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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C.

**AGENDA DOCUMENT NO. 24-44-A**  
**AGENDA ITEM**  
**For meeting of October 10, 2024**

October 3, 2024

**MEMORANDUM**

TO: The Commission

FROM: Lisa J. Stevenson *LJS by RMK*  
Acting General Counsel

Neven F. Stipanovic *NFS by RMK*  
Associate General Counsel

Robert Knop *RMK*  
Assistant General Counsel

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SUBJECT: REG 2024-06 (Requests to Modify or Redact Contributor Information)  
Draft NPRM

Attached is a draft NPRM for REG 2024-06 (Requests to Modify or Redact Contributor Information). One or more Commissioners have asked for this draft to be made public and placed on the agenda for the Commission's October 10, 2024, Open Meeting.

Attachment

DRAFT

**FEDERAL ELECTION COMMISSION**

**11 CFR Part 400**

**[NOTICE 2024 - XX]**

**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 threat, 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 rule and has not made any final decisions about the issues presented in this rulemaking.

**DATES:** Comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. 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 notice in the Federal Register announcing the date and time of the hearing.

**ADDRESS:** 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,

1 1050 First Street, NE, Washington, DC 20463 (for U.S. Postal Service) or 20002 (for all other  
2 delivery services).

3 Each commenter must provide, at a minimum, their first name, last name, city, and state.

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

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

15 **SUPPLEMENTARY INFORMATION:**

16 The Federal Election Campaign Act ("the Act")<sup>1</sup> generally requires contributors'  
17 identities to be disclosed in reports or statements filed with the Commission. Namely, political  
18 committees must disclose the name, mailing address, occupation, and employer name of each  
19 individual who contributes an aggregate of \$200 or more each election cycle.<sup>2</sup> Moreover,  
20 conduits and intermediaries receiving and forwarding earmarked contributions to candidates  
21 must disclose every contributor's name and mailing address, regardless of the amount of the

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<sup>1</sup> 52 U.S.C. 30101-45.

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

1 earmarked contribution.<sup>3</sup> The Commission, in turn, must post the reports and statements  
2 containing the identification information on its website.<sup>4</sup>

3 While recognizing that there are important governmental interests that justify the Act's  
4 disclosure requirements, the Supreme Court has acknowledged that disclosing a contributor's  
5 identity may expose them to threats, harassment, or retaliation, resulting in a significant burden  
6 on their First Amendment rights.<sup>5</sup> Accordingly, the Court has required a narrow exemption from  
7 the Act's reporting requirements when there is a "reasonable probability" that the contributor  
8 may face such threats, harassment, or retaliation.<sup>6</sup>

9 Thus far, the courts have granted disclosure exemptions only to committees and  
10 organizations that sought to withhold the identity of their contributors due to demonstrated  
11 threats, harassment, or reprisals resulting from association with that committee or organization.  
12 The Commission has also granted such exemptions via the advisory opinion process when the  
13 requesting committee or organization was able to demonstrate specific evidence of past threats  
14 and harassment.<sup>7</sup> From time to time, the Commission has also received requests from individual  
15 contributors who wished to have their identifying information removed from disclosure reports.  
16 And the Commission granted such requests when they were supported by evidence of threats,  
17 harassment, or reprisal. Consistent with the Supreme Court precedent, the Commission now

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<sup>3</sup> 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.*

<sup>4</sup> 52 U.S.C. 30112(a).

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

<sup>6</sup> *Id.*

<sup>7</sup> 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 seeks to establish a procedure to formalize the submission and consideration of requests by  
2 individual contributors when reasonable probability exists that the contributors may face threats,  
3 harassment, or reprisal.

4 Accordingly, the Commission proposes to revise its regulations to establish a process for  
5 individual contributors (or their agents) to request that the Commission modify or redact, in  
6 whole or in part, certain contributor information (*i.e.*, mailing address, occupation, and employer  
7 name) from a disclosure report or statement that has been filed with the Commission under 52  
8 U.S.C. 30104 and 52 U.S.C. 30116(a)(8). The Commission would grant the request if it  
9 determines that the request establishes a reasonable probability that disclosure of the requestor's  
10 identifying information would subject the requestor to threats, harassment, or reprisals. The  
11 Commission invites public comments on the proposed rule.

