

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL’S REPORT

MUR: 7683

DATE COMPLAINT FILED: Jan. 22, 2020

DATE OF NOTIFICATION: Jan. 27, 2020

LAST RESPONSE RECEIVED: Mar. 19, 2020

DATE ACTIVATED: Apr. 7, 2020

EXPIRATION OF SOL: July 15, 2021 – ongoing

ELECTION CYCLES: 2016, 2018, 2020

COMPLAINANTS:

Common Cause

Paul S. Ryan

RESPONDENTS:

Our Revolution

Bernard Sanders

**RELEVANT STATUTE
AND REGULATIONS:**

52 U.S.C. § 30125(e)

11 C.F.R. § 300.2(b), (c), (m)

11 C.F.R. § 300.61

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

The Complaint alleges that Senator Bernard “Bernie” Sanders established, financed, maintained, or controlled (“EFMC’d”) Our Revolution, a 501(c)(4) organization, and that Our Revolution, as an entity EFMC’d by a federal candidate or officeholder, impermissibly solicited, received, and spent non-federal funds (*i.e.*, “soft money”) in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”). Respondents deny the allegations, arguing that Our Revolution was inspired but not established by Sanders, and that it has continued to operate independently of him.

Based on the available information, it appears that the creation of Our Revolution was influenced by Sanders, that Sanders had some involvement in Our Revolution’s initial launch

1 activities, and that several people who worked for Sanders's political campaigns either went on
2 to work for Our Revolution or left Our Revolution to work for Sanders, but the available factual
3 record does not indicate that Sanders EFMC'd Our Revolution within the meaning of the Act and
4 Commission regulations. Though Our Revolution appears to have solicited, received, and spent
5 funds that were not subject to the limitations and source prohibitions of the Act, because there is
6 an insufficient basis to infer that it was EFMC'd by a federal candidate or officeholder, we
7 recommend that the Commission dismiss the allegation that Our Revolution violated 52 U.S.C.
8 § 30125(e)(1) and 11 C.F.R. § 300.61 by impermissibly soliciting, receiving, and spending soft
9 money. We also recommend that the Commission dismiss the allegation that Sanders violated
10 52 U.S.C. § 30125(e)(1) and 11 C.F.R. § 300.61 by soliciting soft money for an organization that
11 he EFMC'd.

12 **II. FACTUAL BACKGROUND**

13 Bernie Sanders has been a U.S. Senator from Vermont since 2007, and he ran for
14 president in 2016 and 2020.¹ Following his defeat in the 2016 presidential election, Sanders
15 reportedly engaged in various activities to continue advocating for causes and issues highlighted
16 in his campaign. A *USA Today* article from July 2016 cited in the Complaint states that Sanders
17 had “plans to launch educational and political organizations . . . to keep his progressive
18 movement alive,” and the article names Our Revolution as one such group.² The article quotes
19 Sanders as stating, “[i]f we are successful, what it will mean is that the progressive message and

¹ Bernard Sanders, Statement of Candidacy (Apr. 30, 2015); Bernard Sanders, Statement of Candidacy (Feb. 19, 2019); *Sanders, Bernard, About this Candidate*, FEC.GOV, <https://www.fec.gov/data/candidate/S4VT00033/?tab=about-candidate> (last visited July 8, 2021).

² Nicole Gaudiano, *Bernie Sanders Will Launch Organizations to Spread Progressive Message*, USA TODAY (July 15, 2016), <https://www.usatoday.com/story/news/politics/elections/2016/07/15/bernie-sanders-progressive-message/87073052/> (cited in Compl. ¶ 69 n.48 (Jan. 22, 2020)).

1 the issues that I campaigned on will be increasingly spread throughout this country.”³ On
 2 November 16, 2016, Sanders published a book entitled *Our Revolution: A Future to Believe In*.⁴
 3 The book shares his “experiences from the campaign trail” and “outlines a progressive economic,
 4 environmental, racial, and social justice agenda,” stating that “[t]he campaign may be over, but
 5 the struggle goes on.”⁵

6 Our Revolution is a 501(c)(4) nonprofit organization that was incorporated on July 15,
 7 2016.⁶ Of its five original Board members at the time of its incorporation, one was Sanders’s
 8 wife, Jane Sanders, and another was Michael Briggs, who served as a political consultant for
 9 Sanders’s 2016 presidential campaign and received campaign payroll disbursements from
 10 Sanders’s authorized committee, Bernie 2016, through August 15, 2016.⁷ The Articles of
 11 Incorporation were amended *nunc pro tunc* in September 2016, and none of the amended eleven-
 12 member Board were or had been paid by Bernie 2016.⁸

³ *Id.* Sanders continued, “The goal here is to do what I think the Democratic establishment has not been very effective in doing. And that is at the grass-roots level, encourage people to get involved, give them the tools they need to win, [and] help them financially.” *Id.*

⁴ Compl. ¶ 20; Bernie Sanders, *Our Revolution: A Future to Believe In*, AMAZON.COM, <https://www.amazon.com/Our-Revolution-Believe-Bernie-Sanders/dp/1250132924> (last visited July 8, 2021) [hereinafter *Our Revolution Amazon Listing*] (cited in Compl. ¶ 20 n.17).

⁵ *Our Revolution Amazon Listing*.

⁶ IRS Form 990, Our Revolution 2016 Return of Organization Exempt from Income Tax (Apr. 27, 2018); Our Revolution Resp. at 1 (Mar. 19, 2020); Our Revolution Resp., Ex. A (Our Revolution, Articles of Incorporation of Domestic Nonprofit Corporation [hereinafter *Our Revolution Original Articles of Incorporation*] (July 15, 2016)). The incorporator listed on the original Articles of Incorporation is Nicholas J. Gehrig, while the original Board of Directors included Michael Briggs, Richard Sugarman, Jane Sanders, Brad Deutsch, and Huck Gutman. Our Revolution Original Articles of Incorporation.

⁷ See *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00577130&recipient_name=Michael+Briggs&two_year_transaction_period=2016 (last visited July 8, 2021) (showing all disbursements by Bernie 2016 to Briggs during the 2016 election cycle).

⁸ Our Revolution Resp., Ex. C at 3 (Our Revolution, Articles of Amendment of Domestic Nonprofit Corporation [hereinafter *Our Revolution Amended Articles of Incorporation*] (Sept. 6, 2016)); see *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00577130&two_year_transaction_period=2016 (last visited July 8, 2021) (showing all disbursements made by Bernie 2016 during the 2016 election cycle).

1 On its website, Our Revolution describes its mission as “building a down-ballot bench of
2 progressive champions from city halls to the halls of Congress.”⁹ At one time, a drawing of
3 Sanders was prominently displayed on Our Revolution’s homepage.¹⁰ Between its founding in
4 July 2016 and the end of 2018, Our Revolution raised over \$9.5 million and spent \$1.2 million in
5 political campaign and lobbying activities, according to available IRS filings.¹¹ In 2016, Our
6 Revolution reported two independent expenditures in support of federal candidates to the
7 Commission, aggregating \$240,000.¹² It has reported no other spending to the Commission.
8 There is an Our Revolution PAC affiliated with Our Revolution, which has raised \$123,161.53
9 since its formation in 2018, and has reported no independent expenditures or other federal
10 election activity.¹³

11 On August 24, 2016, Sanders was the keynote speaker at the launch event for Our
12 Revolution, which was held in Vermont and live-streamed on Sanders’s official YouTube

⁹ OUR REVOLUTION, <https://www.ourrevolution.com> (last visited July 8, 2021) (cited in Our Revolution Resp. at 1). According to its District of Columbia Articles of Incorporation, Our Revolution’s stated purpose includes “developing and advocating for legislation, regulations, and government programs to protect the legal rights of all citizens in order to avoid disenfranchisement of the average citizen and to improve the political process,” and “conducting research about and publicizing the positions of elected officials concerning these issues.” Our Revolution Amended Articles of Incorporation.

¹⁰ OUR REVOLUTION, <https://www.ourrevolution.com> [<https://web.archive.org/web/20200620223740/http://www.ourrevolution.com/>](archived June. 20, 2020).

¹¹ IRS Form 990, Our Revolution 2016 Return of Organization Exempt from Income Tax (Apr. 27, 2018); IRS Form 990, Our Revolution 2017 Return of Organization Exempt from Income Tax (Nov. 16, 2018); IRS Form 990, Our Revolution 2018 Return of Organization Exempt from Income Tax (Nov. 11, 2019). Our Revolution’s 2019 Form 990 is not yet publicly available. Filings for 2019 and 2020 are not publicly available.

¹² Compl. ¶ 88; Our Revolution, Report of Independent Expenditures (Nov. 5, 2016) (reporting \$240,000 in independent expenditures in support of Deborah Ross (\$120,000) and Russell Feingold (\$120,000)).

¹³ Our Revolution PAC, Statement of Organization (Apr. 18, 2018) (listing Our Revolution as an affiliated organization); *Our Revolution PAC—Spending*, FEC.GOV, <https://www.fec.gov/data/committee/C00676684/?tab=spending&cycle=2018> (last visited July 8, 2021); (recording no independent expenditures during the 2018 election cycle); *Our Revolution PAC—Spending*, FEC.GOV, <https://www.fec.gov/data/committee/C00676684/?tab=spending&cycle=2020> (last visited July 8, 2021) (recording no independent expenditures during the 2020 election cycle); *Our Revolution PAC—Spending*, FEC.GOV, <https://www.fec.gov/data/committee/C00676684/?tab=spending&cycle=2022> (last visited July 8, 2021) (recording no independent expenditures to date during the 2022 election cycle).

1 channel.¹⁴ The description for the video reads: “At this meeting, Bernie Sanders and others
2 from Our Revolution will lay out some of the next steps we can take as a movement to empower
3 a wave of progressive candidates this November and win the major upcoming fights for the
4 values we share.”¹⁵ At that event, after speaking for thirty-five minutes about his recently
5 concluded presidential campaign, Sanders stated:

6 Now, having said all of that, let me say something else. And that
7 is, tonight, I think the question on the minds of a whole lot of
8 people is, “Okay, we ran a great campaign, we woke up the
9 American people, but where do we go from here?” And that’s
10 kind of what tonight is about. So, tonight, I want to introduce you
11 to a new independent nonprofit organization called “Our
12 Revolution,” which is inspired by the historic Bernie 2016
13 presidential campaign.¹⁶

14 After introducing and praising the organization’s incoming leadership team, Sanders
15 stated, “I will not be directing or controlling Our Revolution, but I have the utmost confidence
16 that this leadership team in the board being assembled shares the progressive values we all hold,
17 and I expect very big things from them and from all of you who join with them to carry the
18 political revolution forward.”¹⁷

19 Among Our Revolution’s ten employees at the time of its launch were at least four
20 former campaign staffers from the 2016 Sanders presidential campaign, including Jeff Weaver,
21 President (former Bernie 2016 Campaign Manager); Shannon Jackson, Executive Director

¹⁴ Bernie Sanders, *Our Revolution Launch Event*, YOUTUBE.COM (Aug. 24, 2016), <https://www.youtube.com/watch?v=Kp4tFcwkhQ> [hereinafter *Our Revolution Launch Event*].

¹⁵ *Id.*

¹⁶ *Id.* at 45:04.

¹⁷ *Id.* at 48:40. The launch event followed news reporting about Sanders’s role in Our Revolution, as well as questions regarding its campaign finance obligations due to its ties to Sanders. *See, e.g.*, Jonathan Karl & Benjamin Siegel, *Bernie Sanders’ New Political Group Raises Campaign Finance Questions*, ABC NEWS (Aug. 19, 2016), <https://abcnews.go.com/Politics/bernie-sanders-political-group-raises-campaign-finance-questions/story?id=41520854> (cited in Compl. ¶ 13 n.9).

1 (former Bernie 2016 Senior Advisor); John Robinson, Operations Director (former Bernie 2016
2 Chief Operating Officer); and Erika Andiola, Political Director (former Bernie 2016 Latino
3 Outreach Coordinator).¹⁸ Jackson and Andiola remained on the Sanders campaign payroll until
4 August 15, 2016, shortly before the launch, and Weaver remained on the payroll until
5 October 31, 2016, more than two months after the launch.¹⁹ Our Revolution's eleven-member
6 Board included three individuals associated with Sanders, including Huck Gutman, Sanders's
7 former Senate Chief of Staff, as well as Deborah Parker and Jim Zogby, who were among
8 Sanders's five appointees to the Democratic National Committee's platform committee in
9 2016.²⁰ The initial board, named at the time Our Revolution was incorporated, was later
10 retroactively replaced with this eleven-member board.²¹

11 News reports from the summer of 2016 contemporaneous with Our Revolution's launch
12 generally suggest that Sanders was involved in the formation of Our Revolution: For instance,
13 an article from *ABC News* refers to Our Revolution as "a new organization formed by [Sanders]
14 to continue his political revolution across the country," and states that Our Revolution arose out
15 of Sanders's interest in "finding a way to use his hard-earned and active email list to support

¹⁸ David Weigel & John Wagner, *Bernie Sanders Launches "Our Revolution" with Electoral Targets—and a Few Critics Left Behind*, WASH. POST (Aug. 24, 2016), <https://www.washingtonpost.com/news/post-politics/wp/2016/08/24/bernie-sanders-launches-our-revolution-with-electoral-targets-and-a-few-critics-left-behind/> (cited in Compl. ¶ 71 n.52).

