

FEC Seeks Comment on Subvendor Reporting Rulemaking Petition

September 2021

In August, the Federal Election Commission (FEC) issued a Notice of Availability (NOA) seeking public comment on a rulemaking petition concerning subvendor reporting. The rulemaking petition asked the FEC to amend its regulations to require political committees and other reporting entities to provide additional detail on payments made by vendors on behalf of the political committees and other reporting entities. Comments on the NOA are due October 4, 2021.

Under the petitioners' proposed regulatory approach, political committees and other reporting entities would be required to report not only payments made by the political committee or reporting entity to a vendor or independent contractor, but also any payments made by the vendor or independent contractor for the benefit of the political committee or reporting entity. The vendor or independent contractor would also be required to provide the political committee or reporting entity with the relevant information for reporting the expenses. For example, a fundraising firm working on behalf of a campaign committee would be required to provide the campaign committee with detailed information on expenses incurred on behalf of the campaign committee, such as postage, printing, event fees, and travel. When reporting its payment to the fundraising firm, the campaign committee would be required to report the fundraising firm's payments for these expenses.

Currently, political committees are required to report underlying expenses in three situations: (1) reimbursement payments to individuals; (2) credit card payments; and (3) for campaign committees, a candidate's payment of expenses on behalf of the campaign committee that are not reimbursed. FEC regulations do not require political committees or reporting entities to report the

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underlying expenses of their vendors or subvendors. However, both federal courts and the FEC have found it illegal for a political committee to use a vendor as a conduit to purposefully conceal a payment to a third party that is not a bona fide subvendor.

Wiley is available to draft comments in response to this rulemaking petition, either individually or as part of a larger coalition of organizations.