## 12 **I. Background**

### 13 **A. Requirements to disclose contributor's identities**

#### 14 *1. Political committees*

15 Political committees must file disclosure reports with the Commission on a regular  
16 basis.<sup>8</sup> These reports must include the "identification" of any person who contributes more than  
17 \$200 during a calendar year (or during an election cycle, in the case of an authorized  
18 committee).<sup>9</sup> The Act defines the term "identification" to mean "in the case of an individual, the  
19 name, the mailing address, and the occupation of such individual, as well as the name of his or

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<sup>8</sup> See 52 U.S.C. 30104(a).

<sup>9</sup> 52 U.S.C. 30104(b)(3)(A); 11 CFR 104.3(a)(4).

1 her employer.”<sup>10</sup> “Mailing address” means any address where a person receives mail, such as a  
2 business address.<sup>11</sup>

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

9 First, the committee must include a clear and conspicuous request for the contributor’s  
10 identification information in any solicitations.<sup>14</sup> Second, if the contributor does not provide  
11 sufficient identification information when making the contribution, the committee must make at  
12 least one request for the information within 30 days of receipt of the contribution.<sup>15</sup> Third, if the  
13 contributor does not respond to the follow-up request, but the committee possesses the  
14 information in its contributor records, fundraising records, or prior reports filed during the same  
15 two-year election cycle, then the committee must use that information when disclosing the  
16 contribution.<sup>16</sup> Finally, if the requested information about a contribution is received after the

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<sup>10</sup> 52 U.S.C. 30101(13). *See also* 11 CFR 100.12.

<sup>11</sup> *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>.

<sup>12</sup> 52 U.S.C. 30102(i); 11 CFR 104.7.

<sup>13</sup> 11 CFR 104.7(b).

<sup>14</sup> 11 CFR 104.7(b)(1)(i).

<sup>15</sup> 11 CFR 104.7(b)(2).

<sup>16</sup> 11 CFR 104.7(b)(3).

1 contribution has been disclosed on a report, the committee must file a memo or amend its report  
2 to disclose the information.<sup>17</sup>

3                   2.       *Persons who are not political committees*

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

10                   a.       Independent expenditures

11               An “independent expenditure” is defined as an expenditure for a communication made  
12 without coordination with a candidate, campaign, or political party that “expressly advocat[es]  
13 the election or defeat of a clearly identified candidate.”<sup>19</sup> The Act provides that any person that  
14 is not a political committee and makes independent expenditures aggregating more than \$250  
15 with respect to a given election per calendar year must file a statement containing, among other  
16 information, the name, address, occupation, and employer of each person whose contributions  
17 aggregated more than \$200 within the calendar year.<sup>20</sup> The Act also provides that the statement

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<sup>17</sup> 11 CFR 104.7(b)(4).

<sup>18</sup> See 52 U.S.C. 30104(c), (f).

<sup>19</sup> 52 U.S.C. 30101(17).

<sup>20</sup> See 52 U.S.C. 30104(c).

1 must include the same details for those who contributed more than \$200 for the purpose of  
2 furthering an independent expenditure.<sup>21</sup>

3 b. Electioneering communications

4 An electioneering communication is any broadcast, cable, or satellite communication that  
5 refers to a clearly identified federal candidate, is publicly distributed within 30 days of a primary  
6 or 60 days of a general election and is targeted to the relevant electorate.<sup>22</sup> All persons who  
7 make electioneering communications totaling more than \$10,000 in any calendar year must file a  
8 statement with the Commission.<sup>23</sup> The statement must include, among other information, the  
9 name and address of each person who gave a total of \$1,000 or more within a specified period.<sup>24</sup>  
10 If the electioneering communications were paid exclusively from a segregated account, only  
11 donors to that account must be disclosed.<sup>25</sup>

12 3. *Conduits and intermediaries*

13 The Act and Commission regulations have special disclosure requirements for conduits  
14 and intermediaries. A conduit or intermediary is any person not authorized by the campaign to  
15 raise funds who receives and forwards an earmarked contribution to a candidate or a candidate's  
16 authorized committee.<sup>26</sup> An earmarked contribution is one that a contributor directs (either  
17 orally or in writing) to a clearly identified candidate or authorized committee through an

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21 *Id.* 30104(c)(2).

22 52 U.S.C. 30104(f)(3).

