

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL ELECTION COMMISSION

11 CFR Parts 104, 110, and 400

[Notice 2024–29]

Modification and Redaction of Contributor Information

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Election Commission proposes to amend its regulations by establishing procedures for contributors or their agents to request the Commission—in certain limited circumstances when there is a reasonable probability the contributor may face threats, harassment or reprisal—to modify or redact, in whole or in part, certain contributor information (*i.e.*, mailing address, occupation, and employer name) from a disclosure report or statement that has been filed with the Commission. The Commission seeks comment on the proposed rules and has not made any final decisions about the issues presented in this rulemaking.

DATES: Comments must be received on or before February 18, 2025. The Commission may hold a public hearing on this rulemaking. Anyone wishing to testify at such a hearing must file timely written comments and must include in the written comments a request to testify. If a hearing is to be held, the Commission will publish a notification in the **Federal Register** announcing the date and time of the hearing.

ADDRESSES: All comments must be in writing. Commenters are encouraged to submit comments electronically via the Commission's website at <https://sers.fec.gov/fosers>, reference REG 2024–06. Alternatively, comments may be submitted in paper form addressed to the Federal Election Commission, Attn.: Mr. Robert M. Knop, Assistant General Counsel for Policy, 1050 First Street NE, Washington, DC 20463 (for U.S. Postal Service) or 20002 (for all other delivery services).

Each commenter must provide, at a minimum, their first name, last name, city, and state. All properly submitted comments, including attachments, will become part of the public record, and the Commission will make comments available for public viewing on the Commission's website and in the Commission's Public Records Office. Accordingly, commenters should not provide in their comments any information that they do not wish to make public, such as a home street address, personal email address, date of birth, phone number, social security number, or driver's license number, or any information that is restricted from disclosure, such as trade secrets or commercial or financial information that is privileged or confidential.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Knop, Assistant General Counsel for Policy, Ms. Lindsay Bird, Attorney, or Mr. Isaac Campbell, Attorney, 1050 First Street NE, Washington, DC 20463 (for U.S. Postal Service) or 20002 (for all other delivery services), (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Federal Election Campaign Act (“the Act”) ¹ generally requires contributors' identities to be disclosed in reports or statements filed with the Commission. Namely, political committees must disclose the name, mailing address, occupation, and employer name of each individual who contributes an aggregate in excess of \$200 per calendar year (or per election cycle in the case of an authorized committee).² Moreover, conduits and intermediaries receiving and forwarding earmarked contributions to candidates must disclose every contributor's name and mailing address, regardless of the amount of the earmarked contribution.³ The Commission, in turn, must post the reports and statements containing the identification information on its website.⁴

While recognizing that there are important governmental interests that justify the Act's disclosure requirements, the Supreme Court has

acknowledged that disclosing a contributor's identity may expose them to threats, harassment, or retaliation, resulting in a significant burden on their First Amendment rights.⁵ Accordingly, the Court has required an exemption from the Act's reporting requirements when there is a “reasonable probability” that the contributor may face such threats, harassment, or retaliation.⁶

Thus far, the courts have granted disclosure exemptions only to committees and organizations that sought to withhold the identity of their contributors due to demonstrated threats, harassment, or reprisals resulting from association with that committee or organization. The Commission has also granted such exemptions via the advisory opinion process when the requesting committee or organization was able to demonstrate specific evidence of past threats and harassment.⁷ From time to time, the Commission has also received requests from individual contributors who wished to have their identifying information removed from disclosure reports. And the Commission granted such requests when they were supported by evidence of threats, harassment, or reprisal. The Commission is now considering whether to establish a procedure to formalize the submission and consideration of requests by individual contributors when reasonable probability exists that the contributors may face threats, harassment, or reprisal.

Accordingly, the Commission proposes to revise its regulations to establish a process for individual contributors (or their agents) to request that the Commission modify or redact, in whole or in part, certain contributor information (*i.e.*, mailing address, occupation, and employer name) from a disclosure report or statement that has been filed with the Commission under 52 U.S.C. 30104 and 30116(a)(8). The Commission would grant the request if it determines that the request establishes a reasonable probability that

⁵ *Buckley v. Valeo*, 424 U.S. 1, 68 (1976) (*per curiam*).

⁶ *Id.*

⁷ Advisory Opinion 1990–13 (Socialist Workers' Party); Advisory Opinion 1996–46 (Socialist Workers' Party); Advisory Opinion 2003–02 (Socialist Workers' Party); Advisory Opinion 2009–01 (Socialist Workers' Party); Advisory Opinion 2012–38 (Socialist Workers' Party).

¹ 52 U.S.C. 30101–45.

² 52 U.S.C. 30104(b)(3)(A); 11 CFR 104.3(a)(4).

³ 11 CFR 110.6(c)(1)(iv)(A). If the contribution exceeds \$200, the conduit or intermediary must also report the contributor's occupation and employer. *Id.*

⁴ 52 U.S.C. 30112(a).

disclosure of the requestor's identifying information would subject the requestor to threats, harassment, or reprisals. The Commission invites public comments on the proposed rules.

I. Background

A. Requirements To Disclose Contributor's Identities

1. Political Committees

Political committees must file disclosure reports with the Commission on a regular basis.⁸ These reports must include the "identification" of any person who contributes more than \$200 during a calendar year (or during an election cycle, in the case of an authorized committee).⁹ The Act defines the term "identification" to mean "in the case of any individual, the name, the mailing address, and the occupation of such individual, as well as the name of his or her employer."¹⁰ "Mailing address" means any address where a person receives mail, including a business address.¹¹

When the treasurer of a political committee demonstrates to the Commission that the committee used best efforts to obtain, maintain, and submit the information required by the Act, any report or records of such committee will be considered in compliance with the Act.¹² Commission regulations specify the actions that treasurers must take to demonstrate that they have exercised best efforts to obtain and report the "identification" of each person whose contribution(s) they are required to disclose.¹³

