# 501(C)(4) REPORTING

## WHEN ARE DONORS DISCLOSED?

Donor disclosure by 501(c)(4) organizations is a hot topic of debate among the media, lawmakers, nonprofits, legal scholars, and experts in the tax-exempt sector. While 501(c)(4)s may no longer be required to disclose their donors' identity to the IRS or the public, certain activities may trigger donor disclosure to the Federal Election Commission, some state agencies, and in very limited circumstances, the U.S. House and Senate.

This factsheet explores the basics of 501(c)(4) reporting and provides an overview of common activities that may trigger donor disclosure. (Updated March 2023)

## DONOR DISCLOSURE TO IRS ELIMINATED

All 501(c)(4) organizations are regulated by the Internal Revenue Service (IRS) and are required to file annual financial reports. Every 501(c)(4) organization with annual gross receipts over $50,000 must file a **Form 990** or **Form 990-EZ** with the IRS annually. After a great deal of debate and litigation, starting with FY 2020, 501(c)(4) organizations are no longer required to disclose their donors' names and addresses on their organization's Schedule B of their annual form 990 or 990 EZ.[1] However, 501(c)(4) organizations must continue to report their donations equal to or greater than $5,000 on schedule B like before, minus donors' identifying information. 501(c)(4) organizations must keep donor names and addresses on file in their own records.

The IRS addresses the most frequently asked questions about exempt organization public disclosure on its **website here**.

While the IRS prohibits states from accessing federal tax return information (form 990) for state campaign finance or consumer protection enforcement, the IRS did, in theory, give a green light to states to collect donor information using their own collection and storage methods. Some states, such as New York, have or are considering passing laws and regulations in an attempt to collect donor information and have faced legal challenges.[2] However, be sure to check each state's lobbying or campaign finance laws for donor disclosure and reporting requirements when engaged in political activity within the state.

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1 On May 26, 2020, the IRS issue a final regulation, Federal Register : Guidance Under Section 6033 Regarding the Reporting Requirements of Exempt Organizations, IRS 2019 – 0039 eliminating the need for many 501(c) organizations to disclose their donors, including 501(c)(4)s. However, 501(c)(3) and 527s must still disclose their donors to the IRS according to federal law. At the time of this writing, there is a lawsuit challenging 501(c)(3) donor disclosure requirements: *Buckeye Institute v. IRS*.

2 In 2021, the US Supreme Court ruled that the state of California could not require public charities to disclose their Schedule B or donor's names and addresses and that the state's policy violated the donors' First Amendment right of association. *Americans for Prosperity Foundation v. Bonta, Slip Opinion 19-251*

# OTHER COMMON ACTIVITIES THAT TRIGGER DISCLOSURE

## Lobbying the Federal Government

Organizations that lobby the federal government may be subject to the federal Lobbying Disclosure Act (LDA). LDA reports do not usually require organizations to detail the origin of the funds used to pay for lobbying activities.[3] In addition to providing information about lobbying conduct, organizations report the total expenses for lobbying in a reporting period and information about certain political expenditures.

## Lobbying Your State and Local Government

State laws related to lobbying disclosure vary, as does the governmental entity that regulates lobbying. Organizations engaged in advocacy at the state and local level should become familiar with the law(s) that regulate their activity. Your state may be one of the more than 34 included in Alliance for Justice's **State Law Resources**.

As of this writing, we are aware that the following states have some type of donor disclosure requirements for nonprofits that engage in lobbying activities:

- **Maine**
- **Minnesota**
- **Montana**
- **Nebraska**
- **New Mexico**
- **New York**
- **Pennsylvania**
- **Washington**
- **West Virginia**
- **Texas**

Some of these states require donor disclosure for those contributions earmarked specifically for direct or grassroots lobbying communications. Disclosure might be avoided in some states by paying for lobbying communications from the organization's general funds and avoiding earmarked solicitations or fundraising. Every state's law is unique, and this list is not exhaustive, so double-check the law in your state if donor privacy is a concern.

### NOTE

Individuals who are registered federal lobbyists are required to file form LD-203 on a semi-annual basis to report their individual political contributions and any contributions to specific entities and events linked to Members of Congress (as defined by the Honest Leadership and Open Government Act of 2007).