23 52 U.S.C. 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).



intermediary or conduit.<sup>27</sup> 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.<sup>28</sup> Commission regulations require such reports to include each contributor’s name and mailing address, regardless of the amount of the earmarked contribution.<sup>29</sup> If the contribution exceeds \$200, the conduit must also report the contributor’s occupation and employer.<sup>30</sup>

**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.<sup>31</sup> The Commission is required to post all publicly available election-related reports and information on its website.<sup>32</sup> Commission regulations provide that it “will make the fullest possible disclosure of records to the public, consistent with the rights of individuals to privacy . . . .”<sup>33</sup> 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.

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<sup>27</sup> 11 CFR 110.6.

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

<sup>29</sup> 11 CFR 110.6(c)(1)(iv)(A).

<sup>30</sup> *Id.*

<sup>31</sup> 52 U.S.C. 30111(a)(4); 30104(a)(11)(B).

<sup>32</sup> 52 U.S.C. 30112(a).

<sup>33</sup> 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 a candidate's financial constituencies, (2) deterring corruption and avoiding the appearance of corruption, and (3) preventing circumvention of the contribution limits.<sup>34</sup> The Court has generally determined that the Act's disclosure requirements are properly tailored to the advancement of these interests.<sup>35</sup> 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.

*I. 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.<sup>36</sup> 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."<sup>37</sup> The Court reasoned that, in most applications, disclosure requirements are "the least restrictive means of curbing the evils of campaign ignorance and

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<sup>34</sup> *Buckley*, 424 U.S. at 66-67.

<sup>35</sup> *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).

<sup>36</sup> *Buckley*, 424 U.S. at 68.

<sup>37</sup> *Id.*

corruption that Congress found to exist.”<sup>38</sup> 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.”<sup>39</sup> 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 reprisal from either Government officials or private parties.”<sup>40</sup> Organizations have brought suits in federal court seeking to be exempted from campaign finance disclosure requirements pursuant to the Supreme Court’s opinion.<sup>41</sup>

## 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

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<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at 71.

<sup>40</sup> *Id.* at 74.

<sup>41</sup> 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).

disclose its contributors' identities.<sup>42</sup> 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.<sup>43</sup> 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.<sup>44</sup> The Commission renewed SWP's exemption on the same grounds four more times.<sup>45</sup> In 2016, SWP again sought to renew the exemption, but the Commission was unable to reach agreement on SWP's request.<sup>46</sup>

### 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 are instead 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

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

<sup>43</sup> Advisory Opinion 1990-13 (SWP).

<sup>44</sup> *Id.* at 6.

<sup>45</sup> See Advisory Opinion 1996-46 (SWP); Advisory Opinion 2003-02 (SWP); Advisory Opinion 2009-01 (SWP); Advisory Opinion 2012-38 (SWP).

<sup>46</sup> See Advisory Opinion 2016-23 (SWP).

intimate partner violence who wishes to prevent their home address from being publicly disclosed.

A subset of these requests have invoked the Daniel Anderl Judicial Security and Privacy Act of 2022.<sup>47</sup> 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.<sup>48</sup> Agencies have no discretion to refuse a valid request; failure to comply may subject the agency to a suit for declaratory or injunctive relief.<sup>49</sup>

## **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 Commission seeks to establish a procedure to formalize the submission and consideration of

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<sup>47</sup> See Daniel Anderl Judicial Security and Privacy Act of 2022, Pub. L. 117-263, 136 Stat. 3458 (2022) ("Judicial Security and Privacy Act").

<sup>48</sup> *Id.* secs. 5933-34.

<sup>49</sup> *Id.* sec. 5934(f)(1).

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.

**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 52 U.S.C. 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, or whether the procedure should be limited to the modification and redaction of addresses. Are an individual's occupation and employer too far attenuated from potential safety 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?

*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 52 U.S.C. 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

1 there other types of documents made public by the Commission that include identifying  
2 information? If so, should they be included in the new procedure? Are there categories of  
3 reports or statements that should be excluded from the proposed procedure?

4 The proposed rules would also only permit requests for the modification or redaction of  
5 reports already filed with the Commission and amendments to those reports. Proposed 11 CFR  
6 400.8, discussed below, provides that once the Commission modifies or redacts a report pursuant  
7 to a request, the filer can incorporate those same changes into future reports for the next two  
8 calendar years without the requestor submitting a new request.