First, the committee must include a clear and conspicuous request for the contributor's identification information in any solicitations.¹⁴ Second, if the contributor does not provide sufficient identification information when making the contribution, the committee must make at least one request for the information within 30 days of receipt of the contribution.¹⁵ Third, if the contributor does not respond to the follow-up request, but the committee possesses the information in its contributor records, fundraising records, or prior reports filed during the same two-year election cycle, then the

committee must use that information when disclosing the contribution.¹⁶ Finally, if the requested information about a contribution is received after the contribution has been disclosed on a report, the committee must file a memo or amend its report to disclose the information.¹⁷

2. Persons Who Are Not Political Committees

Persons that spend money to influence Federal elections but fall outside of the definition of a political committee are not required to file regular disclosure reports; however, an obligation to file disclosures with the FEC may be triggered if they engage in specified election-related spending.¹⁸ Namely, a person that is not a political committee may be required to disclose the identity of their contributors if they make independent expenditures or electioneering communications.

a. Independent Expenditures

An "independent expenditure" is defined as an expenditure for a communication made without coordination with a candidate, campaign, or political party that "expressly advocat[es] the election or defeat of a clearly identified candidate."¹⁹ The Act provides that any person that is not a political committee and makes independent expenditures aggregating more than \$250 with respect to a given election per calendar year must file a statement containing, among other information, the name, address, occupation, and employer of each person whose contributions aggregated more than \$200 within the calendar year.²⁰ The Act also provides that the statement must include the same details for those who contributed more than \$200 for the purpose of furthering an independent expenditure.²¹

b. Electioneering Communications

An electioneering communication is any broadcast, cable, or satellite communication that refers to a clearly identified Federal candidate, is publicly distributed within 30 days of a primary or 60 days of a general election and is targeted to the relevant electorate.²² All persons who make electioneering communications totaling more than \$10,000 in any calendar year must file a statement with the Commission.²³ The

statement must include, among other information, the name and address of each person who gave a total of \$1,000 or more within a specified period.²⁴ If the electioneering communications were paid exclusively from a segregated account, only donors to that account must be disclosed.²⁵

3. Conduits and Intermediaries

The Act and Commission regulations have special disclosure requirements for conduits and intermediaries. A conduit or intermediary is any person not authorized by the campaign to raise funds who receives and forwards an earmarked contribution to a candidate or a candidate's authorized committee.²⁶ An earmarked contribution is one that a contributor directs (either orally or in writing) to a clearly identified candidate or authorized committee through an intermediary or conduit.²⁷ Individuals, political committees, partnerships, and unregistered organizations may serve as conduits for earmarked contributions.

A conduit or intermediary must report the source of an earmarked contribution to the Commission and the intended recipient.²⁸ Commission regulations require such reports to include each contributor's name and mailing address, regardless of the amount of the earmarked contribution.²⁹ If the contribution exceeds \$200, the conduit must also report the contributor's occupation and employer.³⁰

B. The Commission's Duty To Make Reports Public

The Commission must make a disclosure report or statement available for public inspection within 48 hours of receipt.³¹ The Commission is required to post all publicly available election-related reports and information on its website.³² Commission regulations provide that it "will make the fullest possible disclosure of records to the public, consistent with the rights of individuals to privacy. . . ." ³³ Thus, when a person or entity files a report or statement with the Commission containing a contributor's identification information, that information becomes accessible to the general public on the Commission's website.

⁸ See 52 U.S.C. 30104(a).

⁹ *Id.* 30104(b)(3)(A); 11 CFR 104.3(a)(4).

¹⁰ 52 U.S.C. 30101(13). See also 11 CFR 100.12.

¹¹ See, e.g., Federal Election Commission, Record at 4 (Dec. 2009) ("A mailing address is any address at which an individual can receive mail, including a work address or a P.O. Box."), <http://www.fec.gov/pdf/record/2009/dec09.pdf>.

¹² 52 U.S.C. 30102(i); 11 CFR 104.7.

¹³ 11 CFR 104.7(b).

¹⁴ *Id.* § 104.7(b)(1).

¹⁵ *Id.* § 104.7(b)(2).

¹⁶ *Id.* § 104.7(b)(3).

¹⁷ *Id.* § 104.7(b)(4).

¹⁸ See 52 U.S.C. 30104(c), (f).

¹⁹ *Id.* 30101(17).

²⁰ See *id.* 30104(c).

²¹ *Id.* 30104(c)(2).

²² *Id.* 30104(f)(3).

²³ *Id.* 30104(f)(1); 11 CFR 104.20(b).

²⁴ 52 U.S.C. 30104(f)(2); 11 CFR 104.20(c).

²⁵ 52 U.S.C. 30104(f)(2)(E); 11 CFR 104.20(c)(8).

²⁶ 11 CFR 110.6(b)(2).

²⁷ 11 CFR 110.6.

²⁸ 52 U.S.C. 30116(a)(8); 11 CFR 110.6 (c)(1)(i).

²⁹ 11 CFR 110.6(c)(1)(iv)(A).

³⁰ *Id.*

³¹ 52 U.S.C. 30111(a)(4), 30104(a)(11)(B).

³² *Id.* 30112(a).

³³ 11 CFR 5.2(a).

C. Exemptions From Disclosure Requirements

The Supreme Court has recognized that there are important governmental interests that justify the Act's disclosure requirements, including: (1) providing information to the electorate about the financial support enjoyed by a candidate or political committee, (2) deterring corruption and avoiding the appearance of corruption, and (3) preventing circumvention of the Act's contribution limits.³⁴ The Court has generally determined that the Act's disclosure requirements are properly tailored to the advancement of these interests.³⁵ However, the Court has also recognized the need for as-applied exemptions from compelled disclosure in some circumstances.

The Commission has provided as-applied exemptions from the Act's disclosure requirements in three ways: (1) conformance with court decisions, (2) the Commission's advisory opinion process, and (3) informal requests to the Commission.

