

AGENDA DOCUMENT NO. July 29, 2021  
AGENDA ITEM  
For meeting of 21-32-A



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

July 21, 2021

**MEMORANDUM**

TO: The Commission

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

Neven F. Stipanovic *NFS*  
Associate General Counsel

Robert Knop *RMK*  
Assistant General Counsel

Joanna S. Waldstreicher *JSW*  
Attorney

SUBJECT: REG 2021-02 (Subvendor Reporting) - Draft Notification of Availability

On June 29, 2021, the Commission received a Petition for Rulemaking from the Campaign Legal Center and the Center on Science & Technology Policy at Duke University ("Petition"). The Petition asks the Commission to amend its regulations at 11 CFR 104.3(b), 109.10(e), and 104.20(c), to require that persons filing reports under those sections itemize all expenditures or disbursements made on behalf of or for the benefit of the political committee or other reporting person, including those made by an agent, independent contractor, vendor, or subvendor.

The Office of the General Counsel has examined the petition and determined that it meets the requirements of 11 C.F.R. § 200.2(b). Therefore, we have drafted the attached Notification of Availability ("NOA") seeking comment on whether the Commission should initiate a full rulemaking on the proposal in the petition. The NOA will be published in the *Federal Register* pursuant to 11 C.F.R. § 200.3(a)(1).

In keeping with the Commission's usual procedure, the NOA does not address the merits of the petition. Instead, it states that consideration of the merits will be deferred until the close of the comment period.

The Office of the General Counsel requests that this draft be placed on the agenda for the Open Meeting on July 29, 2021.

Attachment

1 **FEDERAL ELECTION COMMISSION**

2 **11 CFR Parts 104 and 109**

3 **[NOTICE 2021-XX]**

4 **Rulemaking Petition: Subvendor Reporting**

5 **AGENCY:** Federal Election Commission.

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

7 **SUMMARY:** On June 29, 2021, the Federal Election Commission received a Petition for  
8 Rulemaking asking the Commission to amend its existing regulations regarding reporting  
9 expenditures and certain other disbursements. The proposed amendments would require political  
10 committees and persons who make independent expenditures and electioneering communications  
11 to itemize certain payments made by vendors to others on behalf of the reporting entities.

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

14 **ADDRESSES:** All comments must be in writing. Commenters may submit comments  
15 electronically via the Commission’s website at <http://sers.fec.gov/fosers/>, reference REG 2021-  
16 02.

17 Each commenter must provide, at a minimum, his or her first name, last name, city, and  
18 state. All properly submitted comments, including attachments, will become part of the public  
19 record, and the Commission will make comments available for public viewing on the  
20 Commission’s website and in the Commission’s Public Records Office. Accordingly,  
21 commenters should not provide in their comments any information that they do not wish to make  
22 public, such as a home street address, personal email address, date of birth, phone number, social

1 security number, or driver’s license number, or any information that is restricted from disclosure,  
2 such as trade secrets or commercial or financial information that is privileged or confidential.

3 **FOR FURTHER INFORMATION CONTACT:** Mr. Robert M. Knop, Assistant General  
4 Counsel, or Ms. Joanna S. Waldstreicher, Attorney, Office of the General Counsel, at  
5 [subvendorreporting@fec.gov](mailto:subvendorreporting@fec.gov).

6 **SUPPLEMENTARY INFORMATION:** On June 29, 2021, the Commission received a  
7 Petition for Rulemaking from the Campaign Legal Center and the Center on Science &  
8 Technology Policy at Duke University (“Petition”). The Petition asks the Commission to amend  
9 its regulations at 11 CFR 104.3(b), 109.10(e), and 104.20(c), to require that persons filing reports  
10 under those sections itemize all expenditures or disbursements made on behalf of or for the  
11 benefit of the political committee or other reporting person, including those made by an agent,  
12 independent contractor, vendor, or subvendor.

13 The Federal Election Campaign Act (the “Act”) and Commission regulations require that  
14 political committees disclose the name and address of each person to whom expenditures or  
15 certain other disbursements aggregating over \$200 are made, as well as certain information about  
16 each expenditure or disbursement. 52 U.S.C. 30104(b)(5)(A), (b)(6)(B)(v); 11 CFR  
17 104.3(b)(3)(i), (b)(4)(i). The Act and Commission regulations also require that disbursements  
18 aggregating over \$200 for independent expenditures and electioneering communications  
19 similarly be disclosed. 52 U.S.C. 30104(b)(6)(B)(iii), (c)(2)(A); 11 CFR 109.10(e)(1)(ii-iii)  
20 (independent expenditures); 52 U.S.C. 30104(f)(2)(C); 11 CFR 104.20(c)(4) (electioneering  
21 communications).

22 The Petition notes that “if a disclosed vendor subcontracts with a third party, the payment  
23 to the subcontractor might not be disclosed,” Petition at 1, and asserts that “a substantial portion

1 of FEC-reported political spending now consists of large payments to a small number of  
2 consulting firms that disguise where political money is ultimately going.” Petition at 3. The  
3 Petition asserts that this lack of disclosure about the ultimate recipients and purposes of political  
4 spending has a number of negative consequences: it “deprives voters of information they use to  
5 assess candidates and cast informed votes,” Petition at 4; it “becomes nearly impossible for  
6 researchers and academics to monitor digital political ad practices,” *id.*; it allows reporting  
7 entities to “disguise FECA violations, such as violations of the personal use ban” and “evidence  
8 of common vendor coordination between an authorized committee and a super PAC,” Petition at  
9 5; and it can “provide further cover for so-called ‘scam PACs,’” Petition at 6.

10 The Petition asks the Commission to amend 11 CFR 104.3(b) to require additional  
11 disclosure by political committees, by adding a new subparagraph (5) that reads:

12 (5)(i) Any person reporting expenditures or disbursements under this section must  
13 report expenditures or disbursements made by an agent or independent contractor,  
14 including any vendor or subvendor, on behalf of or for the benefit of the reporting  
15 person.

16 (ii) An agent or contractor, including a vendor or subvendor, who makes an  
17 expenditure or disbursement on behalf of or for the benefit of a reporting  
18 committee or person that is required to be reported under this section shall  
19 promptly make known to the reporting committee or person all the information  
20 required for reporting the expenditure or disbursement.

21 Petition at 6-7.

DRAFT

1           The Petition also asks the Commission to amend sections 109.10(e)(1) and 104.20(c) to  
2 add similar language requiring additional disclosure in relation to independent expenditures and  
3 electioneering communications, respectively.

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

6           The Commission will not consider the Petition’s merits until after the comment period  
7 closes. If the Commission decides that the Petition has merit, it may begin a rulemaking  
8 proceeding. The Commission will announce any action that it takes in the *Federal Register*.

9

10 Dated: July XX, 2021

11

12 On behalf of the Commission,

13

14

15

16 **Shana M. Broussard,**

17 *Chair,*

18 *Federal Election Commission.*

19

20 BILLING CODE: 6715-01-P

21