¹⁹ We did not find records of any payments to Robinson by Bernie 2016 during the 2016 election cycle. See *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00577130&two_year_transaction_period=2016 (last visited July 8, 2021). Press reports contemporaneous with the launch event state that Weaver was approached for his position with Our Revolution by Sanders's wife, Dr. Jane Sanders. See Weigel & Wagner, *supra* note 18.

²⁰ Our Revolution Amended Articles of Incorporation.

²¹ Our Revolution Original Articles of Incorporation; Our Revolution Resp., Ex. B.

1 down-ticket candidates this cycle.”²² One article also indicates that Sanders sent an email
 2 soliciting funds for Our Revolution in August 2016, reportedly writing, “[E]lection days come
 3 and go, but the struggle for economic, social, racial and environmental justice continues.
 4 Together, we built something special and unprecedented through our presidential campaign.
 5 Now, we are going to take the next steps for our political revolution.”²³

6 In 2018, Our Revolution issued a press release celebrating its second anniversary that
 7 began, “Our Revolution, the political entity founded by Sen. Bernie Sanders[,] today announced
 8 unprecedented growth”²⁴ In February 2020, two additional Our Revolution press releases
 9 used identical language,²⁵ and in April 2020, another release included an excerpt from a CNBC
 10 article describing Our Revolution as “[a] group Bernie Sanders founded.”²⁶ In September 2019,
 11 Sanders himself wrote a press release for Our Revolution in which he described what “we have

²² Compl. ¶¶ 23, 35; Karl & Siegel, *supra* note 17. It is unclear whether this was a reference to a list belonging to Sanders personally or his 2016 campaign, and there is no record of Bernie 2016 receiving any funds from Our Revolution for use of its email list or otherwise. The *Washington Post* described Our Revolution as Sanders’s “long-awaited post primary movement,” Weigel & Wagner, *supra* note 18, and one *USA Today* reporter who interviewed Sanders about his post-election plans wrote that Sanders “plans to launch educational and political organizations within the next few weeks to keep his progressive movement alive,” including Our Revolution. Gaudiano, *supra* note 2.

²³ Nicole Gaudiano, *Bernie Sanders Seeks Contributions for “Our Revolution,”* USA TODAY (Aug. 3, 2016), <https://www.usatoday.com/story/news/politics/onpolitics/2016/08/03/bernie-sanders-seeks-contributions-our-revolution/88038338/> (cited in Compl. ¶ 12 n.8).

²⁴ Compl., App’x at 48 (Press Release, Our Revolution, Bernie Sanders-Inspired Group Celebrates 2-Year Anniversary and Boasts a Near 50 Percent Win Rate for Endorsed Candidates, (Aug. 22, 2018)); *see also* David Duhalde, *Our Revolution Failed to Live Up to Its Potential. But the Bernie Movement Needs a Mass Organization Now.*, JACOBIN (Apr. 28, 2020), <https://www.jacobinmag.com/2020/04/our-revolution-bernie-sanders> (Duhalde, former political director for Our Revolution, describes Our Revolution as a group “Sanders created after his first presidential run”).

²⁵ Press Release, Our Revolution, Jim Hightower: Bernie Will Turn Texas Blue! (Feb. 3, 2020), https://medium.com/@our_revolution/texas-joins-the-progressive-movement-with-momentum-e1c55eac3962; Press Release, Our Revolution, Progressive Power in Florida—Not to Be Underestimated (Feb. 4, 2020), https://medium.com/@our_revolution/power-to-the-people-florida-grassroots-takes-off-e7966fee542b.

²⁶ Press Release, Our Revolution, The Fight for Our Future Continues! (Apr. 28, 2020), https://medium.com/@our_revolution/the-fight-for-our-future-continues-37c00ff67902 (quoting Brian Schwartz, *A Group Bernie Sanders Founded is Pushing to Win Him Enough Delegates to Influence the Democrats’ Platform*, CNBC (Apr. 22, 2020), <https://www.cnbc.com/2020/04/22/pro-bernie-sanders-group-pushes-for-delegates-to-influence-democratic-platform.html>).

1 focused on” over the three years of Our Revolution’s operation, and noted that “we have a very,
2 very, very long way to go.”²⁷

3 In February 2019, after Sanders announced his 2020 Presidential candidacy, Nina Turner,
4 then-President and Board Member of Our Revolution, announced that she would be taking a
5 leave of absence as President to serve as Co-Chair of the Sanders campaign.²⁸ The available
6 information regarding her announcement does not address whether she would also leave her
7 position on the Our Revolution Board of Directors; however, she continued to be listed on the
8 Our Revolution website as a Board member until at least November 2019, approximately nine
9 months after joining the 2020 Sanders campaign.²⁹

10 During the 2020 election, between May 2018 and April 2020, Our Revolution spent
11 \$16,668 on 180 ads “related to social issues, elections or politics.”³⁰ Many, but not all,
12 advocated for the nomination and election of Sanders, and others advocated for other progressive
13 candidates and issues. The precise spending on the individual ads is unclear based on the

²⁷ Press Release, Bernie Sanders for Our Revolution, Our Revolution as a Transformative Force in American Political Life (Sept. 20, 2019), https://medium.com/@our_revolution/our-revolution-as-a-transformative-force-in-american-political-life-7bf9e998d015.

²⁸ Comp. ¶ 74; Seth A. Richardson, *Former Ohio Sen. Nina Turner to Serve as Co-Chair of Bernie Sanders Campaign*, CLEVELAND.COM (Feb. 21, 2019), <https://www.cleveland.com/politics/2019/02/former-ohio-sen-nina-turner-to-serve-as-co-chair-of-bernie-sanders-campaign.html> (cited in Compl. ¶ 74 n.56).

²⁹ *About*, OUR REVOLUTION, <https://ourrevolution.com/about/> [<https://web.archive.org/web/20191107053752/https://ourrevolution.com/about/>] (archived Nov. 7, 2019).

³⁰ Compl. ¶¶ 29-30; Facebook Ad Library, Our Revolution, https://www.facebook.com/ads/library/?active_status=all&ad_type=all&country=US&view_all_page_id=1194419550610259&search_type=page&media_type=all (last visited July 8, 2021) [hereinafter Facebook Ad Library]. None of the ads was reported as an independent expenditure, and Our Revolution has not placed ads on Facebook since April 2020. Though Our Revolution has spent an aggregate total of \$16,668 on such ads, the available information does not indicate that Our Revolution spent \$10,000 or more on any given election, and as such we do not make any recommendations with respect to Our Revolution’s reporting obligations. Our Revolution has also claimed to engage in extensive grass roots advocacy and voter engagement efforts during the 2020 election cycle. *See, e.g.*, Email from Larry Cohen, Board Chair, Our Revolution, to supporters (Jan. 6, 2020, 3:28 AM), <https://politicalemails.org/messages/88636> (cited in Compl. ¶ 33 n.37).

1 information available in the Facebook Ad Library.³¹ These ads contained language such as: “If
2 Bernie is going to win, he needs the support of each of us. Chip in today,” and “Pitch in to help
3 Our Revolution win with progressive candidates in November.”³² Each of the ads directed
4 viewers to Our Revolution’s ActBlue contribution page, which required that the contributor be at
5 least eighteen years of age, and affirm that the “contribution is made from my own funds” and
6 that “the funds are not being provided by any other person or entity,” but permitted the use of
7 “funds of an authorizing corporation.”³³ The contribution page did not address any amount
8 limitations, nor source prohibitions other than contributions made with the funds of another.³⁴

9 The Complaint alleges that Our Revolution was EFMC’d by Sanders, and as a result,
10 violated the soft money provision by soliciting, receiving, and spending funds not subject to the
11 limitations and prohibitions of the Act.³⁵ By implication, the Complaint also alleges that Sanders
12 violated the soft money provision by soliciting non-federal funds for Our Revolution.³⁶ Both
13 Responses acknowledge that Sanders “inspired” the creation of Our Revolution.³⁷ However, Our
14 Revolution asserts that it was “established and has continued to operate independently” of
15 Sanders, and, further, that besides his initial activities relating to the group’s launch, Sanders
16 “has not been otherwise materially involved with Our Revolution” other than “an occasional

³¹ Facebook Ad Library.

³² *Id.*

³³ Compl. ¶ 31 (including image of Our Revolution’s ActBlue contribution page).

³⁴ *Id.* ¶¶ 29-30; Facebook Ad Library.

³⁵ Compl. ¶¶ 67-92.

³⁶ *Id.*

³⁷ Our Revolution Resp. at 2 n.5; Sanders Resp. at 1 (Mar. 19, 2020).

1 show of support.”³⁸ Sanders states that he did not establish Our Revolution, and avers that he
 2 has never directed or controlled the organization.”³⁹

3 III. LEGAL ANALYSIS

4 Under section 30125(e) of the Act, a candidate, individual holding Federal office, their
 5 agent, or an entity directly or indirectly EFMC'd by or acting on behalf of one or more
 6 candidates or individuals holding office, shall not “solicit, receive, direct, transfer, or spend
 7 funds in connection with an election,” including funds for any federal election activity, “unless
 8 the funds are subject to the limitations, prohibitions, and reporting requirements of the Act.”⁴⁰
 9 This provision, among others enacted as part of the Bipartisan Campaign Reform Act of 2002,
 10 was designed to “plug the soft-money loophole.”⁴¹

11 The Commission has found that solicitations not explicitly limited to funds that comply
 12 with the Act may constitute solicitations of soft money.⁴² The Act and Commission regulations
 13 prohibit any candidate or political committee from knowingly accepting or receiving
 14 contributions from any corporation.⁴³ Further, a contribution to any candidate or his authorized

³⁸ Our Revolution Resp. at 2 & n.7. For instance, Sanders joined a September 2019 “organization-wide conference call celebrating Our Revolution’s third anniversary” during which he thanked participants for their work with the organization. See Compl. ¶ 36; Brian Slodysko, *Shadow Group Provides Sanders Super PAC Support He Scorns*, ASSOC. PRESS (Jan. 7, 2020), <https://apnews.com/article/bernie-sanders-iowa-us-news-elections-political-action-committees-345bbd1af529cfb1e41305fa3ab1e604> (cited in Comp. ¶ 35 n.39).

³⁹ Sanders Resp. at 1-2.

⁴⁰ 52 U.S.C. § 30125(e); 11 C.F.R. §§ 300.60-.61.

⁴¹ *McConnell v. FEC*, 540 U.S. 93, 133 (2003).

⁴² Factual & Legal Analysis (“F&LA”) at 3, MUR 6841 (Friends for Reid, *et al.*). There, the Commission concluded that an email sent by a candidate on behalf of his authorized committee which contained a solicitation but “did not inform recipients that Reid was only asking for contributions that complied with the Act,” violated 52 U.S.C. § 30125(e)(1)(B).” *Id.* The Commission ultimately dismissed this violation as a matter of prosecutorial discretion due to the “corrective actions taken by the Reid Committee and the modest amount in violation.” *Id.*

⁴³ 52 U.S.C. §§ 30116(f), 30118(a).

1 committee was limited to \$2,600 per election for the 2016 election cycle, \$2,700 per election for
2 the 2018 election cycle, and \$2,800 for the 2020 election cycle.⁴⁴

3 The Commission's regulations define "solicit" broadly as "to ask, request, or recommend,
4 explicitly or implicitly, that another person make a contribution, donation, transfer of funds, or
5 otherwise provide anything of value."⁴⁵ Solicitations include "[a] communication that provides a
6 method of making a contribution or donation," and "[a] communication that identifies a Web
7 address where the Web page displayed is specifically dedicated to facilitating the making of a
8 contribution or donation."⁴⁶

9 As explained below, it appears that Our Revolution may have solicited and received soft
10 money, based on information in the donation pages attached to Our Revolution's online political
11 advertising and in the group's tax filings. However, the available information, which is limited
12 to Sanders's relations to and connections with individuals who formed and controlled Our
13 Revolution, is insufficient to conclude that Sanders EFMC'd the organization. Accordingly, the
14 current record does not afford a reasonable basis to conclude that Our Revolution or Sanders
15 violated section 30125(e) of the Act.

16 **A. The Available Information Suggests that Our Revolution Likely Solicited**
17 **and Received Soft Money**

18 The available information suggests that Our Revolution may have solicited soft money.
19 During the 2020 election, Our Revolution placed ads on Facebook that supported Sanders and
20 asked for donations. Our Revolution's ActBlue page did not address or limit the type or amount

⁴⁴ *See id.* § 30116(a)(1)(A); 11 C.F.R. § 110.1(b)(1).