1. Court Decisions

In *Buckley v. Valeo*, the Court acknowledged that disclosing a contributor's identity may deter them from contributing and, in some instances, may expose them to threats, harassment, or retaliation.³⁶ The Court recognized that "[t]hese are not insignificant burdens on individual rights, and they must be weighed carefully against the interests which Congress has sought to promote by this legislation."³⁷ The Court reasoned that, in most applications, disclosure requirements are "the least restrictive means of curbing the evils of campaign ignorance and corruption that Congress found to exist."³⁸ However, the Court left open the possibility of a case "where the threat to the exercise of First Amendment rights is so serious, and the state interest furthered by disclosure so insubstantial, that the Act's requirements cannot be constitutionally applied."³⁹ Specifically, the *Buckley* Court instructed that, in such circumstances, "[t]he evidence offered need show only a reasonable probability that the compelled disclosure of a party's contributors' names will subject them to threats, harassment, or reprisals from either Government officials or

private parties."⁴⁰ Organizations have brought suits in Federal court seeking to be exempted from campaign finance disclosure requirements pursuant to the Supreme Court's opinion, and minor parties have, from time to time, demonstrated a reasonable probability that the disclosure would subject contributors to threats, harassment, or reprisals.⁴¹

2. Advisory Opinions

Committees and organizations that wish to withhold their contributors' names and other identifying information due to threats, harassment, or reprisals resulting from association with that committee or organization can also request an exemption through the advisory opinion process. The Commission has issued advisory opinions granting exemptions from the Act's disclosure requirements to one organization: the Socialist Workers' Party ("SWP").

In 1979, following an action for declaratory and injunctive relief, the Commission and SWP entered into a consent agreement stipulating that, for a limited time, SWP would not be required to comply with certain disclosure provisions of the Act, including the requirement to disclose its contributors' identities.⁴² When the consent agreement expired, SWP sought an advisory opinion concerning its continued eligibility for disclosure exemptions.

In 1990, the Commission issued an advisory opinion extending SWP's partial reporting exemption for the next two election cycles.⁴³ The Commission reasoned that SWP was a minor party that continued to demonstrate a reasonable probability that disclosure of its contributors' names and other identifying information would subject them to threats, harassment, or reprisals.⁴⁴ The Commission renewed SWP's exemption on the same grounds four more times.⁴⁵ In 2016, SWP again

sought to renew the exemption, but the Commission was unable to reach agreement on SWP's request.⁴⁶

3. Informal Requests

The Commission has occasionally received informal requests to substitute or redact an individual's address from publicly available documents, which it has considered on an *ad hoc* basis. The concerns raised in these requests are not necessarily connected to the individual's support for a particular cause or organization but may instead be tied to the specific individual's circumstances. For example, these requests may be submitted by an individual who wishes to replace a home address with a business address due to personal security concerns or a victim of intimate partner violence who wishes to prevent their home address from being publicly disclosed.

A subset of these requests have invoked the Daniel Aderl Judicial Security and Privacy Act of 2022.⁴⁷ That Federal law requires Government agencies (including the Commission), persons, businesses, and associations to remove from public view residential addresses and certain other personally identifiable information of Federal judges and members of their households and immediate families within 72 hours of receiving a request for removal.⁴⁸ Agencies have no discretion to refuse a valid request; failure to comply may subject the agency to a suit for declaratory or injunctive relief.⁴⁹

II. Proposed Rules

A. Applicability of Proposed Rules

The Act requires individuals and entities to disclose contributors' identities in reports or statements filed with the Commission in certain circumstances. There are no exemptions to these disclosure requirements in the Act. However, as discussed above, the Supreme Court and other Federal courts have recognized the need for as-applied exemptions from compelled disclosure in some circumstances. Consistent with that precedent, the Commission too has granted as-applied exemptions in limited circumstances. Thus far, individual contributors' concerns about the disclosure of their personal information have generally been considered on an *ad hoc* basis. The

Opinion 2009-01 (SWP); Advisory Opinion 2012-38 (SWP).

⁴⁶ See Advisory Opinion 2016-23 (SWP).

⁴⁷ See Daniel Aderl Judicial Security and Privacy Act of 2022, Public Law 117-263, 136 Stat. 3458 (2022) ("Judicial Security and Privacy Act").

⁴⁸ *Id.* secs. 5933-34.

⁴⁹ *Id.* sec. 5934(f)(1).

⁴⁰ *Id.* at 74.

⁴¹ E.g., Consent Decree, *Socialist Workers 1974 Nat'l Campaign Comm. v. Fed. Election Comm'n*, Case No. 74-1338 (D.D.C. 1979); *Brown v. Socialist Workers '74 Campaign Comm. (Ohio)*, 459 U.S. 87 (1982); *Fed. Election Comm'n v. Hall-Tyner Election Campaign Comm.*, 678 F.2d 416, 420 (2d Cir.1982). Courts have also declined to order exemptions, finding that a plaintiff's claims of threat, harassment, or reprisal were insufficient to oust the general disclosure rule. *ProtectMarriage.com v. Bowen*, 830 F. Supp. 2d 914, 928-30 (E.D. Cal. 2011).

⁴² Consent Decree, *Socialist Workers 1974 Nat'l Campaign Comm. v. Fed. Election Comm'n*, Case No. 74-1338 (D.D.C. 1979).

⁴³ Advisory Opinion 1990-13 (SWP).

⁴⁴ *Id.* at 6.

⁴⁵ See Advisory Opinion 1996-46 (SWP); Advisory Opinion 2003-02 (SWP); Advisory

³⁴ *Buckley*, 424 U.S. at 66-67.

³⁵ See *id.*; *McConnell v. Fed. Election Comm'n*, 540 U.S. 93, 103-104 (2003); *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 368-70 (2010).

³⁶ *Buckley*, 424 U.S. at 68.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.* at 71.

Commission now considers whether to establish a procedure to formalize the submission and consideration of these *ad hoc* requests. In doing so, the Commission is not seeking to foreclose or supplant other avenues of relief, such as recourse to the courts or the Judicial Security and Privacy Act.

The Commission welcomes comments on the scope and necessity of the proposed rules. Does the Commission have the authority to draft regulations to establish a new procedure for addressing as-applied exemptions? Is a new approach desirable, or should all requests be addressed through the advisory opinion process and by the courts? Should the proposed procedure also apply to requests from committees or organizations that seek to withhold their contributors' information? If so, should there be different approaches for requests from individual contributors and requests from committees and organizations?

