ad practices."[9]

Without additional disclosure requirements, it is practically impossible to know how much is spent across online ad platforms since not all platforms make data available to researchers or the public.

Even among online platforms that voluntarily make digital ad data publicly available, disclosure is checkered at best.[10]

The FEC's current sub-vendor disclosure rules let political groups or campaigns report payments to firms for advertising or media where some of that payment may be ultimately disseminated to ad platforms, leading to discrepancies between what campaigns report to the FEC and what is reported by platforms like Facebook and Google.

Disparities between FEC disbursement data naming the platforms and the total payments reported by digital ad platforms are rampant since it is common for political committees to pay firms that use a portion of that payment to purchase digital ads, OpenSecrets' research has found.

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[8] *See,* e.g., Patrick Condon, *Minnesota DFL, Omar challenger Antone Melton-Meaux trade campaign finance charges*, Star Tribune. https://www.startribune.com/minnesota-dfl-hits-antone-melton-meaux-with-campaign-finance-complaint/572009432 (last visited Oct. 4, 2021).

[9] REG 2021-02 (Subvendor Reporting)—Draft Notification of Availability. (2021, July 21). Federal Election Commission. P.3. https://www.fec.gov/resources/cms-content/documents/mtgdoc-21-32-A.pdf (last visited Oct. 4, 2021).

[10] See Laura Edelson, Facebook's political ad spending numbers don't add up, Online Political Transparency Project. medium.com/online-political-transparency-project/transparency-theater-facebooks-political-ad-spending-numbers-don-t-add-up-d7a85479a002 (last visited Oct. 4, 2021).

The FEC's disbursements do not explicitly denote all payments to those digital ad platforms. Instead, political committees often route payments through media firms that then dispense payments to the platforms.

Not only does this make it impossible to get a comprehensive picture of digital spending across the board, it also hides the cut that is taken by firms or consultants.

This makes it impossible for a member of the public to distinguish between the amount of the payment that was ultimately spent on digital ads and the cut that may have been taken by the vendor reported to the FEC.

The American public can at least look to the FCC for some information to track traditional political ad buys, but digital advertising is not subject to the same disclosure requirements as TV or radio advertising.

III. Sub-vendor disclosure lessons can be drawn from state disclosure rules

Multiple states have successfully implemented systems for sub-vendor disclosure and sub-itemization of expenditures to consultants or other agents making purchases on behalf of a political committee.

As of 2008, at least 24 states required some disclosure of sub-vendors.[11]

Having a way to link sub-vendor back to the main expenditures reported by political committees is important for researchers to make sense of sub-itemization data. One way states have addressed this issue is by assigning transaction IDs to the main expenditures and IDs on the itemized transaction disclosures referencing back to the initial transaction IDs.

California requires reporting of sub-vendor payment disclosure for committee payments to committee staff members or to a consultant or other independent contractor for any sub-vendor payment of $500 or more.[12] However, political committees are not required to report the date a payment is made to a vendor.

Standardized codes that apply to sub-vendor payments to describe the purpose in a standardized way are also helpful for data analysis.[13]

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[11] *See* Campaign Disclosure Project, Grading State Disclosure 2008, https://campaigndisc.calvoter.org/gradingstate/GSD08.pdf (last visited Oct. 4, 2021) (examples include California, Connecticut, Florida, Hawaii, Idaho, Indiana, Tennessee, Kentucky, Maine, Michigan, Minnesota, Miossouri, Nebraska, New Jersey, New York, North Carolina, Oregon, South Carolina, Tennessee, Virginia, Washington and, West Virginia).
[12] Cal .Elec. Code § 84303.
[13] *See.* Cal .Elec. Code § 84211

In New York State, payments are reported with standardized codes for the expenditure's purpose.[14] One of those codes is for consultants. Expenditures using that code are re-reported on Schedule O in the subcontracts sub-schedule with sub-itemizations listed — offering additional details that provide important context about these transactions.".[15]

IV. Conclusion

Lack of transparency around payment streams from campaigns and political committees has made potential violations of campaign finance law and other questionable activities more difficult to parse out. Without additional disclosure, any cut of disbursements that is taken by firms or consultants who place ad buys remains secret and it is practically impossible to know how much is spent on political advertising across online ad platforms.

Requiring disclosure of sub-vendors would equip voters with the tools necessary to identify which digital platforms have advertising sponsored by political committees while giving political committees and their donors greater insight into what they are paying for.

Respectfully submitted,
/s/Sheila Krumholz
Executive Director
OpenSecrets

[14] *See* N.Y. Elec. Law § 14-102. *See also* New York State Board of Elections, Form CF-01, Schedule F. https://www.elections.ny.gov/NYSBOE/download/finance/cf01.pdf (last visited Oct. 4, 2021).
[15] *See* New York State Board of Elections, Form CF-01, Schedule O. https://www.elections.ny.gov/NYSBOE/download/finance/cf01.pdf (last visited Oct. 4, 2021).