⁴⁵ 11 C.F.R. § 300.2(m); *see also* Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 Fed. Reg. 49,064, 49,086 (July 29, 2002) (final rulemaking defining "to solicit" as to "ask another person to make a contribution or donation, or transfer of funds, or to provide anything of value, including through a conduit or intermediary").

⁴⁶ 11 C.F.R. § 300.2(m)(1)(i)-(iii).

1 of donations it intended to solicit.⁴⁷ Moreover, the page appeared to approve of donations
2 coming from “an authorizing corporation.”⁴⁸ In its Response, Our Revolution provided no
3 specific information about the amounts or sources of its donations. However, Our Revolution’s
4 tax filings indicate that it has received at least nineteen contributions of \$5,000 or greater,
5 including at least four in amounts greater than \$100,000.⁴⁹ Our Revolution asserts in its
6 Response, without providing any specifics, that it “has never spent any funds ‘in connection with
7 an election’ that came from individuals who contributed to Our Revolution in excess of \$5,000
8 per year.”⁵⁰

9 **B. There is Insufficient Information to Conclude that Our Revolution was**
10 **EFMC’d by Sanders**

11 To determine whether a candidate or individual holding federal office directly or
12 indirectly EFMC’d a given entity, the Commission shall consider a non-exhaustive list of ten
13 factors set forth in 11 C.F.R. § 300.2(c)(2)(i)-(x). These factors “must be examined in the
14 context of the overall relationship between [the candidate or officeholder] and the entity.”⁵¹ For
15 the purposes of this analysis, an “agent” of a candidate or officeholder is “any person who has

⁴⁷ Compl. ¶ 31 (including image of Our Revolution’s ActBlue contribution page).

⁴⁸ *Id.*

⁴⁹ IRS Form 990, Our Revolution 2016 Return of Organization Exempt from Income Tax, Sched. B (Apr. 27, 2018) (recording three contributions from unidentified contributors totaling \$5,000 or more: \$7,500, \$5,000, and \$300,000); IRS Form 990, Our Revolution 2017 Return of Organization Exempt from Income Tax, Sched. B (Nov. 16, 2018) (recording seven contributions from unidentified contributors totaling \$5,000 or more: \$100,000, \$25,000, \$11,187, \$6,000, \$5,500, and two \$5,000 contributions); IRS Form 990, Our Revolution 2018 Return of Organization Exempt from Income Tax, Sched. B (Nov. 11, 2019) (recording one contribution from an unidentified contributor of \$218,309).

⁵⁰ Our Revolution Resp. at 1 n.7.

⁵¹ 11 C.F.R. § 300.2(c)(2).

1 actual authority, either express or implied,” “to solicit, receive, direct, transfer, or spend funds in
 2 connection with any election.”⁵²

3 As applied to Our Revolution and Sanders, the most probative areas of inquiry include
 4 the following:

- 5 • Whether Sanders or his agents had an “active or significant role” in the formation of
 6 Our Revolution;⁵³
- 7 • Whether Sanders, through his 2016 fundraising email sent on behalf Our Revolution,
 8 “cause[d] or arrange[d] for funds in a significant amount or on an ongoing basis to be
 9 provided to”⁵⁴ Our Revolution;
- 10 • Whether the transition of officers and employees from the 2016 Sanders presidential
 11 campaign to Our Revolution “indicates the creation of a successor entity;”⁵⁵
- 12 • Whether Sanders — through Nina Turner, the Co-Chair of his 2020 presidential
 13 campaign who, according to Our Revolution’s website, simultaneously was a member
 14 of Our Revolution’s Board of Directors; or through Jeff Weaver, the Campaign
 15 Manager of the 2016 Sanders campaign who remained on the campaign payroll for
 16 two months after joining Our Revolution — had the “authority or ability to direct or
 17 participate in the governance”⁵⁶ of Our Revolution;
- 18 • Whether Sanders, through Turner or Weaver, also had the authority to “hire, appoint,
 19 demote, or otherwise control the officers, or other decision-making employees or
 20 members”⁵⁷ of Our Revolution; and

⁵² *Id.* § 300.2(b)(3). An agent’s actual authority is created by manifestations of consent (express or implied) by the principal to the agent about the agent’s authority to act on the principal’s behalf. *See* Definitions of “Agent” for BCRA Regulations on Non-Federal Funds or Soft Money and Coordinated and Independent Expenditures, 71 Fed. Reg. 4975, 4975-76 (Jan. 31, 2006); Advisory Opinion (“AO”) 2007-05 at 3 (Iverson).

⁵³ 11 C.F.R. § 300.2(c)(2)(ix).

⁵⁴ *Id.* § 300.2(c)(2)(viii).

⁵⁵ *Id.* § 300.2(c)(2)(vi). Although this factor is phrased in terms of whether the “sponsor” has any members, officers or employees who were formerly members, officers or employees of the allegedly sponsored entity, the reference to “creation of a successor entity” indicates that a flow of members, officers or employees in the other direction — *i.e.*, from the sponsor to the sponsored entity — is also highly relevant to the determination. *See* First Gen. Counsel’s Rpt. at 11 n.12 & Certification (Jan. 7, 2003) MUR 5343 (Democratic Senate Majority Fund, *et al.*) (approving FGCR’s recommendations).

⁵⁶ 11 C.F.R. § 300.2(c)(2)(ii).

⁵⁷ *Id.* § 300.2(c)(2)(iii).

- 1 • Whether, via Turner or Weaver, there was “common or overlapping membership”
 2 between the Sanders 2020 presidential campaign and Our Revolution that “indicates a
 3 formal or ongoing relationship”⁵⁸ between the two entities.

4 Examining “the context of the overall relationship”⁵⁹ between Sanders and Our
 5 Revolution, though the available information supports the conclusion that Our Revolution was
 6 inspired and perhaps influenced by Sanders and his political agenda, it does not provide a
 7 sufficient basis to infer that he EFMC'd Our Revolution.

8 1. The Available Information Does Not Indicate that Sanders Established
 9 Our Revolution

10 The relevant available information does not indicate that Sanders or his agents “played an
 11 active or significant role” in the formation of Our Revolution.⁶⁰ In Advisory Opinion 2003-12
 12 (Flake), the Commission concluded that a candidate and officeholder established an entity where
 13 he was among the individuals who formed the organization, signed the formation documents,
 14 was the organization's initial Chairman, and an individual who also served as his part-time
 15 campaign consultant aided the organization with its state filings and opened its bank account.⁶¹
 16 There is no indication that Sanders or anyone acting at his direction participated in any such

⁵⁸ *Id.* § 300.2(c)(2)(v).

⁵⁹ *Id.* § 300.2(c)(2).

⁶⁰ Our Revolution argues that, “[e]ven if one were to erroneously conclude that Our Revolution was initially established by the Senator, the ‘soft money’ restrictions still would not apply to Our Revolution because the Senator has not, and does not, finance, maintain or control Our Revolution and has not been otherwise materially involved with Our Revolution over the last three and a half years” (citing 11 C.F.R. § 300.2(c)(4)). Section 300.2(c)(4) provides that, if a sponsor established an entity within the mean of the soft money provision, he or she may request an advisory opinion of the Commission to determine that the relationship between the sponsor and the entity has been severed, and that such request “must demonstrate that all material connections between the sponsor and the entity have been severed for two years.” Though that provision is not applicable in the context of this enforcement matter, as Sanders has not sought any such advisory opinion, it is notable that the factual record does not indicate any “material connections” between Sanders and Our Revolution since its launch in 2016.

⁶¹ AO 2003-12 at 7 (Flake). The Opinion continues: “Having concluded that Representative Flake established STMP, it is not necessary to determine whether he will finance, maintain or control STMP. As such, the Commission concludes that STMP is an entity ‘established, financed, maintained or controlled by’ Representative Flake.” *Id.*

1 activities with respect to Our Revolution. The available information does indicate that one of the
2 individuals whose names appear on the Articles of Incorporation, Michael Briggs, was
3 apparently paid by Sanders or his political campaign at the time Our Revolution was
4 incorporated; it is unclear, however, whether Briggs was an “agent” of Sanders or his campaign
5 within the meaning of the Commission regulations.⁶² Moreover, given that the initial board was
6 later retroactively replaced with a new eleven member board in September 2016, it is unclear
7 what involvement Briggs might have had in establishing Our Revolution. He did not sign its
8 Articles of Incorporation as the incorporator, nor is he listed on the amended board.

9 There is no information indicating that any other individuals involved in Our
10 Revolution’s incorporation were otherwise acting as agents for Sanders when they formed the
11 organization. Though several of Our Revolution’s initial and new board members were linked to
12 Sanders, such as his wife and former Senate Chief of Staff, the only information available to
13 indicate that Sanders might have been in a position to direct their activities is circumstantial by
14 virtue of these relationships.⁶³ More generally, there is no information that any other individuals
15 involved in Our Revolution’s incorporation were otherwise acting as Sanders’s agent when they
16 formed the organization. In sum, other than Sanders’s relationships with and connections to
17 individuals involved in forming Our Revolution, there is nothing additional to suggest that

⁶² Briggs appears to have served as Sanders’s communications director during the 2016 campaign. *See* John Wagner, *In 24 Hours After Iowa Caucuses, Sanders Donors Pony Up \$3 Million, Aides Say*, WASH. POST (Feb. 2, 2016), <https://www.washingtonpost.com/news/post-politics/wp/2016/02/02/in-24-hours-after-iowa-caucuses-sanders-donors-pony-up-3-million-aides-say/>. The available information does not indicate whether Briggs had the authority to “solicit, receive, direct, transfer, or spend funds in connection with any election.” 11 C.F.R. § 300.2(b)(3).

⁶³ *Supra* notes 6-7 and accompanying text (describing the original Our Revolution board and founders as well as their connections to Sanders); *supra* note 8 and accompanying text (listing amended board and their connections to Sanders).

1 Sanders personally had a role in forming the group or directed those who did.⁶⁴ This
2 information, without more, does not sufficiently indicate that there is reason to believe that
3 Sanders established Our Revolution within the meaning of the Act or Commission regulations.

4 Though Our Revolution's website and four press releases from Our Revolution's five
5 years of operations state that Our Revolution was "founded" by Sanders,⁶⁵ Respondents contend
6 that these releases refer to the fact that Sanders and his 2016 presidential campaign inspired the
7 formation of Our Revolution. Beyond these statements, there is no other information
8 corroborating the notion that Sanders himself took an active or significant role in the group's
9 establishment. None of the news articles which purport to state that Sanders "founded" Our
10 Revolution contain a direct quote from Sanders or contain any descriptions of his activities.

11 In their Responses, both Sanders and Our Revolution deny that Sanders established Our
12 Revolution.⁶⁶ Further, though Our Revolution's name is suggestive of a connection to Sanders

⁶⁴ Cf. AO 2003-12 at 7; First Gen. Counsel's Rpt. at 18-23, MURs 7370 & 7496 (New Republican PAC, *et al.*) (recommending the Commission find reason to believe that a group was EFMC'd by a candidate where the candidate served as Chair of the organization and hired and directed its employees; the Commission ultimately split on the report's recommendations and closed the file); First Gen. Counsel's Rpt. at 14-29,

⁶⁵ *Our Story*, OUR REVOLUTION, <https://ourevolution.com/ourstory/> (last visited July 8, 2021) ("Bernie [Sanders] founded Our Revolution to be a transformative force in American political life."); Compl., App'x at 48 (Press Release, Our Revolution, Bernie Sanders-Inspired Group Celebrates 2-Year Anniversary and Boasts a Near 50 Percent Win Rate for Endorsed Candidates, (Aug. 22, 2018)); Press Release, Our Revolution, Jim Hightower: Bernie Will Turn Texas Blue! (Feb. 3, 2020), https://medium.com/@our_revolution/texas-joins-the-progressive-movement-with-momentum-e1c55eac3962; Press Release, Our Revolution, Progressive Power in Florida—Not to Be Underestimated (Feb. 4, 2020), https://medium.com/@our_revolution/power-to-the-people-florida-grassroots-takes-off-e7966fee542b; Press Release, Our Revolution, The Revolution Report: 6-5-21 (June 5, 2021), <https://ourevolution.com/2021/06/05/the-revolution-report-6-5-21/>.

⁶⁶ Our Revolution Resp. at 2 ("Although Common Cause and Mr. Ryan allege that Our Revolution was *established* by Senator Sanders, the fact is that Our Revolution was established and has continued to operate independently of the Senator."); Sanders Resp. at 1-2 ("Our Revolution was not established by Senator Sanders. Although, undoubtedly, Our Revolution was '*inspired*' by Bernie Sanders and his historic presidential campaign,' Senator Sanders made it clear during the organization's August 24, 2016, official launch event that Our Revolution is 'a new independent nonprofit organization . . . inspired by the historic Bernie 2016 presidential campaign' and the Senator explicitly stated that he would not be 'directing or controlling' the organization.").