B. Part 400

1. Proposed 11 CFR 400.1—Scope

Proposed 11 CFR 400.1 provides that part 400 establishes the procedures for processing requests to modify or redact a contributor's mailing address, occupation, or employer name in reports or statements that have been filed with the Commission under 52 U.S.C. 30104 and 30116(a)(8). The Commission seeks comments on three broad questions that are raised by the scope of the proposed rules: (1) whose information can be modified or redacted, (2) what information can be modified or redacted, and (3) what reports or statements can be modified or redacted.

a. Whose information can be redacted?

The proposed rules would only apply to the modification or redaction of a contributor's identification information. They do not extend to other individuals whose personal information may be included on disclosure reports or other documents made public by the Commission. For example, the proposed regulations do not apply to the redaction of a candidate, treasurer, or payee's address. Should the proposed rules allow for the redaction of any person's information that is in the documents the Commission makes public?

b. What information can be modified or redacted?

The proposed rules would only apply to a request to modify or redact a contributor's mailing address, occupation, or employer name; they do

not establish a procedure for modifying or redacting a contributor's name. This is consistent with the Commission's past practice. The Commission has only granted requests to withhold contributors' names pursuant to advisory opinions or court decisions and has not considered such requests on an *ad hoc* basis.

The Commission welcomes comments on the scope and necessity of the proposed rules. Should these rules allow for the modification or redaction of contributors' names and, if so, should the procedure to modify or redact names differ from the procedure to modify or redact other identifying information. If the Commission redacts names under part 400, should the confidentiality provision at proposed § 400.9 change?

The Commission also welcomes comments on whether a contributor's occupation and employer name should be included in the new procedure established by the proposed rules. Are an individual's occupation and employer too far attenuated from potential concerns to include in the process? Or should the Commission be able to assess whether there is a reasonable probability of threats, harassment, or reprisals resulting from the disclosure of an individual's occupation and employer name when weighing each request? Further, should the Commission permit redaction of the contributor's complete mailing address or only the street name and number of the contributor's mailing address?

c. What reports or statements can be modified or redacted?

Proposed 11 CFR 400.1 provides that the procedures in part 400 shall apply to the modification or redaction of reports and statements filed with the Commission under 52 U.S.C. 30104 and 30116(a)(8), which include all reports filed by political committees, reports of independent expenditures, statements disclosing electioneering communications, and reports of conduits and intermediaries. The Commission intends for the proposed procedure to allow the modification or redaction of any report or statement that contains a contributor address, occupation, or employer name and is in the Commission's possession. Are there reports or statements the Commission omitted that include contributor identification information? Are there other types of documents made public by the Commission that include identifying information? If so, should they be included in the new procedure? Are there categories of reports or statements that should be excluded from the proposed procedure?

The proposed rules would also only permit requests for the modification or redaction of reports already filed with the Commission and amendments to those reports. Proposed 11 CFR 400.8, discussed below, provides that once the Commission modifies or redacts a report pursuant to a request, the filer can incorporate those same changes into future reports for the next two calendar years without the requestor submitting a new request.

The Commission seeks comments on whether the new procedure should allow contributors to ask for their information to be modified or redacted by the filer in future reports. If so, what limitations should be placed on the request? Should the filers of the future reports be required to participate in the request? Should future filers be required to withhold the information, or should it be discretionary? How would the filers of future reports be made aware that the contributor's information can or must be withheld? Following the Commission's initial approval of a contributor's request for modification or redaction of information, should filers be responsible for notifying the Commission about the need for future modifications or redactions for the same contributor or should the Commission itself manage tracking of future changes to reports? What are the anticipated burdens to individual contributors and filers, from various alternative approaches to the modification or redaction of future reports?

2. Proposed 11 CFR 400.2—Computation of Time

Proposed § 400.2 provides that the time periods established by part 400 will be computed in accordance with 11 CFR 111.2, which is the computation of time provision in the Commission's enforcement regulations. Section 111.2 provides that in computing any period of time, the day of the act, event, or default from which the designated period of time begins to run will not be included. The last day of the period so computed will be included, unless it is a Saturday, a Sunday, or a legal holiday. When the period of time is less than seven (7) days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. Whenever the Commission or any person has the right or is required to do some act within a prescribed period after the service of any paper by or upon the Commission or such person, and the paper is served by or upon the Commission or such person by mail, three (3) days shall be added to the prescribed period.

3. Proposed 11 CFR 400.3—Requests To Modify or Redact Contributor's Mailing Address, Occupation, or Employer Name

Proposed § 400.3 establishes that a contributor may request that the Commission modify or redact their mailing address, occupation, or employer name from a report or statement filed with the Commission. The Commission expects such requests will include concerns specific to the individual contributor. Accordingly, in the Commission's view, the individual contributor is best suited to provide the information necessary for the Commission to consider the request. Proposed § 400.5, discussed below, specifies that agents, parents, and guardians may submit requests on the contributor's behalf. The Commission intends for proposed § 400.3 to apply to any contributor whose address, occupation, or employer name is included on any report or statement made public by the Commission. This section does not consider the amount of a contribution or the recipient of the contribution.

The Commission seeks comments on this approach. Are there other individuals or groups that should be able to submit requests through the new procedure? Should this procedure only be available to individuals whose contributions were under a specified amount? Should any other limitations be placed upon the types of information that may be modified or redacted for a given contributor?

4. Proposed 11 CFR 400.4—Contents of the Request

Proposed § 400.4 describes the contents of a request to modify or redact contributor information. Paragraph (a) contains the information that must be included in a request at a minimum. Paragraph (a)(1) requires the request to provide the requestor's full name, address, and telephone number. Paragraph (a)(2) requires the request to identify the information the requestor seeks to modify or redact. Paragraph (a)(3) requires the request to identify any published report(s) that contain the information the requestor is asking the Commission to modify or redact. Paragraph (a)(4) requires the request to be sworn to and signed by the requestor and notarized. Under § 400.6, discussed below, the Office of the General Counsel will review all requests to determine if they have met the requirements in paragraph (a). If a request does not meet the requirements in paragraph (a), then no action will be taken on the request

other than to notify the requestor of its deficiencies.