## Operating a Federal Separate Segregated Fund (SSF)

Organizations that establish and operate a federal SSF – also known as a connected PAC – should be aware of the reporting obligations under the Federal Election Campaign Act (FECA).

[3] Under certain limited circumstances, the organization's LDA filing must list the name, address, and principal place of business of any "affiliated organization," i.e., any organization which contributes more than $5,000 in a calendar quarter for lobbying activities ***and*** "actively participates in the planning, supervision or control of such lobbying activities."

The FECA does not require the connected 501(c)(4) organization to disclose any administrative expenses related to operating the SSF, but the SSF is required to report contributor information and all expenditures made from its bank account to the Federal Election Commission (FEC) on **Form 3X** ("Report of Receipts and Disbursements").

These SSFs or connected PACs must disclose the following information about their contributors to the SSF: name, address, amount contributed over $200, aggregate amount if multiple contributions over $200, and employee occupation of contributor. The FEC also requires the SSF to use "best efforts" to provide this information, and "best efforts" is defined as making two separate requests for the information. Many SSFs or connected PACs will meet the "best efforts" requirement by including a disclaimer asking contributors to provide this information and then sending a follow-up letter to obtain any missing information. By doing this, they can demonstrate "best efforts" upon investigation.

## Making Membership Communications

501(c)(4) organizations that have **FEC-qualified members** are permitted to pay for communications to their members using general treasury funds that expressly advocate the election or defeat of a clearly identified federal candidate ("express advocacy"). Expenses for express advocacy that exceed $2,000 for any election must be reported to the FEC on **Form 7** ("Report of Communication Costs by Corporations and Membership Organizations"). Federal law does not require the reporting of any contribution or donor information on Form 7. Once organizations meet the threshold for filing a Form 7, they'll also need to file quarterly reports and a 12-day pre-election report through the end of the election.

501(c)(4) organizations should also take care to check state law on reporting membership communications, as they vary by state.

## Making Electioneering Communications

Organizations that make **electioneering communications** that add up to more than $10,000 in the calendar year must file **FEC Form 9** ("24 Hour Notice of Disbursements/Obligations for Electioneering Communications") with the FEC within 24 hours of the "disclosure date."
501(c)(4) organizations should also take care to check state law on reporting membership communications, as they vary by state.

Currently, an organization paying for an electioneering communication out of its general treasury account must report the name and address of any donor who, since the first day of the preceding calendar year, has donated an amount totaling $1,000 or more to the person (or organization) that is earmarked for electioneering communications.[4]

[4] In *Van Hollen v. Federal Election Commission*, 811 F.3d 486 (D.C. Cir. 2016), the U.S. Court of Appeals for the District of Columbia Circuit upheld the 2007 FEC regulations, requiring that only donors of contributions over $1000 earmarked for electioneering communications need to be reported . A petition to rehear the case en banc was denied on September 26, 2016.

To avoid reporting donors who contribute to the organization's general fund, **do not ask for earmarked contributions**. Alternatively, groups may decide to establish a segregated bank account to pay for electioneering communications and report only the donors who have made contributions to that account. 501(c)(4)s making electioneering communications are also required to report the persons sharing the exercise, care, and control of making the disbursement for the electioneering communication. This is usually the senior person of the organization such as the Executive Director, President, or equivalent, the one with the decision-making authority for the communication.

## Making Independent Expenditures

Since the *Citizens United* ruling in 2010, 501(c)(4) organizations have been permitted to use their general treasury funds to pay for **independent expenditures** (IEs) in federal elections. IEs are those communications that expressly advocate the election or defeat of a clearly identified federal candidate and are not made in coordination with the candidate or their campaign. There has been a great deal of litigation surrounding donor disclosure for those organizations making IEs.

However, starting in 2018 and affirmed in 2020, the federal courts vacated an FEC regulation, and that decision expanded donor disclosure for those 501(c)(4)s making independent expenditures. Since that time, the FEC has not issued any regulations, but has issued some guidance that helps to clarify when 501(c)(4)s should disclose their donors.