1 due to his publication of a book of the same title several months after Our Revolution was
2 formed, the forthcoming book's title was publicized prior to Our Revolution's incorporation,⁶⁷
3 indicating that the organization's name may have been inspired by Sanders based on publicly
4 available information.⁶⁸ And even if it were assumed that Sanders was responsible for naming
5 Our Revolution, this itself is not sufficient to show that Sanders "established" the organization.⁶⁹

6 There is no doubt that Sanders was the key influence behind Our Revolution. But the
7 current record does not indicate that Sanders played an active or significant role in the actual
8 process by which the group was created.⁷⁰ Based on this information, there does not appear to
9 be sufficient indicia that Sanders established Our Revolution under the meaning of the Act and
10 Commission regulations.

11 2. The Available Information Does Not Indicate that Sanders Financed Our
12 Revolution

13 With respect to whether Sanders financed Our Revolution, the information cited in the
14 Complaint indicates that Sanders sent at least one early fundraising email on behalf of Our

⁶⁷ See Damien Willis, *Sanders Stops in Vado, Addresses Needs of Rural New Mexicans*, LAS CRUCES SUN NEWS (May 21, 2016), <https://www.lcsun-news.com/story/news/politics/2016/05/21/sanders-addresses-needs-rural-new-mexicans/84725398/> (including a photo of Sanders captioned, "Presidential candidate Bernie Sanders spoke in May in Vado, N.M. Sanders' book 'Our Revolution: A Future to Believe In' is scheduled to come out Nov. 15, a week after Election Day").

⁶⁸ The Commission has previously noted that an organization's name can be informative when conducting the EFMC analysis. See F&LA at 7, MUR 6957 (Isadore Hall III) (noting that the name of a committee titled "Hall's Ballot Measure Committee" indicated that Hall controlled it).

⁶⁹ Additionally, the timing of the organization's founding (after the conclusion of Sanders's candidacy) supports the claim that the organization was designed to continue the messages adopted by Sanders's campaign rather than as a vessel through which to funnel soft money to any candidate or campaign, the stated purpose of the EFMC regulation. See *McConnell v. FEC*, 540 U.S. 93, 133 (2003).

⁷⁰ See AO 2004-33 at 9 (Ripon) (finding that, where members of Congress served in an honorary and advisory capacity on an organization's Advisory Board, the organization was not EFMC'd by those members); see also First Gen. Counsel's Rpt. at 8-9, MUR 7413 (Jonathan Jenkins for Senate, *et al.*) (recommending that the Commission take no action where a candidate appeared to be a group's primary representative at its launch, and continued to be listed as the registered agent of the group, because it was not clear to what extent he financed, maintained, or controlled the group during its short period of activity). The Commission split on the recommendations in that matter and closed the file. Certification, MUR 7413 (May 27, 2021); Certification, MUR 7413 (June 14, 2021).

1 Revolution, and that Our Revolution may have had access to the list of emails used by the
 2 Sanders campaign during the 2016 election.⁷¹ There is no evidence indicating how much
 3 Sanders raised for Our Revolution, nor whether these funds or the value of Sanders's email list
 4 constituted a "significant amount."⁷² And even if Sanders did raise funds for Our Revolution in
 5 connection with these early activities, there is no indication that funds were provided by him to
 6 Our Revolution on an "ongoing basis."⁷³ Regarding Sanders's use of his official YouTube
 7 Channel to stream the launch event, the Commission regulations exempt "uncompensated
 8 internet activity by individuals," including the "use of equipment or services . . . regardless of
 9 who owns the equipment and services."⁷⁴ Although the available information is limited with
 10 respect to the expenses associated with the Our Revolution launch event, this exemption appears
 11 to cover any value associated with Sanders's use of his YouTube channel. In sum, Sanders does
 12 not appear to have caused or arranged for funds in a significant amount or on an ongoing basis to
 13 be provided to Our Revolution, and as a result, does not appear to have financed it.

14 3. The Existence of Overlapping and Subsequent Employees Does Not
 15 Establish that Sanders Controlled Our Revolution

16 While subsequent employer/employee relationships may indicate that a candidate or
 17 officeholder controls an organization, the Commission has previously found that "more than the
 18 mere fact of such informal, ongoing relationships . . . is necessary," and that "while former
 19 employers and colleagues may exercise influence, *influence is not necessarily control.*"⁷⁵ The

⁷¹ See *supra* Part II and notes 22 & 23.

⁷² 11 C.F.R. § 300.2(c)(2)(vii).

⁷³ *Id.* § 300.2(c)(2)(viii).

⁷⁴ *Id.* § 100.94(a).

⁷⁵ First Gen. Counsel's Rpt. at 18 & Certification (Apr. 3, 2003), MUR 5338 (The Leadership Forum, *et al.*) (emphasis added) (continuing, "In any given instance, these relationships may fall somewhere along a spectrum. At

1 information available here — the potential overlap of one Our Revolution board member with
2 the 2020 Sanders campaign for a several-month period; the overlap of the Our Revolution
3 inaugural President and 2016 Sanders campaign payroll for a two-month period; and the
4 movement of several 2016 Sanders campaign staffers to Our Revolution — does not show that
5 Sanders, through these individuals, had the authority or ability to direct or participate in the
6 governance of Our Revolution; that Sanders was able to hire, appoint, demote, or control the
7 organization's officers or other decision-making employees or members; or that there was a
8 “formal and ongoing relationship” between Our Revolution and Sanders.

9 As Co-Chair of Sanders's 2020 campaign, Nina Turner was an agent of Sanders and his
10 campaign while apparently simultaneously serving as a member of the Our Revolution Board of
11 Directors.⁷⁶ However, news reports state that she stepped down from her role as President at Our
12 Revolution before joining the 2020 Sanders campaign, diminishing the likelihood of a formal
13 relationship between the two organizations.⁷⁷ The available documents covering her
14 announcement are unclear as to whether she similarly stepped down from her role on Our
15 Revolution's Board. The Our Revolution website listed her name as a Board member until
16 sometime between November 2019 and January 2020, at least nine months after her move to the

one end of the spectrum is a complete ‘firewall’ of no contacts whatsoever. . . . [A]t the other end of the spectrum[] is influence by one group upon the other that is so regular and pervasive that it amounts to control . . .”); *see also* F&LA at 8, MUR 6280 (Howard L. Berman) (quoting MUR 5338 for the same proposition). Nor does the fact that Sanders penned a single press release for Our Revolution during its four years of activity provide any indicia of control. *See* Press Release, Bernie Sanders for Our Revolution, Our Revolution as a Transformative Force in American Political Life (Sept. 20, 2019), https://medium.com/@our_revolution/our-revolution-as-a-transformative-force-in-american-political-life-7bf9e998d015.

⁷⁶ *See* 11 C.F.R. § 300.2(b)(3) (“[A]gent means any person who has actual authority, either express or implied, to engage in any of the following activities on behalf of . . . an individual who is a Federal candidate or an individual holding Federal office[:] to solicit, receive, direct, transfer, or spend funds in connection with any election.”); Compl. ¶ 74; *About*, OUR REVOLUTION, <https://ourrevolution.com/about/> [<https://web.archive.org/web/20191107053752/https://ourrevolution.com/about/>] (archived Nov. 7, 2019).

⁷⁷ *See* Richardson, *supra* note 28.

1 Sanders campaign.⁷⁸ Critically, however, even assuming that Turner did remain on the Board
2 during this time, there is no indication that, in light of the ten other board member positions, she
3 would be able to effectively control the organization on Sanders's behalf.⁷⁹

4 Seven other individuals who had previously been associated with Sanders and his
5 campaigns subsequently joined the staff of Our Revolution.⁸⁰ In a previous matter, the
6 Commission concluded that "prior employment relationships do not, without more, establish that
7 an entity is controlled by its employees' prior employer."⁸¹ Additional indications of control do
8 not appear to be present here. The available information does not indicate that Sanders, through
9 these former employees, controlled Our Revolution. Three individuals who subsequently
10 worked for Our Revolution continued to be paid by the Sanders campaign through August 2016,
11 with two of them last paid prior to the official launch of Our Revolution and, in Weaver's case,
12 through two months into his role at Our Revolution. As both Sanders and Our Revolution
13 acknowledge,⁸² Our Revolution was inspired by Sanders's campaign, and thus it is not surprising
14 that individuals who worked for the campaign would go on to work for Our Revolution.

⁷⁸ Compare *About*, OUR REVOLUTION, <https://ourrevolution.com/about/> [<https://web.archive.org/web/20191107053752/https://ourrevolution.com/about/>] (archived Nov. 7, 2019), with *Our Board*, OUR REVOLUTION, <https://ourrevolution.com/about/> [<https://web.archive.org/web/20200119122808/https://ourrevolution.com/about/>] (archived Jan. 19, 2020).

⁷⁹ But see First Gen. Counsel's Rpt. at 10 -12, MUR 6062 (Harry Truman Fund, *et al.*) (recommending that the Commission determine an entity was EFMC'd, on the basis of overlapping officers where an individual served as treasurer for both organizations, in concert with additional information such as a similar pattern of receipts and disbursements); Certification, MUR 6062 (indicating split Commission vote) (Apr. 21, 2009); First Gen. Counsel's Rpt. at 18-23, MURs 7370 & 7496 (New Republican PAC, *et al.*) (recommending the Commission find reason to believe that a group was EFMC'd by a candidate where the candidate served as chair of the organization and hired and directed its employees); Certification (May 28, 2021), MURs 7370 & 7496 (indicating Commission split on recommendations); Certification (June 14, 2021), MURs 7370 & 7496 (same, and the Commission closed the file).

⁸⁰ See *supra* notes 18-21 and accompanying text.

⁸¹ See First Gen. Counsel's Rpt. at 25 & Certification (Jan. 7, 2003), MUR 5343 (Democratic Senate Majority Fund, *et al.*) (adopted by the Commission).

⁸² Our Revolution Resp. at 1 n.5; Sanders Resp. at 1.

1 However, as was the case in a prior matter, “in the absence of information that [the former
2 campaign staffers] continue[d] to receive instructions or directions from [Sanders], we cannot
3 rely solely on . . . prior association . . . to establish an ongoing relationship.”⁸³

4 Further, the available information shows that Sanders spoke at the launch event for Our
5 Revolution, held in his home state of Vermont and live-streamed from his official YouTube
6 channel, where he framed Our Revolution’s work and purpose as a continuation of the agenda
7 promoted by his 2016 presidential campaign.⁸⁴ However, he also said that he had the “utmost
8 confidence that this leadership team in the board being assembled” and that “I expect very big
9 things from them,”⁸⁵ and specifically stated that he would not be “directing or controlling Our
10 Revolution.”⁸⁶

11 Regarding the other factors that could indicate that Sanders controlled Our Revolution,
12 there is no information presented by the Complaint, and we are aware of none, indicating that
13 Sanders owned or owns stock in Our Revolution, or that he has the authority under Our
14 Revolution’s bylaws to govern the organization’s activities:⁸⁷ Sanders’s statement that he did
15 and would not “direct[] or control[] Our Revolution”⁸⁸ is supported by the available information.

⁸³ See First Gen. Counsel’s Rpt. at 12 & Certification (Jan. 7, 2003), MUR 5343 (Democratic Senate Majority Fund, *et al.*) (adopted by the Commission).

⁸⁴ *E.g.*, Our Revolution Launch Event at 45:30 (“Now, having said all of that, let me say something else: and that is, tonight, I think the question on the minds of a whole lot of people is, ‘Okay, we ran a great campaign, we woke up the American people, but where do we go from here?’ And that’s kind of what tonight is about, so tonight I want to introduce you to a new independent nonprofit organization called ‘Our Revolution,’ which is inspired by the historic Bernie 2016 presidential campaign.”).

⁸⁵ *Id.* at 48:40.

⁸⁶ *Id.*

⁸⁷ See 11 C.F.R. § 300.2(c)(2)(i)-(ii).

⁸⁸ Our Revolution Launch Event at 48:40.

1 In sum, evaluating the overall context of the available information, there are insufficient indicia
2 to support a conclusion that Sanders controls Our Revolution.

3 * * *

4 Because there is an insufficient basis to infer that Our Revolution was EFMC'd by a
5 candidate or federal officeholder, we recommend that the Commission dismiss the allegations
6 that Our Revolution violated 52 U.S.C. § 30125(e)(1) and 11 C.F.R. § 300.61 by soliciting,
7 receiving, and spending soft money. Consequently, we also recommend that the Commission
8 dismiss the allegation that Sanders violated 52 U.S.C. § 30125(e)(1) and 11 C.F.R. § 300.61 by
9 soliciting soft money for an organization he EFMC'd.