Paragraph (b) contains the information that a request should include where possible. The Commission will consider these factors when evaluating the strength of a request. Paragraph (b)(1) provides that the request should state with particularity the facts that establish a reasonable probability that the disclosure of each piece of information the requestor seeks to modify or redact would subject the requestor to threats, harassment, or reprisals. Paragraph (b)(2) provides that statements within the request should be based upon the requestor's personal knowledge. Paragraph (b)(3) provides that the request should be accompanied by any records supporting the facts alleged if such records are known, and available, to the requestor. If a request meets the requirements of paragraph (a) but does not contain all the information in paragraph (b), it will still be forwarded to the Commission for review and evaluation, but the Commission may have insufficient information to grant the request.

Paragraph (c) provides that all statements made in a request are subject to the statutes governing perjury and to 18 U.S.C. 1001. The Commission recognizes personal safety concerns will motivate requests to modify or redact contributor information. To move quickly to evaluate such requests, the Commission must be able to rely on the veracity of the statements in each request.

5. Proposed 11 CFR 400.5—Procedure for Submitting a Request

Proposed § 400.5 describes the procedure for submitting a request for modification or redaction of contributor information. Requests must be submitted in writing, addressed to the Office of the General Counsel. Requests can be submitted via U.S. mail or to the email address designated on the Commission's website to receive such requests. An authorized agent, parent, or guardian of a contributor may submit a modification or redaction request, but the agent, parent, or guardian must disclose the identity of their principal. All requests must include the information in § 400.4(a). Requests submitted by an agent still must be sworn to and signed by the requestor, not the agent.

The Commission seeks comments on whether committees or organizations should be permitted to act as agents of contributors for purposes of § 400.5, or whether they should be required to

address such requests through the advisory opinion process or the courts.

6. Proposed 11 CFR 400.6—Initial Request Processing

Proposed § 400.6 sets forth the process that the Office of the General Counsel will follow upon receipt of a request to modify or redact contributor information.

Paragraph (a) provides that the Office of the General Counsel will review the request within five business days to ensure substantial compliance with the technical requirements of § 400.4(a). If the request meets the technical requirements, the Office of the General Counsel will forward it to the Commission for review under § 400.7.

Paragraph (b) provides that if the technical requirements in § 400.4(a) are not met, the Office of the General Counsel will, within five business days, notify the requestor that no action will be taken and identify the request's deficiencies.

7. Proposed 11 CFR 400.7—Reasonable Probability Finding; Notification

Proposed § 400.7 describes the process that the Commission will follow when considering a request for modification or redaction of contributor information. It also sets forth the notifications that will follow the Commission's decision.

Paragraph (a) provides that if the Commission, after reviewing the request and any supporting documentation, determines by an affirmative vote of four (4) or more of its members that there is a reasonable probability that the relevant disclosure would subject the requestor to threats, harassment, or reprisals, the Commission may approve, in whole or in part, the modification or redaction of the requested information.

The Commission will examine whether the request includes the information in § 400.4(b) when evaluating the strength of the request but will maintain the flexibility to consider the totality of the circumstances as presented in the request and supporting documentation. The Commission will not undertake an independent investigation to verify or supplement the information in the request. However, under § 400.4(c), the statements in the request are subject to penalties of perjury and to 18 U.S.C. 1001.

The "reasonable probability" standard in § 400.7(a) implements the standard that the Supreme Court has used to evaluate as-applied challenges to the

Act's disclosure requirements.⁵⁰ The Commission will apply this standard to each piece of information the contributor seeks to modify or redact. The proposed rules use the same standard for all requests, regardless of whether the request seeks to substitute or completely redact information. The Commission seeks comments on whether the "reasonable probability" standard is the appropriate standard for evaluating requests to modify or redact contributor information. If not, what would be the appropriate standard?

Paragraph (b) provides that the Commission will, within five (5) business days of voting, notify the requestor of the Commission's decision.

Paragraph (c) provides that if the request is approved, the Commission will expeditiously make any approved changes to published reports. The Commission notes that under proposed § 400.4(a)(3), the requestor is required to identify the published reports that the requestor seeks to modify or redact.

Paragraph (d) provides that if changes are made to a disclosure report filed with the Commission, within five (5) business days after the changes are made, the Commission will notify the committee or person who filed the disclosure report that the report was modified pursuant to part 400. To conserve Commission resources, the proposed rules do not require the Commission to notify the filer if no changes are made to their report.

8. Proposed 11 CFR 400.8— Modifications or Redactions in Future Disclosure Reports

Proposed § 400.8 provides that if the Commission makes modifications or redactions to a disclosure report pursuant to a request under part 400, any individuals or entities who are required to identify the same individual in reports or statements filed with the Commission may incorporate those modifications or redactions into any report or statement filed within the next two calendar years, or within any other period specified by the Commission in its decision approving the contributor's request.

The Commission recognizes that it would be inefficient and impractical to require a contributor to submit a new request each time their information is included in a new report. Additionally, the factual basis underlying a request for modification or redaction will likely persist for some time. Thus, proposed § 400.8 establishes that the changes the

Commission makes pursuant to a request under part 400 can be preemptively made to any report or statement filed with the Commission within the next two calendar years without an additional request. The Commission will have discretion to adjust this two-year default on a case-by-case basis. The Commission seeks comments on this approach. In addition, the Commission seeks comments on whether such requests must be submitted after a contribution is made, or whether it would be more appropriate to permit a requestor to file in advance of making a contribution.

The Commission is proposing a two-calendar year period in § 400.8 as the default because it believes this is a period during which it could reasonably expect the threats, harassment, and reprisals identified in a request for modification or redaction to persist. Additionally, this period helps limit the frequency of requests, conserving Commission resources and reducing the burden on requestors. The Commission seeks comments on whether two calendar years is the appropriate default time period for proposed § 400.8.