Independent expenditures must be reported to the FEC on Form 5 ("Report of Independent Expenditures Made and Contributions Received") once the organization has spent a total of more than $250. All expenditures must be individually itemized. On a quarterly basis, 501(c)(4) organizations must report the identity of all donors that contribute in excess of $200 money that is earmarked for the following purposes:

(1) the organization's independent expenditure program;
(2) "other political purposes" of the organization.[5]

When are donations made for "political purposes?" While the FEC has not issued regulations, three FEC commissioners have issued the following policy statement that they intend to only exercise their discretion and proceed with enforcement actions against organizations that fail to disclose donors who contribute funds "earmarked for political purposes."

[5] Crew v. FEC, 316 F.Supp. 3d 349, 392 (D.D.C. Aug. 3, 2018) The DC. Cir affirmed the decision at 971 F.3d 340 (Aug. 21, 2020). There was an intervening stay pending appeal, which the United State Supreme Court eventually vacated (139 S.Ct. 50), therefore the original decision stands The Crew decision vacated 11 CFR section 109.10(e)(1)(6) which required 501(c)(4)s to only report donors that gave to further the itemized independent expenditure. The FEC followed with public guidance issued October 8, 2018 found here that only lead to more confusion. Then in 2022, the FEC issued an interim rule vacating 11 CFR 109.10(e)(1)(6), followed by a policy statement signed by 3 FEC commissioners that did clarify how those three commissioners planned to exercise their discretion and provided some clarification to 501(c)(4) and other non-committee organizations. Read their policy statement here.

Toward that end, they write:

*...that a donation made to a non-committee organization ((a c4, c5, c6) without a connected PAC) is "earmarked for political purposes" within the meaning of § 30104(c)(1) only if it is designated or solicited for, or restricted to, activities or communications that expressly advocate the election or defeat of a clearly identified candidate for federal office.*

*Thus, for example, a donor who gives money to a non-committee organization with a specific instruction that the organization use the funds for independent expenditures or other activities to expressly advocate for or against a federal candidate, or who gives in direct response to a solicitation for funding such expenditures or activities, makes a contribution "earmarked for political purposes.*

*On the other hand, a donor who makes an unrestricted donation to a non-committee organization or designates a donation for non-electoral purposes like issue advocacy, or who responds to a general solicitation to support the organization's mission, does not make a contribution "earmarked for political purposes." The latter donations are not subject to disclosure under § 30104(c)(1), even if the non-committee organization decides in the same reporting period to use its general funds for express advocacy activities, because the only relevant determinant is the cognizable intent and understanding of the donor at the time he or she gave money to the organization.*

A 501(c)(4) that reports IEs on Form 5, must also use the memo text box on Form 5-A to indicate which itemized donors gave "for the purpose for furthering any independent expenditure."

501(c)(4)s without a connected PAC that report IEs on Form 5, must also disclose their donors that contribute to the IE program or for political purposes on their 24- and 48-hour reports immediately prior to an election.

## Supporting Ballot Measures

Ballot measure activity is governed exclusively by state campaign finance regulations that vary by state. Organizations planning to engage in ballot measure advocacy should find out if they meet the state's reporting threshold, which would require the organization to register with the state and file regular reports disclosing their ballot measure activity, which may include donor information. For information on state requirements for participating in ballot measure advocacy, consult AFJ's **State Law Resources**.

The Alliance for Justice Action Campaign (AFJAC) serves as the nation's leading resource on the legal framework for 501(c)(4) nonprofit advocacy efforts. AFJAC provides invaluable resources, training, and technical assistance to help nonprofit organizations and their donors advocate more efficiently and effectively. The information contained in this fact sheet and any attachments is being provided for informational purposes only and not as part of an attorney-client relationship. The information is not a substitute for expert legal, tax, or other professional advice tailored to your specific circumstances, and may not be relied upon for the purposes of avoiding any penalties that may be imposed under the Internal Revenue Code. Alliance for Justice Action Campaign publishes plain-language guides, offers educational workshops, and provides technical assistance for nonprofits engaging in advocacy.