10 **IV. RECOMMENDATIONS**

- 11 1. Dismiss the allegation that Our Revolution violated 52 U.S.C. § 30125(e)(1) and
12 11 C.F.R. § 300.61 by accepting and spending soft money contributions as an
13 organization established, financed, maintained, or controlled by a federal
14 candidate or officeholder;
- 15 2. Dismiss the allegation that Bernard Sanders violated 52 U.S.C. § 30125(e)(1) and
16 11 C.F.R. § 300.61 by soliciting soft money contributions on behalf of an
17 organization he established, financed, maintained, or controlled;
- 18 3. Approve the attached Factual and Legal Analysis;
- 19 4. Approve the appropriate letters; and

1 5. Close the file.

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July 8, 2021

Date

Lisa J. Stevenson
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Charles Kitcher
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Justine A. di Giovanni

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Attachment:
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

Respondents: Our Revolution
Bernard Sanders

MUR: 7683

I. INTRODUCTION

This matter was generated by a Complaint filed with the Federal Election Commission alleging that Senator Bernard “Bernie” Sanders established, financed, maintained, or controlled (“EFMC’d”) Our Revolution, a 501(c)(4) organization, and that Our Revolution, as an entity EFMC’d by a federal candidate or officeholder, impermissibly solicited, received, and spent non-federal funds (*i.e.*, “soft money”) in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”). Respondents deny the allegations, arguing that Our Revolution was inspired but not established by Sanders, and that it has continued to operate independently of him.

Based on the available information, it appears that the creation of Our Revolution was influenced by Sanders, that Sanders had some involvement in Our Revolution’s initial launch activities, and that several people who worked for Sanders’s political campaigns either went on to work for Our Revolution or left Our Revolution to work for Sanders, but the available factual record does not indicate that Sanders EFMC’d Our Revolution within the meaning of the Act and Commission regulations. Though Our Revolution appears to have solicited, received, and spent funds that were not subject to the limitations and source prohibitions of the Act, because there is an insufficient basis to infer that it was EFMC’d by a federal candidate or officeholder, the Commission dismisses the allegation that Our Revolution violated 52 U.S.C. § 30125(e)(1) and 11 C.F.R. § 300.61 by impermissibly soliciting, receiving, and spending soft money. The

1 Commission also dismisses the allegation that Sanders violated 52 U.S.C. § 30125(e)(1) and
2 11 C.F.R. § 300.61 by soliciting soft money for an organization that he EFMC'd.

3 **II. FACTUAL BACKGROUND**

4 Bernie Sanders has been a U.S. Senator from Vermont since 2007, and he ran for
5 president in 2016 and 2020.¹ Following his defeat in the 2016 presidential election, Sanders
6 reportedly engaged in various activities to continue advocating for causes and issues highlighted
7 in his campaign. A *USA Today* article from July 2016 cited in the Complaint states that Sanders
8 had “plans to launch educational and political organizations . . . to keep his progressive
9 movement alive,” and the article names Our Revolution as one such group.² The article quotes
10 Sanders as stating, “[i]f we are successful, what it will mean is that the progressive message and
11 the issues that I campaigned on will be increasingly spread throughout this country.”³ On
12 November 16, 2016, Sanders published a book entitled *Our Revolution: A Future to Believe In*.⁴
13 The book shares his “experiences from the campaign trail” and “outlines a progressive economic,

¹ Bernard Sanders, Statement of Candidacy (Apr. 30, 2015); Bernard Sanders, Statement of Candidacy (Feb. 19, 2019); *Sanders, Bernard, About this Candidate*, FEC.GOV, <https://www.fec.gov/data/candidate/S4VT00033/?tab=about-candidate> (last visited June 15, 2021).

² Nicole Gaudiano, *Bernie Sanders Will Launch Organizations to Spread Progressive Message*, USA TODAY (July 15, 2016), <https://www.usatoday.com/story/news/politics/elections/2016/07/15/bernie-sanders-progressive-message/87073052/> (cited in Compl. ¶ 69 n.48 (Jan. 22, 2020)).

³ *Id.* Sanders continued, “The goal here is to do what I think the Democratic establishment has not been very effective in doing. And that is at the grass-roots level, encourage people to get involved, give them the tools they need to win, [and] help them financially.” *Id.*

⁴ Compl. ¶ 20; Bernie Sanders, *Our Revolution: A Future to Believe In*, AMAZON.COM, <https://www.amazon.com/Our-Revolution-Believe-Bernie-Sanders/dp/1250132924> (last visited June 15, 2021) [hereinafter *Our Revolution Amazon Listing*] (cited in Compl. ¶ 20 n.17).

1 environmental, racial, and social justice agenda,” stating that “[t]he campaign may be over, but
 2 the struggle goes on.”⁵

3 Our Revolution is a 501(c)(4) nonprofit organization that was incorporated on July 15,
 4 2016.⁶ Of its five original Board members at the time of its incorporation, one was Sanders’s
 5 wife, Jane Sanders, and another was Michael Briggs, who served as a political consultant for
 6 Sanders’s 2016 presidential campaign and received campaign payroll disbursements from
 7 Sanders’s authorized committee, Bernie 2016, through August 15, 2016.⁷ The Articles of
 8 Incorporation were amended *nunc pro tunc* in September 2016, and none of the amended eleven-
 9 member Board were or had been paid by Bernie 2016.⁸

10 On its website, Our Revolution describes its mission as “building a down-ballot bench of
 11 progressive champions from city halls to the halls of Congress.”⁹ At one time, a drawing of

⁵ Our Revolution Amazon Listing.

⁶ IRS Form 990, Our Revolution 2016 Return of Organization Exempt from Income Tax (Apr. 27, 2018); Our Revolution Resp. at 1 (Mar. 19, 2020); Our Revolution Resp., Ex. A (Our Revolution, Articles of Incorporation of Domestic Nonprofit Corporation [hereinafter Our Revolution Original Articles of Incorporation] (July 15, 2016)). The incorporator listed on the original Articles of Incorporation is Nicholas J. Gehrig, while the original Board of Directors included Michael Briggs, Richard Sugarman, Jane Sanders, Brad Deutsch, and Huck Gutman. Our Revolution Original Articles of Incorporation.

⁷ See *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00577130&recipient_name=Michael+Briggs&two_year_transaction_period=2016 (last visited June 15, 2021) (showing all disbursements by Bernie 2016 to Briggs during the 2016 election cycle).

⁸ Our Revolution Resp., Ex. C at 3 (Our Revolution, Articles of Amendment of Domestic Nonprofit Corporation [hereinafter Our Revolution Amended Articles of Incorporation] (Sept. 6, 2016)); see *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00577130&two_year_transaction_period=2016 (last visited June 15, 2021) (showing all disbursements made by Bernie 2016 during the 2016 election cycle).

⁹ OUR REVOLUTION, <https://www.ourrevolution.com> (last visited June 15, 2021) (cited in Our Revolution Resp. at 1). According to its District of Columbia Articles of Incorporation, Our Revolution’s stated purpose includes “developing and advocating for legislation, regulations, and government programs to protect the legal rights of all citizens in order to avoid disenfranchisement of the average citizen and to improve the political process,” and “conducting research about and publicizing the positions of elected officials concerning these issues.” Our Revolution Amended Articles of Incorporation.

1 Sanders was prominently displayed on Our Revolution’s homepage.¹⁰ Between its founding in
2 July 2016 and the end of 2018, Our Revolution raised over \$9.5 million and spent \$1.2 million in
3 political campaign and lobbying activities, according to available IRS filings.¹¹ In 2016, Our
4 Revolution reported two independent expenditures in support of federal candidates to the
5 Commission, aggregating \$240,000.¹² It has reported no other spending to the Commission.
6 There is an Our Revolution PAC affiliated with Our Revolution, which has raised \$123,161.53
7 since its formation in 2018, and has reported no independent expenditures or other federal
8 election activity.¹³

9 On August 24, 2016, Sanders was the keynote speaker at the launch event for Our
10 Revolution, which was held in Vermont and live-streamed on Sanders’s official YouTube
11 channel.¹⁴ The description for the video reads: “At this meeting, Bernie Sanders and others
12 from Our Revolution will lay out some of the next steps we can take as a movement to empower

¹⁰ OUR REVOLUTION, <https://www.ourrevolution.com> [<https://web.archive.org/web/20200620223740/http://www.ourrevolution.com/>] (archived June 20, 2020).

¹¹ IRS Form 990, Our Revolution 2016 Return of Organization Exempt from Income Tax (Apr. 27, 2018); IRS Form 990, Our Revolution 2017 Return of Organization Exempt from Income Tax (Nov. 16, 2018); IRS Form 990, Our Revolution 2018 Return of Organization Exempt from Income Tax (Nov. 11, 2019). Our Revolution’s 2019 Form 990 is not yet publicly available. Filings for 2019 and 2020 are not publicly available.

¹² Compl. ¶ 88; Our Revolution, Report of Independent Expenditures (Nov. 5, 2016) (reporting \$240,000 in independent expenditures in support of Deborah Ross (\$120,000) and Russell Feingold (\$120,000)).

¹³ Our Revolution PAC, Statement of Organization (Apr. 18, 2018) (listing Our Revolution as an affiliated organization); *Our Revolution PAC—Spending*, FEC.GOV, <https://www.fec.gov/data/committee/C00676684/?tab=spending&cycle=2018> (last visited June 15, 2021); (recording no independent expenditures during the 2018 election cycle); *Our Revolution PAC—Spending*, FEC.GOV, <https://www.fec.gov/data/committee/C00676684/?tab=spending&cycle=2020> (last visited June 15, 2021) (recording no independent expenditures during the 2020 election cycle); *Our Revolution PAC—Spending*, FEC.GOV, <https://www.fec.gov/data/committee/C00676684/?tab=spending&cycle=2022> (last visited June 15, 2021) (recording no independent expenditures to date during the 2022 election cycle).

¹⁴ Bernie Sanders, *Our Revolution Launch Event*, YOUTUBE.COM (Aug. 24, 2016), <https://www.youtube.com/watch?v=Kp4tFcwkhQ> [hereinafter *Our Revolution Launch Event*].

1 a wave of progressive candidates this November and win the major upcoming fights for the
2 values we share.”¹⁵ At that event, after speaking for thirty-five minutes about his recently
3 concluded presidential campaign, Sanders stated:

4 Now, having said all of that, let me say something else. And that
5 is, tonight, I think the question on the minds of a whole lot of
6 people is, “Okay, we ran a great campaign, we woke up the
7 American people, but where do we go from here?” And that’s
8 kind of what tonight is about. So, tonight, I want to introduce you
9 to a new independent nonprofit organization called “Our
10 Revolution,” which is inspired by the historic Bernie 2016
11 presidential campaign.¹⁶

12 After introducing and praising the organization’s incoming leadership team, Sanders
13 stated, “I will not be directing or controlling Our Revolution, but I have the utmost confidence
14 that this leadership team in the board being assembled shares the progressive values we all hold,
15 and I expect very big things from them and from all of you who join with them to carry the
16 political revolution forward.”¹⁷

17 Among Our Revolution’s ten employees at the time of its launch were at least four
18 former campaign staffers from the 2016 Sanders presidential campaign, including Jeff Weaver,
19 President (former Bernie 2016 Campaign Manager); Shannon Jackson, Executive Director
20 (former Bernie 2016 Senior Advisor); John Robinson, Operations Director (former Bernie 2016
21 Chief Operating Officer); and Erika Andiola, Political Director (former Bernie 2016 Latino

¹⁵ *Id.*

¹⁶ *Id.* at 45:04.

¹⁷ *Id.* at 48:40. The launch event followed news reporting about Sanders’s role in Our Revolution, as well as questions regarding its campaign finance obligations due to its ties to Sanders. *See, e.g.,* Jonathan Karl & Benjamin Siegel, *Bernie Sanders’ New Political Group Raises Campaign Finance Questions*, ABC NEWS (Aug. 19, 2016), <https://abcnews.go.com/Politics/bernie-sanders-political-group-raises-campaign-finance-questions/story?id=41520854> (cited in Compl. ¶ 13 n.9).

1 Outreach Coordinator).¹⁸ Jackson and Andiola remained on the Sanders campaign payroll until
 2 August 15, 2016, shortly before the launch, and Weaver remained on the payroll until
 3 October 31, 2016, more than two months after the launch.¹⁹ Our Revolution’s eleven-member
 4 Board included three individuals associated with Sanders, including Huck Gutman, Sanders’s
 5 former Senate Chief of Staff, as well as Deborah Parker and Jim Zogby, who were among
 6 Sanders’s five appointees to the Democratic National Committee’s platform committee in
 7 2016.²⁰ The initial board, named at the time Our Revolution was incorporated, was later
 8 retroactively replaced with this eleven-member board.²¹

9 News reports from the summer of 2016 contemporaneous with Our Revolution’s launch
 10 generally suggest that Sanders was involved in the formation of Our Revolution: For instance,
 11 an article from *ABC News* refers to Our Revolution as “a new organization formed by [Sanders]
 12 to continue his political revolution across the country,” and states that Our Revolution arose out
 13 of Sanders’s interest in “finding a way to use his hard-earned and active email list to support
 14 down-ticket candidates this cycle.”²² One article also indicates that Sanders sent an email

¹⁸ David Weigel & John Wagner, *Bernie Sanders Launches “Our Revolution” with Electoral Targets—and a Few Critics Left Behind*, WASH. POST (Aug. 24, 2016), <https://www.washingtonpost.com/news/post-politics/wp/2016/08/24/bernie-sanders-launches-our-revolution-with-electoral-targets-and-a-few-critics-left-behind/> (cited in Compl. ¶ 71 n.52).