Proposed § 400.8 is discretionary. It permits filers to modify or withhold certain information from future reports but does not require them to do so. Under proposed § 400.7(d), the Commission will notify filers if it changes their report(s) pursuant to a contributor's request. These filers would be on notice that they can, and for the sake of efficiency should, make these same changes in future reports in accordance with § 400.8. The Commission seeks comments as to how it can prevent a requestor's information from being released in a future report without the filing of a new request. Under the proposed language, if the contributor makes a contribution to a new committee or organization, the contributor would be responsible for notifying that entity that their information can be withheld or modified pursuant to § 400.8. The Commission seeks comments concerning the method by which a contributor would demonstrate that his or her information should be withheld or modified when making a contribution to a new committee or organization. Is a copy of the notification to the requestor from the Commission approving the request sufficient? If not, what evidence of the Commission's decision ought to be provided?

9. Proposed 11 CFR 400.9— Confidentiality

Proposed § 400.9 establishes that requests, notifications, and findings

made pursuant to part 400 will generally be kept confidential. Paragraph (a) provides that except as provided in proposed § 400.7(d), which describes the notification that is sent to committees when their reports have been modified under part 400, no request submitted to the Commission, nor any notification sent by the Commission, nor any findings made by the Commission, will be made public by the Commission without the written consent of the requestor. Paragraph (b) establishes that nothing in part 400 shall be construed to prevent the introduction of evidence in the courts of the United States which could properly be introduced pursuant to the Federal Rules of Evidence or Federal Rules of Civil Procedure. The Commission seeks comments concerning appropriate mechanisms by which the Commission may preserve the confidentiality of potentially at-risk requestors while maintaining appropriate transparency as to the Commission's actions regarding redaction and modification requests. The Commission also seeks comments on whether the proposed procedures in part 400 should apply to requests from committees or other organizations to redact or withhold their contributors' identification information, or whether such requests should be addressed through the advisory opinion process and the courts.

Additionally, the proposed rules do not provide for the redaction or modification of a contributor's name pursuant to a request under part 400. A person viewing a disclosure report will be able to see the names of the individuals whose addresses, occupations, or employers' names have been modified or redacted pursuant to part 400.

The Commission seeks comments on whether and how it should keep the requests, notifications, and findings made pursuant to proposed part 400 confidential.

C. Best Efforts Regulations

The Commission's "best efforts" regulations at 11 CFR 104.7 specify the actions that treasurers must take to demonstrate they have exercised best efforts to obtain and report the "identification" of each person whose contribution(s) they are required to disclose.⁵¹ The "best efforts" regulations describe the steps a committee must take to collect, obtain, and report a contributor's required identification information when the contributor does not include such information with their contribution.

⁵⁰ See *Buckley*, 424 U.S. at 74; *Brown*, 459 U.S. at 93–99; *McConnell*, 540 U.S. at 199; *Citizens United*, 558 U.S. at 370.

⁵¹ 11 CFR 104.7(b).

Among other requirements, the “best efforts” regulations provide that a committee must make at least one request for the missing information within 30 days of receipt of the contribution.⁵² Additionally, if the contributor does not respond to the follow-up request, the committee must still disclose the information if it is in its records from the same two-year election cycle.⁵³

The Commission is proposing to amend § 104.7 to accommodate proposed § 400.8, which describes the circumstances in which a committee may withhold identification information from a disclosure report under part 400. Under proposed § 400.8, if the Commission modifies or redacts a disclosure report under proposed part 400, a committee may incorporate those modifications or redactions into any report within the next two calendar years, or within any other period specified by the Commission in its decision approving the contributor’s request.

If a committee is excused from providing missing identification information under proposed § 400.8 because a contributor’s request to redact such information has been granted, the committee should not be required to solicit the same information from the contributor or disclose the information from its records. Accordingly, the proposed amendments to § 104.7 clarify that a committee does not have to take such steps if they are excused from providing the identification information pursuant to proposed § 400.8.

1. Amendment to 11 CFR 104.7(b)(2)

Current 11 CFR 104.7(b)(2) provides that for each contribution received aggregating in excess of \$200 per calendar year (or per election cycle, in the case of an authorized committee) that lacks required contributor information, such as the contributor’s full name, mailing address, occupation or name of employer, the treasurer must make at least one effort after the receipt of the contribution to obtain the missing information. The Commission proposes to amend § 104.7(b)(2) to clarify that it does not apply if the committee is excused from providing the information pursuant to 11 CFR 400.8.

2. Amendment to 11 CFR 104.7(b)(3)

Current 11 CFR 104.7(b)(3) provides that if a contributor does not include the required identification information with their contribution, the treasurer must still report the information if it is in the

political committee’s possession, or in its connected organization’s possession, including information in contributor records, fundraising records and previously filed reports, in the same two-year election cycle. The Commission proposes to amend § 104.7(b)(2) to clarify that it does not apply if the committee is excused from providing the information pursuant to 11 CFR 400.8.

D. Reporting Provisions

1. Amendment to 11 CFR 104.3(a)(4)

Current 11 CFR 104.3(a)(4) provides that all political committees must report identifying information (including mailing address, occupation, and the name of their employer) of all contributors whose contributions aggregate more than \$200 per calendar year. The Commission proposes to amend § 104.3(a)(4) to clarify that it does not apply if the committee is excused from providing the information pursuant to 11 CFR 400.8.

2. Amendment to 11 CFR 104.20(c)(8) Through (10)

Current 11 CFR 104.20(c)(8) through (10) provide that all statements of electioneering communications must disclose the name and address of each person of \$1,000 or more, aggregating since the first day of the preceding calendar year. The Commission proposes to amend 11 CFR 104.20(c)(8) through (10) to clarify that persons filing statements of electioneering communication do not have to disclose an individual’s address if the person is excused from providing the information pursuant to 11 CFR 400.8.

3. Amendment to 11 CFR 110.6(c)(1)(iv)(A)

Current 11 CFR 110.6(c)(1)(iv)(A) provides that all intermediaries or conduits must report the name and mailing address of each contributor, and for each earmarked contribution in excess of \$200, the contributor’s occupation and employer name. The Commission proposes to amend 11 CFR 110.6(c)(1)(iv)(A) to clarify that intermediaries and conduits do not have to disclose a contributor’s mailing address if they are excused from providing the information pursuant to 11 CFR 400.8.

* * * * *

The Commission seeks comments on whether any other regulations would be affected by the proposed rules.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The Commission certifies that the proposed rules, if adopted, would not have a significant impact on a substantial number of small entities. The proposed rules would not impose any new recordkeeping, reporting, or financial obligations on reporting entities; in fact, the proposed rules would relieve the reporting obligations of certain reporting entities. Additionally, the majority of the proposed regulations target Commission actions and the streamlined, articulated proposed procedures would apply only to individuals and not to any small entities. Therefore, the attached proposed rules, if promulgated, will not have a significant impact on a substantial number of small entities.

List of Subjects

11 CFR Part 104

Campaign funds, Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 110

Campaign funds, Political committees and parties.

11 CFR Part 400

Personally identifiable information, Privacy, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Federal Election Commission proposes to amend 11 CFR chapter I as set forth below:

PART 104—REPORTS BY POLITICAL COMMITTEES AND OTHER PERSONS (52 U.S.C. 30104)

■ 1. The authority citation for part 104 continues to read as follows:

Authority: 52 U.S.C. 30101(1), 30101(8), 30101(9), 30102(g) and (i), 30104, 30111(a)(8) and (b), 30114, 30116, 36 U.S.C. 510.

■ 2. In § 104.3, revise paragraph (a)(4) introductory text to read as follows:

§ 104.3 Contents of reports (52 U.S.C. 30104(b), 30114).

(a) * * *

(4) *Itemization of receipts for all political committees including authorized and unauthorized committees.* The identification (as defined at 11 CFR 100.12) of each contributor, unless the committee is excused from providing the information pursuant to 11 CFR 400.8, and the aggregate year-to-date (or aggregate election-cycle-to-date, in the case of an authorized committee) total for such

⁵² *Id.* § 104.7(b)(2).

⁵³ *Id.* § 104.7(b)(3).

contributor in each of the following categories shall be reported.

* * * * *

■ 3. In § 104.7, revise the first sentence of paragraph (b)(2) and paragraph (b)(3) to read as follows:

§ 104.7 Best efforts (52 U.S.C. 30102(i)).

* * * * *

(b) * * *

(2) For each contribution received aggregating in excess of \$200 per calendar year (or per election cycle, in the case of an authorized committee) which lacks required contributor information, such as the contributor's full name, mailing address, occupation or name of employer, the treasurer makes at least one effort after the receipt of the contribution to obtain the missing information, unless the committee is excused from providing the information pursuant to 11 CFR 400.8. * * *

(3) The treasurer reports all contributor information not provided by the contributor, but in the political committee's possession, or in its connected organization's possession, regarding contributor identifications, including information in contributor records, fundraising records and previously filed reports, in the same two-year election cycle in accordance with 11 CFR 104.3, unless the committee is excused from providing the information pursuant to 11 CFR 400.8; and

* * * * *

■ 4. In § 104.20, revise paragraphs (c)(8) through (10) to read as follows:

§ 104.20 Reporting electioneering communications (52 U.S.C. 30104 (f)).

* * * * *

(c) * * *

(8) If the disbursements were paid exclusively from a segregated bank account consisting of funds provided solely by persons other than national banks, corporations organized by authority of any law of Congress, or foreign nationals as defined in 11 CFR 110.20(a)(3), the name and address of each donor who donated an amount aggregating \$1,000 or more to the segregated bank account, aggregating since the first day of the preceding calendar year, unless the person filing the statement is excused from providing the donor's information pursuant to 11 CFR 400.8.

(9) If the disbursements were not paid exclusively from a segregated bank account described in paragraph (c)(7) of this section and were not made by a corporation or labor organization, the name and address of each donor who donated an amount aggregating \$1,000 or more to the person making the

disbursement, aggregating since the first day of the preceding calendar year, unless the person filing the statement is excused from providing the donor's information pursuant to 11 CFR 400.8.

(10) If the disbursements were made by a corporation or labor organization and were not paid exclusively from a segregated bank account described in paragraph (c)(7) of this section, the name and address of each person who made a donation aggregating \$1,000 or more to the corporation or labor organization, aggregating since the first day of the preceding calendar year, which was made for the purpose of furthering electioneering communications, unless the corporation or labor organization is excused from providing the person's information pursuant to 11 CFR 400.8.

* * * * *

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

■ 5. The authority citation for part 110 continues to read as follows:

Authority: 52 U.S.C. 30101(8), 30101(9), 30102(c)(2) and (g), 30104(i)(3), 30111(a)(8), 30116, 30118, 30120, 30121, 30122, 30123, 30124, and 36 U.S.C. 510.

■ 6. In § 110.6, revise paragraph (c)(1)(iv)(A) to read as follows:

§ 110.6 Earmarked contributions 52 U.S.C. 30116(a)(8)).

* * * * *

(c) * * *

(1) * * *

(iv) * * *

(A) The name and mailing address of each contributor and, for each earmarked contribution in excess of \$200, the contributor's occupation and the name of his or her employer, unless the conduit or intermediary is excused from providing the information pursuant to 11 CFR 400.8;

* * * * *

■ 7. Add subchapter D consisting of part 400 to read as follows:

SUBCHAPTER D—MODIFICATION AND REDACTION OF CONTRIBUTOR INFORMATION

PART 400—REQUESTS TO MODIFY OR REDACT INDIVIDUAL'S MAILING ADDRESS, OCCUPATION, OR EMPLOYER NAME

Sec.

- 400.1 Scope.
400.2 Computation of time.
400.3 Requests to modify or redact contributor's mailing address, occupation, or employer name.
400.4 Contents of the request.
400.5 Procedure for submitting a request.

- 400.6 Initial request processing.
400.7 Reasonable probability finding; notification.
400.8 Modifications or redactions in future disclosure reports.
400.9 Confidentiality.

Authority: 52 U.S.C. 30102(i), 30101(8), 30101(9), 30102(g) and (i), 30104, 30111(a)(8), 30107(a)(8).

§ 400.1 Scope.

The regulations in this part provide procedures for processing requests to modify or redact a contributor's mailing address, occupation, or employer name in reports or statements that have been filed with the Federal Election Commission (Commission) under 52 U.S.C. 30104 and 30116(a)(8).

§ 400.2 Computation of time.

The time periods established by this part will be computed in accordance with 11 CFR 111.2.