¹⁹ There do not appear to be any recorded payments to Robinson by Bernie 2016 during the 2016 election cycle. See *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00577130&two_year_transaction_period=2016 (last visited June 15, 2021). Press reports contemporaneous with the launch event state that Weaver was approached for his position with Our Revolution by Sanders’s wife, Dr. Jane Sanders. See Weigel & Wagner, *supra* note 18.

²⁰ Our Revolution Amended Articles of Incorporation.

²¹ Our Revolution Original Articles of Incorporation; Our Revolution Resp., Ex. B.

²² Compl. ¶¶ 23, 35; Karl & Siegel, *supra* note 17. It is unclear whether this was a reference to a list belonging to Sanders personally or his 2016 campaign, and there is no record of Bernie 2016 receiving any funds from Our Revolution for use of its email list or otherwise. The *Washington Post* described Our Revolution as Sanders’s “long-awaited post primary movement,” Weigel & Wagner, *supra* note 18, and one *USA Today* reporter

1 soliciting funds for Our Revolution in August 2016, reportedly writing, “[E]lection days come
 2 and go, but the struggle for economic, social, racial and environmental justice continues.
 3 Together, we built something special and unprecedented through our presidential campaign.
 4 Now, we are going to take the next steps for our political revolution.”²³

5 In 2018, Our Revolution issued a press release celebrating its second anniversary that
 6 began, “Our Revolution, the political entity founded by Sen. Bernie Sanders[,] today announced
 7 unprecedented growth”²⁴ In February 2020, two additional Our Revolution press releases
 8 used identical language,²⁵ and in April 2020, another release included an excerpt from a CNBC
 9 article describing Our Revolution as “[a] group Bernie Sanders founded.”²⁶ In September 2019,
 10 Sanders himself wrote a press release for Our Revolution in which he described what “we have

who interviewed Sanders about his post-election plans wrote that Sanders “plans to launch educational and political organizations within the next few weeks to keep his progressive movement alive,” including Our Revolution. Gaudiano, *supra* note 2.

²³ Nicole Gaudiano, *Bernie Sanders Seeks Contributions for “Our Revolution,”* USA TODAY (Aug. 3, 2016), <https://www.usatoday.com/story/news/politics/onpolitics/2016/08/03/bernie-sanders-seeks-contributions-our-revolution/88038338/> (cited in Compl. ¶ 12 n.8).

²⁴ Compl., App’x at 48 (Press Release, Our Revolution, Bernie Sanders-Inspired Group Celebrates 2-Year Anniversary and Boasts a Near 50 Percent Win Rate for Endorsed Candidates, (Aug. 22, 2018)); *see also* David Duhalde, *Our Revolution Failed to Live Up to Its Potential. But the Bernie Movement Needs a Mass Organization Now.*, JACOBIN (Apr. 28, 2020), <https://www.jacobinmag.com/2020/04/our-revolution-bernie-sanders> (Duhalde, former political director for Our Revolution, describes Our Revolution as a group “Sanders created after his first presidential run”).

²⁵ Press Release, Our Revolution, Jim Hightower: Bernie Will Turn Texas Blue! (Feb. 3, 2020), https://medium.com/@our_revolution/texas-joins-the-progressive-movement-with-momentum-e1c55eac3962; Press Release, Our Revolution, Progressive Power in Florida—Not to Be Underestimated (Feb. 4, 2020), https://medium.com/@our_revolution/power-to-the-people-florida-grassroots-takes-off-e7966fee542b.

²⁶ Press Release, Our Revolution, The Fight for Our Future Continues! (Apr. 28, 2020), https://medium.com/@our_revolution/the-fight-for-our-future-continues-37c00ff67902 (quoting Brian Schwartz, *A Group Bernie Sanders Founded is Pushing to Win Him Enough Delegates to Influence the Democrats’ Platform*, CNBC (Apr. 22, 2020), <https://www.cnbc.com/2020/04/22/pro-bernie-sanders-group-pushes-for-delegates-to-influence-democratic-platform.html>).

1 focused on” over the three years of Our Revolution’s operation, and noted that “we have a very,
 2 very, very long way to go.”²⁷

3 In February 2019, after Sanders announced his 2020 Presidential candidacy, Nina Turner,
 4 then-President and Board Member of Our Revolution, announced that she would be taking a
 5 leave of absence as President to serve as Co-Chair of the Sanders campaign.²⁸ The available
 6 information regarding her announcement does not address whether she would also leave her
 7 position on the Our Revolution Board of Directors; however, she continued to be listed on the
 8 Our Revolution website as a Board member until at least November 2019, approximately nine
 9 months after joining the 2020 Sanders campaign.²⁹

10 During the 2020 election, between May 2018 and April 2020, Our Revolution spent
 11 \$16,668 on 180 ads “related to social issues, elections or politics.”³⁰ Many, but not all,
 12 advocated for the nomination and election of Sanders, and others advocated for other progressive

²⁷ Press Release, Bernie Sanders for Our Revolution, Our Revolution as a Transformative Force in American Political Life (Sept. 20, 2019), https://medium.com/@our_revolution/our-revolution-as-a-transformative-force-in-american-political-life-7bf9e998d015.

²⁸ Compl. ¶ 74; Seth A. Richardson, *Former Ohio Sen. Nina Turner to Serve as Co-Chair of Bernie Sanders Campaign*, CLEVELAND.COM (Feb. 21, 2019), <https://www.cleveland.com/politics/2019/02/former-ohio-sen-nina-turner-to-serve-as-co-chair-of-bernie-sanders-campaign.html> (cited in Compl. ¶ 74 n.56).

²⁹ *About*, OUR REVOLUTION, <https://ourrevolution.com/about/> [<https://web.archive.org/web/20191107053752/https://ourrevolution.com/about/>] (archived Nov. 7, 2019).

³⁰ Compl. ¶¶ 29-30; Facebook Ad Library, Our Revolution, https://www.facebook.com/ads/library/?active_status=all&ad_type=all&country=US&view_all_page_id=1194419550610259&search_type=page&media_type=all (last visited June 15, 2021) [hereinafter Facebook Ad Library]. None of the ads was reported as an independent expenditure, and Our Revolution has not placed ads on Facebook since April 2020. Though Our Revolution has spent an aggregate total of \$16,668 on such ads, the available information does not indicate that Our Revolution spent \$10,000 or more on any given election, and as such the Commission does not make any findings with respect to Our Revolution’s reporting obligations. Our Revolution has also claimed to engage in extensive grass roots advocacy and voter engagement efforts during the 2020 election cycle. *See, e.g.*, Email from Larry Cohen, Board Chair, Our Revolution, to supporters (Jan. 6, 2020, 3:28 AM), <https://politicalemails.org/messages/88636> (cited in Compl. ¶ 33 n.37).

1 candidates and issues. The precise spending on the individual ads is unclear based on the
2 information available in the Facebook Ad Library.³¹ These ads contained language such as: “If
3 Bernie is going to win, he needs the support of each of us. Chip in today,” and “Pitch in to help
4 Our Revolution win with progressive candidates in November.”³² Each of the ads directed
5 viewers to Our Revolution’s ActBlue contribution page, which required that the contributor be at
6 least eighteen years of age, and affirm that the “contribution is made from my own funds” and
7 that “the funds are not being provided by any other person or entity,” but permitted the use of
8 “funds of an authorizing corporation.”³³ The contribution page did not address any amount
9 limitations, nor source prohibitions other than contributions made with the funds of another.³⁴

10 The Complaint alleges that Our Revolution was EFMC’d by Sanders, and as a result,
11 violated the soft money provision by soliciting, receiving, and spending funds not subject to the
12 limitations and prohibitions of the Act.³⁵ By implication, the Complaint also alleges that Sanders
13 violated the soft money provision by soliciting non-federal funds for Our Revolution.³⁶ Both
14 Responses acknowledge that Sanders “inspired” the creation of Our Revolution.³⁷ However, Our
15 Revolution asserts that it was “established and has continued to operate independently” of
16 Sanders, and, further, that besides his initial activities relating to the group’s launch, Sanders

³¹ Facebook Ad Library.

³² *Id.*

³³ Compl. ¶ 31 (including image of Our Revolution’s ActBlue contribution page).

³⁴ *Id.* ¶¶ 29-30; Facebook Ad Library.

³⁵ Compl. ¶¶ 67-92.

³⁶ *Id.*

³⁷ Our Revolution Resp. at 2 n.5; Sanders Resp. at 1 (Mar. 19, 2020).

1 “has not been otherwise materially involved with Our Revolution” other than “an occasional
 2 show of support.”³⁸ Sanders states that he did not establish Our Revolution, and avers that he
 3 has never directed or controlled the organization.”³⁹

4 III. LEGAL ANALYSIS

5 Under section 30125(e) of the Act, a candidate, individual holding Federal office, their
 6 agent, or an entity directly or indirectly EFMC’d by or acting on behalf of one or more
 7 candidates or individuals holding office, shall not “solicit, receive, direct, transfer, or spend
 8 funds in connection with an election,” including funds for any federal election activity, “unless
 9 the funds are subject to the limitations, prohibitions, and reporting requirements of the Act.”⁴⁰
 10 This provision, among others enacted as part of the Bipartisan Campaign Reform Act of 2002,
 11 was designed to “plug the soft-money loophole.”⁴¹

12 The Commission has found that solicitations not explicitly limited to funds that comply
 13 with the Act may constitute solicitations of soft money.⁴² The Act and Commission regulations
 14 prohibit any candidate or political committee from knowingly accepting or receiving

³⁸ Our Revolution Resp. at 2 & n.7. For instance, Sanders joined a September 2019 “organization-wide conference call celebrating Our Revolution’s third anniversary” during which he thanked participants for their work with the organization. *See* Compl. ¶ 36; Brian Slodysko, *Shadow Group Provides Sanders Super PAC Support He Scorns*, ASSOC. PRESS (Jan. 7, 2020), <https://apnews.com/article/bernie-sanders-iowa-us-news-elections-political-action-committees-345bbd1af529cfb1e41305fa3ab1e604> (cited in Comp. ¶ 35 n.39).

³⁹ Sanders Resp. at 1-2.

⁴⁰ 52 U.S.C. § 30125(e); 11 C.F.R. §§ 300.60-61.

⁴¹ *McConnell v. FEC*, 540 U.S. 93, 133 (2003).

⁴² Factual & Legal Analysis (“F&LA”) at 3, MUR 6841 (Friends for Reid, *et al.*). There, the Commission concluded that an email sent by a candidate on behalf of his authorized committee which contained a solicitation but “did not inform recipients that Reid was only asking for contributions that complied with the Act,” violated 52 U.S.C. § 30125(e)(1)(B).” *Id.* The Commission ultimately dismissed this violation as a matter of prosecutorial discretion due to the “corrective actions taken by the Reid Committee and the modest amount in violation.” *Id.*

1 contributions from any corporation.⁴³ Further, a contribution to any candidate or his authorized
2 committee was limited to \$2,600 per election for the 2016 election cycle, \$2,700 per election for
3 the 2018 election cycle, and \$2,800 for the 2020 election cycle.⁴⁴

4 The Commission’s regulations define “solicit” broadly as “to ask, request, or recommend,
5 explicitly or implicitly, that another person make a contribution, donation, transfer of funds, or
6 otherwise provide anything of value.”⁴⁵ Solicitations include “[a] communication that provides a
7 method of making a contribution or donation,” and “[a] communication that identifies a Web
8 address where the Web page displayed is specifically dedicated to facilitating the making of a
9 contribution or donation.”⁴⁶

10 As explained below, it appears that Our Revolution may have solicited and received soft
11 money, based on information in the donation pages attached to Our Revolution’s online political
12 advertising and in the group’s tax filings. However, the available information, which is limited
13 to Sanders’s relations to and connections with individuals who formed and controlled Our
14 Revolution, is insufficient to conclude that Sanders EFMC’d the organization. Accordingly, the
15 current record does not afford a reasonable basis to conclude that Our Revolution or Sanders
16 violated section 30125(e) of the Act.

⁴³ 52 U.S.C. §§ 30116(f), 30118(a).

⁴⁴ *See id.* § 30116(a)(1)(A); 11 C.F.R. § 110.1(b)(1).

⁴⁵ 11 C.F.R. § 300.2(m); *see also* Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 Fed. Reg. 49,064, 49,086 (July 29, 2002) (final rulemaking defining “to solicit” as to “ask another person to make a contribution or donation, or transfer of funds, or to provide anything of value, including through a conduit or intermediary”).

⁴⁶ 11 C.F.R. § 300.2(m)(1)(i)-(iii).

1 **A. The Available Information Suggests that Our Revolution Likely Solicited**
 2 **and Received Soft Money**

3 The available information suggests that Our Revolution may have solicited soft money.
 4 During the 2020 election, Our Revolution placed ads on Facebook that supported Sanders and
 5 asked for donations. Our Revolution’s ActBlue page did not address or limit the type or amount
 6 of donations it intended to solicit.⁴⁷ Moreover, the page appeared to approve of donations
 7 coming from “an authorizing corporation.”⁴⁸ In its Response, Our Revolution provided no
 8 specific information about the amounts or sources of its donations. However, Our Revolution’s
 9 tax filings indicate that it has received at least nineteen contributions of \$5,000 or greater,
 10 including at least four in amounts greater than \$100,000.⁴⁹ Our Revolution asserts in its
 11 Response, without providing any specifics, that it “has never spent any funds ‘in connection with
 12 an election’ that came from individuals who contributed to Our Revolution in excess of \$5,000
 13 per year.”⁵⁰

14 **B. There is Insufficient Information to Conclude that Our Revolution was**
 15 **EFMC’d by Sanders**

16 To determine whether a candidate or individual holding federal office directly or
 17 indirectly EFMC’d a given entity, the Commission shall consider a non-exhaustive list of ten

⁴⁷ Compl. ¶ 31 (including image of Our Revolution’s ActBlue contribution page).

⁴⁸ *Id.*

⁴⁹ IRS Form 990, Our Revolution 2016 Return of Organization Exempt from Income Tax, Sched. B (Apr. 27, 2018) (recording three contributions from unidentified contributors totaling \$5,000 or more: \$7,500, \$5,000, and \$300,000); IRS Form 990, Our Revolution 2017 Return of Organization Exempt from Income Tax, Sched. B (Nov. 16, 2018) (recording seven contributions from unidentified contributors totaling \$5,000 or more: \$100,000, \$25,000, \$11,187, \$6,000, \$5,500, and two \$5,000 contributions); IRS Form 990, Our Revolution 2018 Return of Organization Exempt from Income Tax, Sched. B (Nov. 11, 2019) (recording one contribution from an unidentified contributor of \$218,309).

⁵⁰ Our Revolution Resp. at 1 n.7.

1 factors set forth in 11 C.F.R. § 300.2(c)(2)(i)-(x). These factors “must be examined in the
 2 context of the overall relationship between [the candidate or officeholder] and the entity.”⁵¹ For
 3 the purposes of this analysis, an “agent” of a candidate or officeholder is “any person who has
 4 actual authority, either express or implied,” “to solicit, receive, direct, transfer, or spend funds in
 5 connection with any election.”⁵²

6 As applied to Our Revolution and Sanders, the most probative areas of inquiry include
 7 the following:

- 8 • Whether Sanders or his agents had an “active or significant role” in the formation of
 9 Our Revolution;⁵³
- 10 • Whether Sanders, through his 2016 fundraising email sent on behalf Our Revolution,
 11 “cause[d] or arrange[d] for funds in a significant amount or on an ongoing basis to be
 12 provided to”⁵⁴ Our Revolution;
- 13 • Whether the transition of officers and employees from the 2016 Sanders presidential
 14 campaign to Our Revolution “indicates the creation of a successor entity;”⁵⁵
- 15 • Whether Sanders — through Nina Turner, the Co-Chair of his 2020 presidential
 16 campaign who, according to Our Revolution’s website, simultaneously was a member
 17 of Our Revolution’s Board of Directors; or through Jeff Weaver, the Campaign
 18 Manager of the 2016 Sanders campaign who remained on the campaign payroll for

⁵¹ 11 C.F.R. § 300.2(c)(2).

⁵² *Id.* § 300.2(b)(3). An agent’s actual authority is created by manifestations of consent (express or implied) by the principal to the agent about the agent’s authority to act on the principal’s behalf. *See* Definitions of “Agent” for BCRA Regulations on Non-Federal Funds or Soft Money and Coordinated and Independent Expenditures, 71 Fed. Reg. 4975, 4975-76 (Jan. 31, 2006); Advisory Opinion (“AO”) 2007-05 at 3 (Iverson).

⁵³ 11 C.F.R. § 300.2(c)(2)(ix).

⁵⁴ *Id.* § 300.2(c)(2)(viii).

⁵⁵ *Id.* § 300.2(c)(2)(vi). Although this factor is phrased in terms of whether the “sponsor” has any members, officers or employees who were formerly members, officers or employees of the allegedly sponsored entity, the reference to “creation of a successor entity” indicates that a flow of members, officers or employees in the other direction — *i.e.*, from the sponsor to the sponsored entity — is also highly relevant to the determination. *See* First Gen. Counsel’s Rpt. at 11 n.12 & Certification (Jan. 7, 2003) MUR 5343 (Democratic Senate Majority Fund, *et al.*) (approving FGCR’s recommendations).

1 two months after joining Our Revolution — had the “authority or ability to direct or
 2 participate in the governance”⁵⁶ of Our Revolution;

- 3 • Whether Sanders, through Turner or Weaver, also had the authority to “hire, appoint,
 4 demote, or otherwise control the officers, or other decision-making employees or
 5 members”⁵⁷ of Our Revolution; and
- 6 • Whether, via Turner or Weaver, there was “common or overlapping membership”
 7 between the Sanders 2020 presidential campaign and Our Revolution that “indicates a
 8 formal or ongoing relationship”⁵⁸ between the two entities.

9 Examining “the context of the overall relationship”⁵⁹ between Sanders and Our
 10 Revolution, though the available information supports the conclusion that Our Revolution was
 11 inspired and perhaps influenced by Sanders and his political agenda, it does not provide a
 12 sufficient basis to infer that he EFMC’d Our Revolution.

13 1. The Available Information Does Not Indicate that Sanders Established
 14 Our Revolution

15 The relevant available information does not indicate that Sanders or his agents “played an
 16 active or significant role” in the formation of Our Revolution.⁶⁰ In Advisory Opinion 2003-12
 17 (Flake), the Commission concluded that a candidate and officeholder established an entity where

⁵⁶ 11 C.F.R. § 300.2(c)(2)(ii).

⁵⁷ *Id.* § 300.2(c)(2)(iii).

⁵⁸ *Id.* § 300.2(c)(2)(v).

⁵⁹ *Id.* § 300.2(c)(2).

⁶⁰ Our Revolution argues that, “[e]ven if one were to erroneously conclude that Our Revolution was initially established by the Senator, the ‘soft money’ restrictions still would not apply to Our Revolution because the Senator has not, and does not, finance, maintain or control Our Revolution and has not been otherwise materially involved with Our Revolution over the last three and a half years” (citing 11 C.F.R. § 300.2(c)(4)). Section 300.2(c)(4) provides that, if a sponsor established an entity within the mean of the soft money provision, he or she may request an advisory opinion of the Commission to determine that the relationship between the sponsor and the entity has been severed, and that such request “must demonstrate that all material connections between the sponsor and the entity have been severed for two years.” Though that provision is not applicable in the context of this enforcement matter, as Sanders has not sought any such advisory opinion, it is notable that the factual record does not indicate any “material connections” between Sanders and Our Revolution since its launch in 2016.

1 he was among the individuals who formed the organization, signed the formation documents,
2 was the organization’s initial Chairman, and an individual who also served as his part-time
3 campaign consultant aided the organization with its state filings and opened its bank account.⁶¹
4 There is no indication that Sanders or anyone acting at his direction participated in any such
5 activities with respect to Our Revolution. The available information does indicate that one of the
6 individuals whose names appear on the Articles of Incorporation, Michael Briggs, was
7 apparently paid by Sanders or his political campaign at the time Our Revolution was
8 incorporated; it is unclear, however, whether Briggs was an “agent” of Sanders or his campaign
9 within the meaning of the Commission regulations.⁶² Moreover, given that the initial board was
10 later retroactively replaced with a new eleven member board in September 2016, it is unclear
11 what involvement Briggs might have had in establishing Our Revolution. He did not sign its
12 Articles of Incorporation as the incorporator, nor is he listed on the amended board.

13 There is no information indicating that any other individuals involved in Our
14 Revolution’s incorporation were otherwise acting as agents for Sanders when they formed the
15 organization. Though several of Our Revolution’s initial and new board members were linked to
16 Sanders, such as his wife and former Senate Chief of Staff, the only information available to

⁶¹ AO 2003-12 at 7 (Flake). The Opinion continues: “Having concluded that Representative Flake established STMP, it is not necessary to determine whether he will finance, maintain or control STMP. As such, the Commission concludes that STMP is an entity ‘established, financed, maintained or controlled by’ Representative Flake.” *Id.*

⁶² Briggs appears to have served as Sanders’s communications director during the 2016 campaign. *See* John Wagner, *In 24 Hours After Iowa Caucuses, Sanders Donors Pony Up \$3 Million, Aides Say*, WASH. POST (Feb. 2, 2016), <https://www.washingtonpost.com/news/post-politics/wp/2016/02/02/in-24-hours-after-iowa-caucuses-sanders-donors-pony-up-3-million-aides-say/>. The available information does not indicate whether Briggs had the authority to “solicit, receive, direct, transfer, or spend funds in connection with any election.” 11 C.F.R. § 300.2(b)(3).

1 indicate that Sanders might have been in a position to direct their activities is circumstantial by
2 virtue of these relationships.⁶³ More generally, there is no information that any other individuals
3 involved in Our Revolution’s incorporation were otherwise acting as Sanders’s agent when they
4 formed the organization. In sum, other than Sanders’s relationships with and connections to
5 individuals involved in forming Our Revolution, there is nothing additional to suggest that
6 Sanders personally had a role in forming the group or directed those who did.⁶⁴ This
7 information, without more, does not sufficiently indicate that there is reason to believe that
8 Sanders established Our Revolution within the meaning of the Act or Commission regulations.

9 Though Our Revolution’s website and four press releases from Our Revolution’s five
10 years of operations state that Our Revolution was “founded” by Sanders,⁶⁵ Respondents contend
11 that these releases refer to the fact that Sanders and his 2016 presidential campaign inspired the
12 formation of Our Revolution. Beyond these statements, there is no other information
13 corroborating the notion that Sanders himself took an active or significant role in the group’s

⁶³ *Supra* notes 6-7 and accompanying text (describing the original Our Revolution board and founders as well as their connections to Sanders); *supra* note 8 and accompanying text (listing amended board and their connections to Sanders).

⁶⁴ *Cf.* AO 2003-12 at 7; First Gen. Counsel’s Rpt. at 18-23, MURs 7370 & 7496 (New Republican PAC, *et al.*) (recommending the Commission find reason to believe that a group was EFMC’d by a candidate where the candidate served as Chair of the organization and hired and directed its employees; the Commission ultimately split on the report’s recommendations and closed the file).

⁶⁵ *Our Story*, OUR REVOLUTION, <https://ourrevolution.com/ourstory/> (last visited June 15, 2021) (“Bernie [Sanders] founded Our Revolution to be a transformative force in American political life.”); Compl., App’x at 48 (Press Release, Our Revolution, Bernie Sanders-Inspired Group Celebrates 2-Year Anniversary and Boasts a Near 50 Percent Win Rate for Endorsed Candidates, (Aug. 22, 2018)); Press Release, Our Revolution, Jim Hightower: Bernie Will Turn Texas Blue! (Feb. 3, 2020), https://medium.com/@our_revolution/texas-joins-the-progressive-movement-with-momentum-e1c55eac3962; Press Release, Our Revolution, Progressive Power in Florida—Not to Be Underestimated (Feb. 4, 2020), https://medium.com/@our_revolution/power-to-the-people-florida-grassroots-takes-off-e7966fee542b; Press Release, Our Revolution, The Revolution Report: 6-5-21 (June 5, 2021), <https://ourrevolution.com/2021/06/05/the-revolution-report-6-5-21/>.

1 establishment. None of the news articles which purport to state that Sanders “founded” Our
2 Revolution contain a direct quote from Sanders or contain any descriptions of his activities.

3 In their Responses, both Sanders and Our Revolution deny that Sanders established Our
4 Revolution.⁶⁶ Further, though Our Revolution’s name is suggestive of a connection to Sanders
5 due to his publication of a book of the same title several months after Our Revolution was
6 formed, the forthcoming book’s title was publicized prior to Our Revolution’s incorporation,⁶⁷
7 indicating that the organization’s name may have been inspired by Sanders based on publicly
8 available information.⁶⁸ And even if it were assumed that Sanders was responsible for naming
9 Our Revolution, this itself is not sufficient to show that Sanders “established” the organization.⁶⁹

10 There is no doubt that Sanders was the key influence behind Our Revolution. But the
11 current record does not indicate that Sanders played an active or significant role in the actual

⁶⁶ Our Revolution Resp. at 2 (“Although Common Cause and Mr. Ryan allege that Our Revolution was *established* by Senator Sanders, the fact is that Our Revolution was established and has continued to operate independently of the Senator.”); Sanders Resp. at 1-2 (“Our Revolution was not established by Senator Sanders. Although, undoubtedly, Our Revolution was ‘*inspired*’ by Bernie Sanders and his historic presidential campaign,’ Senator Sanders made it clear during the organization’s August 24, 2016, official launch event that Our Revolution is ‘a new independent nonprofit organization . . . inspired by the historic Bernie 2016 presidential campaign’ and the Senator explicitly stated that he would not be ‘directing or controlling’ the organization.”).