§ 400.3 Requests to modify or redact contributor's mailing address, occupation, or employer name.

A contributor may request that the Commission modify or redact their mailing address, occupation, or employer name from a report or statement that has been filed with the Commission.

§ 400.4 Contents of the request.

(a) A request to modify or redact a contributor's mailing address, occupation, or employer name must comply with the following:

(1) It must provide the full name, address, and telephone number of the requestor;

(2) It must identify the information that the requestor seeks to modify or redact;

(3) It must identify any published report(s) that contain the information the requestor is asking the Commission to modify or redact; and

(4) The contents of the request must be sworn to and signed by the requestor and notarized.

(b) A request to modify or redact a contributor's mailing address, occupation, or employer name should conform to the following:

(1) It should state with particularity the facts that establish that there is a reasonable probability that the disclosure of each piece of information the requestor seeks to modify or redact would subject the contributor to threats, harassments, or reprisals;

(2) Statements within the request should be based upon the requestor's personal knowledge; and

(3) It should be accompanied by any records supporting the facts alleged if such records are known, and available to, the requestor.

(c) All statements made in a request are subject to the statutes governing perjury and to 18 U.S.C. 1001.

§ 400.5 Procedure for submitting a request.

A request must be submitted in writing, either by U.S. mail or the email address designated on the Commission's website, addressed to the Office of the General Counsel. An authorized agent or parent or guardian of a contributor may submit a modification or redaction request, but the agent or parent or guardian must disclose the identity of their principal.

§ 400.6 Initial request processing.

(a) Upon receipt of a request, the Office of the General Counsel will, within five (5) business days, review the request for substantial compliance with the technical requirements of § 400.4(a).

(b) If the request does not comply with the technical requirements of § 400.4(a), the Office of the General Counsel will, within five (5) business days, notify the requestor that no action will be taken on the basis of the request and specify the deficiencies of the request.

§ 400.7 Reasonable probability finding; notification.

(a) If the Commission, after reviewing the request and any supporting documentation, determines by an affirmative vote of four (4) or more of its members that there is a reasonable probability that the relevant disclosure would subject the contributor to threats, harassments, or reprisals, the Commission may approve, in whole or in part, the modification or redaction of the requested information.

(b) The Commission will, within five (5) business days of voting, notify the requestor of the Commission's decision.

(c) If the request is approved, the Commission will expeditiously effect any approved changes to the reports published by the Commission.

(d) If changes are made to a disclosure report filed with the Commission, within five (5) business days after the changes are made, the Commission will notify the committee or person who filed the disclosure report that the report was modified pursuant to this part.

§ 400.8 Modifications or redactions in future disclosure reports.

If the Commission makes modifications or redactions to a disclosure report pursuant to a request from a contributor under this part, any individuals or entities who are required to identify the same contributor in reports or statements filed with the

Commission may incorporate those modifications or redactions into any report or statement filed within the next two calendar years, or within any other period specified by the Commission in its decision approving the contributor's request.

§ 400.9 Confidentiality.

(a) Except as provided in § 400.7(d), no request submitted to the Commission, nor any notification sent by the Commission, nor any findings made by the Commission, will be made public by the Commission without the written consent of the requestor.

(b) Nothing in this part shall be construed to prevent the introduction of evidence in the courts of the United States which could properly be introduced pursuant to the Federal Rules of Evidence or Federal Rules of Civil Procedure.

Dated: December 12, 2024.

On behalf of the Commission.

Sean J. Cooksey,

Chairman, Federal Election Commission.

[FR Doc. 2024-29989 Filed 12-18-24; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 125

RIN 3245-AI09

**Government Contracting:
Subcontracting Program**

AGENCY: U.S. Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (SBA) proposes to revise its Small Business Subcontracting Program regulations to encourage faster payments to small business subcontractors and streamline the reporting process for prime contracts. This proposed rule will require prime contractors notify contracting officers in writing when it fails to make full or timely payments to the subcontractor within 30 days past due; require prime contractors cooperate with contracting officers to correct/mitigate this failure until payment is made in full to the subcontractor; and allow contracting officers to modify a prime contractor's past performance for failure to make full or timely payments.

DATES: Comments must be received on or before February 18, 2025.

ADDRESSES: You may submit comments, identified by RIN 3245-AI09, by any of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov> and follow the instructions for submitting comments.

- *Email:* Kunmi Ageh, Procurement Policy Analyst (Attorney), Office of Policy Planning and Liaison, Small Business Administration, at Kunmi.Ageh@sba.gov.

SBA will post all comments on <https://www.regulations.gov>.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted on <https://www.regulations.gov>. If you wish to submit confidential business information (CBI) as defined in the User Notice at <https://www.regulations.gov>, please submit the comments to Kunmi Ageh and highlight the information that you consider to be CBI and explain why you believe this information should be held confidential.

FOR FURTHER INFORMATION CONTACT:

Kunmi Ageh, Procurement Policy Analyst (Attorney), Office of Policy Planning and Liaison, Small Business Administration, at Kunmi.Ageh@sba.gov, 202-374-8454.

Electronic copies of this **Federal**

Register are available at <https://www.regulations.gov>. The docket is available at <https://www.regulations.gov>,

the Federal eRulemaking Portal. A "100-word summary" is also available on <https://www.regulations.gov>. For additional information on submitting items to, or accessing items in, the docket, please refer to the **ADDRESSES** section of this NPRM.

SUPPLEMENTARY INFORMATION:

Background Information

The SBA proposes to revise its Small Business Subcontracting Program regulations in 13 CFR 125.3 in response to changes made in section 862 of the National Defense Authorization Act (NDAA) for Fiscal Year 2024, Public Law 118-31. Section 862 made changes to section 8(d)(13) of the Small Business Act, 15 U.S.C. 637(d)(13)(B)(i), by amending the time in which a prime contractor must notify the contracting officer in writing if, upon completion of the responsibilities of the small business subcontractor, payment to the subcontractor is past due under the terms of the subcontract by 30 days. This means a prime contractor must notify a contracting officer in writing when it failed to make fully or timely payments to a subcontractor within 30 days past the payment due date. Section