⁶⁷ See Damien Willis, *Sanders Stops in Vado, Addresses Needs of Rural New Mexicans*, LAS CRUCES SUN NEWS (May 21, 2016), <https://www.lcsun-news.com/story/news/politics/2016/05/21/sanders-addresses-needs-rural-new-mexicans/84725398/> (including a photo of Sanders captioned, “Presidential candidate Bernie Sanders spoke in May in Vado, N.M. Sanders’ book ‘Our Revolution: A Future to Believe In’ is scheduled to come out Nov. 15, a week after Election Day”).

⁶⁸ The Commission has previously noted that an organization’s name can be informative when conducting the EFMC analysis. See F&LA at 7, MUR 6957 (Isadore Hall III) (noting that the name of a committee titled “Hall’s Ballot Measure Committee” indicated that Hall controlled it).

⁶⁹ Additionally, the timing of the organization’s founding (after the conclusion of Sanders’s candidacy) supports the claim that the organization was designed to continue the messages adopted by Sanders’s campaign rather than as a vessel through which to funnel soft money to any candidate or campaign, the stated purpose of the EFMC regulation. See *McConnell v. FEC*, 540 U.S. 93, 133 (2003).

1 process by which the group was created.⁷⁰ Based on this information, there does not appear to
2 be sufficient indicia that Sanders established Our Revolution under the meaning of the Act and
3 Commission regulations.

4 2. The Available Information Does Not Indicate that Sanders Financed Our
5 Revolution

6 With respect to whether Sanders financed Our Revolution, the information cited in the
7 Complaint indicates that Sanders sent at least one early fundraising email on behalf of Our
8 Revolution, and that Our Revolution may have had access to the list of emails used by the
9 Sanders campaign during the 2016 election.⁷¹ There is no evidence indicating how much
10 Sanders raised for Our Revolution, nor whether these funds or the value of Sanders's email list
11 constituted a "significant amount."⁷² And even if Sanders did raise funds for Our Revolution in
12 connection with these early activities, there is no indication that funds were provided by him to
13 Our Revolution on an "ongoing basis."⁷³ Regarding Sanders's use of his official YouTube
14 Channel to stream the launch event, the Commission regulations exempt "uncompensated
15 internet activity by individuals," including the "use of equipment or services . . . regardless of

⁷⁰ See AO 2004-33 at 9 (Ripon) (finding that, where members of Congress served in an honorary and advisory capacity on an organization's Advisory Board, the organization was not EFMC'd by those members); see also First Gen. Counsel's Rpt. at 8-9, MUR 7413 (Jonathan Jenkins for Senate, *et al.*) (recommending that the Commission take no action where a candidate appeared to be a group's primary representative at its launch, and continued to be listed as the registered agent of the group, because it was not clear to what extent he financed, maintained, or controlled the group during its short period of activity). The Commission split on the recommendations in that matter and closed the file. Certification, MUR 7413 (May 27, 2021); Certification, MUR 7413 (June 14, 2021).

⁷¹ See *supra* Part II and notes 22 & 23.

⁷² 11 C.F.R. § 300.2(c)(2)(vii).

⁷³ *Id.* § 300.2(c)(2)(viii).

1 who owns the equipment and services.”⁷⁴ Although the available information is limited with
 2 respect to the expenses associated with the Our Revolution launch event, this exemption appears
 3 to cover any value associated with Sanders’s use of his YouTube channel. In sum, Sanders does
 4 not appear to have caused or arranged for funds in a significant amount or on an ongoing basis to
 5 be provided to Our Revolution, and as a result, does not appear to have financed it.

6 3. The Existence of Overlapping and Subsequent Employees Does Not
 7 Establish that Sanders Controlled Our Revolution

8 While subsequent employer/employee relationships may indicate that a candidate or
 9 officeholder controls an organization, the Commission has previously found that “more than the
 10 mere fact of such informal, ongoing relationships . . . is necessary,” and that “while former
 11 employers and colleagues may exercise influence, *influence is not necessarily control.*”⁷⁵ The
 12 information available here — the potential overlap of one Our Revolution board member with
 13 the 2020 Sanders campaign for a several-month period; the overlap of the Our Revolution
 14 inaugural President and 2016 Sanders campaign payroll for a two-month period; and the
 15 movement of several 2016 Sanders campaign staffers to Our Revolution — does not show that
 16 Sanders, through these individuals, had the authority or ability to direct or participate in the
 17 governance of Our Revolution; that Sanders was able to hire, appoint, demote, or control the

⁷⁴ *Id.* § 100.94(a).

⁷⁵ First Gen. Counsel’s Rpt. at 18 & Certification (Apr. 3, 2003), MUR 5338 (The Leadership Forum, *et al.*) (emphasis added) (continuing, “In any given instance, these relationships may fall somewhere along a spectrum. At one end of the spectrum is a complete ‘firewall’ of no contacts whatsoever. . . . [A]t the other end of the spectrum[] is influence by one group upon the other that is so regular and pervasive that it amounts to control . . .”); *see also* F&LA at 8, MUR 6280 (Howard L. Berman) (quoting MUR 5338 for the same proposition). Nor does the fact that Sanders penned a single press release for Our Revolution during its four years of activity provide any indicia of control. *See* Press Release, Bernie Sanders for Our Revolution, Our Revolution as a Transformative Force in American Political Life (Sept. 20, 2019), https://medium.com/@our_revolution/our-revolution-as-a-transformative-force-in-american-political-life-7bf9e998d015.

1 organization’s officers or other decision-making employees or members; or that there was a
 2 “formal and ongoing relationship” between Our Revolution and Sanders.

3 As Co-Chair of Sanders’s 2020 campaign, Nina Turner was an agent of Sanders and his
 4 campaign while apparently simultaneously serving as a member of the Our Revolution Board of
 5 Directors.⁷⁶ However, news reports state that she stepped down from her role as President at Our
 6 Revolution before joining the 2020 Sanders campaign, diminishing the likelihood of a formal
 7 relationship between the two organizations.⁷⁷ The available documents covering her
 8 announcement are unclear as to whether she similarly stepped down from her role on Our
 9 Revolution’s Board. The Our Revolution website listed her name as a Board member until
 10 sometime between November 2019 and January 2020, at least nine months after her move to the
 11 Sanders campaign.⁷⁸ Critically, however, even assuming that Turner did remain on the Board
 12 during this time, there is no indication that, in light of the ten other board member positions, she
 13 would be able to effectively control the organization on Sanders’s behalf.⁷⁹

⁷⁶ See 11 C.F.R. § 300.2(b)(3) (“[A]gent means any person who has actual authority, either express or implied, to engage in any of the following activities on behalf of . . . an individual who is a Federal candidate or an individual holding Federal office[:] to solicit, receive, direct, transfer, or spend funds in connection with any election.”); Compl. ¶ 74; *About*, OUR REVOLUTION, <https://ourrevolution.com/about/> [<https://web.archive.org/web/20191107053752/https://ourrevolution.com/about/>] (archived Nov. 7, 2019).

⁷⁷ See Richardson, *supra* note 28.

⁷⁸ Compare *About*, OUR REVOLUTION, <https://ourrevolution.com/about/> [<https://web.archive.org/web/20191107053752/https://ourrevolution.com/about/>] (archived Nov. 7, 2019), with *Our Board*, OUR REVOLUTION, <https://ourrevolution.com/about/> [<https://web.archive.org/web/20200119122808/https://ourrevolution.com/about/>] (archived Jan. 19, 2020).

⁷⁹ *But see* First Gen. Counsel’s Rpt. at 10 -12, MUR 6062 (Harry Truman Fund, *et al.*) (recommending that the Commission determine an entity was EFMC’d, on the basis of overlapping officers where an individual served as treasurer for both organizations, in concert with additional information such as a similar pattern of receipts and disbursements); Certification, MUR 6062 (indicating split Commission vote) (Apr. 21, 2009); First Gen. Counsel’s Rpt. at 18-23, MURs 7370 & 7496 (New Republican PAC, *et al.*) (recommending the Commission find reason to believe that a group was EFMC’d by a candidate where the candidate served as Chair of the organization and hired

1 Seven other individuals who had previously been associated with Sanders and his
2 campaigns subsequently joined the staff of Our Revolution.⁸⁰ In a previous matter, the
3 Commission concluded that “prior employment relationships do not, without more, establish that
4 an entity is controlled by its employees’ prior employer.”⁸¹ Additional indications of control do
5 not appear to be present here. The available information does not indicate that Sanders, through
6 these former employees, controlled Our Revolution. Three individuals who subsequently
7 worked for Our Revolution continued to be paid by the Sanders campaign through August 2016,
8 with two of them last paid prior to the official launch of Our Revolution and, in Weaver’s case,
9 through two months into his role at Our Revolution. As both Sanders and Our Revolution
10 acknowledge,⁸² Our Revolution was inspired by Sanders’s campaign, and thus it is not surprising
11 that individuals who worked for the campaign would go on to work for Our Revolution.
12 However, as was the case in a prior matter, “in the absence of information that [the former
13 campaign staffers] continue[d] to receive instructions or directions from [Sanders], we cannot
14 rely solely on . . . prior association . . . to establish an ongoing relationship.”⁸³

15 Further, the available information shows that Sanders spoke at the launch event for Our
16 Revolution, held in his home state of Vermont and live-streamed from his official YouTube

and directed its employees); Certification (May 28, 2021), MURs 7370 & 7496 (indicating Commission split on recommendations); Certification (June 14, 2021), MURs 7370 & 7496 (same, and the Commission closed the file).

⁸⁰ See *supra* notes 18-21 and accompanying text.

⁸¹ See First Gen. Counsel’s Rpt. at 25 & Certification (Jan. 7, 2003), MUR 5343 (Democratic Senate Majority Fund, *et al.*) (adopted by the Commission).

⁸² Our Revolution Resp. at 1 n.5; Sanders Resp. at 1.

⁸³ See First Gen. Counsel’s Rpt. at 12 & Certification (Jan. 7, 2003), MUR 5343 (Democratic Senate Majority Fund, *et al.*) (adopted by the Commission).

1 channel, where he framed Our Revolution’s work and purpose as a continuation of the agenda
 2 promoted by his 2016 presidential campaign.⁸⁴ However, he also said that he had the “utmost
 3 confidence that this leadership team in the board being assembled” and that “I expect very big
 4 things from them,”⁸⁵ and specifically stated that he would not be “directing or controlling Our
 5 Revolution.”⁸⁶

6 Regarding the other factors that could indicate that Sanders controlled Our Revolution,
 7 there is no information presented by the Complaint, and the Commission is aware of none,
 8 indicating that Sanders owned or owns stock in Our Revolution, or that he has the authority
 9 under Our Revolution’s bylaws to govern the organization’s activities.⁸⁷ Sanders’s statement
 10 that he did and would not “direct[] or control[] Our Revolution”⁸⁸ is supported by the available
 11 information. In sum, evaluating the overall context of the available information, there are
 12 insufficient indicia to support a conclusion that Sanders controls Our Revolution.

13 * * *

14 Because there is an insufficient basis to infer that Our Revolution was EFMC’d by a
 15 candidate or federal officeholder, the Commission dismisses the allegations that Our Revolution
 16 violated 52 U.S.C. § 30125(e)(1) and 11 C.F.R. § 300.61 by soliciting, receiving, and spending

⁸⁴ *E.g.*, Our Revolution Launch Event at 45:30 (“Now, having said all of that, let me say something else: and that is, tonight, I think the question on the minds of a whole lot of people is, ‘Okay, we ran a great campaign, we woke up the American people, but where do we go from here?’ And that’s kind of what tonight is about, so tonight I want to introduce you to a new independent nonprofit organization called ‘Our Revolution,’ which is inspired by the historic Bernie 2016 presidential campaign.”).

⁸⁵ *Id.* at 48:40.

⁸⁶ *Id.*

⁸⁷ *See* 11 C.F.R. § 300.2(c)(2)(i)-(ii).

⁸⁸ Our Revolution Launch Event at 48:40.

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- 1 soft money. Consequently, the Commission also dismisses the allegation that Sanders violated
- 2 52 U.S.C. § 30125(e)(1) and 11 C.F.R. § 300.61 by soliciting soft money for an organization he
- 3 EFMC'd.