9 The Commission seeks comments on whether the new procedure should allow  
10 contributors to ask for their information to be modified or redacted by the filer in future reports.  
11 If so, what limitations should be placed on the request? Should the filers of the future reports be  
12 required to participate in the request? Should future filers be required to withhold the  
13 information, or should it be discretionary? How would the filers of future reports be made aware  
14 that the contributor's information can or must be withheld?

15 2. *Proposed 11 CFR 400.2 Computation of time*

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



1 prescribed period after the service of any paper by or upon the Commission or such person, and  
2 the paper is served by or upon the Commission or such person by mail, three (3) days shall be  
3 added to the prescribed period.

4                   3.       *Proposed 11 CFR 400.3 Requests to modify or redact contributor's*  
5                               *mailing address, occupation, or employer name*

6           Proposed § 400.3 establishes that a contributor may request that the Commission modify  
7 or redact their mailing address, occupation, or employer name from a report or statement filed  
8 with the Commission. The Commission expects such requests will include concerns specific to  
9 the individual contributor. Accordingly, in the Commission's view, the individual contributor is  
10 best suited to provide the information necessary for the Commission to consider the request.

11 Proposed § 400.5, discussed below, specifies that agents may submit requests on the  
12 contributor's behalf. The Commission intends for proposed § 400.3 to apply to any contributor  
13 whose address, occupation, or employer name is included on any report or statement made public  
14 by the Commission. This section does not consider the amount of an individual's contribution or  
15 the recipient of the contribution.

16           The Commission seeks comments on this approach. Are there other individuals or groups  
17 that should be able to submit requests through the new procedure? Should this procedure only be  
18 available to individuals whose contributions were under a specified amount?

19                   4.       *Proposed 11 CFR 400.4 Contents of the request*

20           Proposed § 400.4 describes the contents of a request to modify or redact contributor  
21 information. Paragraph (a) contains the information that must be included in a request at a  
22 minimum. Paragraph(a)(1) requires the request to provide the requestor's full name, address,  
23 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 of a contributor may submit a modification or redaction request, but the agent 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.

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 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.<sup>50</sup> 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.

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

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<sup>50</sup> See *Buckley*, 424 U.S. at 74; *Brown*, 459 U.S. at 93-99.

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

1 filed with the Commission within the next two calendar years without an additional request. The  
2 Commission will have discretion to adjust this two-year default on a case-by-case basis. The  
3 Commission seeks comments on this approach.

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

10 Proposed § 400.8 is discretionary. It permits filers to modify or withhold certain  
11 information from future reports but does not require them to do so. Under proposed § 400.7(d),  
12 the Commission will notify filers if it changes their report(s) pursuant to a contributor's request.  
13 These filers would be on notice that they can, and for the sake of efficiency should, make these  
14 same changes in future reports in accordance with § 400.8. If the contributor makes a  
15 contribution to a new committee or organization, the contributor would be responsible for  
16 notifying that entity that their information can be withheld or modified pursuant to § 400.8.

17 9. *Proposed 11 CFR 400.9 Confidentiality*

18 Proposed § 400.9 establishes that requests, notifications, and findings made pursuant to  
19 part 400 will generally be kept confidential. Paragraph (a) provides that except as provided in  
20 proposed § 400.7(d), which describes the notification that is sent to committees when their  
21 reports have been modified under part 400, no request submitted to the Commission, nor any  
22 notification sent by the Commission, nor any findings made by the Commission, will be made  
23 public by the Commission without the written consent of the requestor. Paragraph (b) establishes

1 that nothing in part 400 shall be construed to prevent the introduction of evidence in the courts of  
2 the United States which could properly be introduced pursuant to the Federal Rules of Evidence  
3 or Federal Rules of Civil Procedure.

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

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

#### 10 **C. Best Efforts Regulations**

11 The Commission's "best efforts" regulations at 11 CFR 104.7 specify the actions that  
12 treasurers must take to demonstrate they have exercised best efforts to obtain and report the  
13 "identification" of each person whose contribution(s) they are required to disclose.<sup>51</sup> The "best  
14 efforts" regulations describe the steps a committee must take to collect, obtain, and report a  
15 contributor's required identification information when the contributor does not include such  
16 information with their contribution. Among other requirements, the "best efforts" regulations  
17 provide that a committee must make at least one request for the missing information within 30  
18 days of receipt of the contribution.<sup>52</sup> Additionally, if the contributor does not respond to the  
19 follow-up request, the committee must still disclose the information if it is in its records from the  
20 same two-year election cycle.<sup>53</sup>

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<sup>51</sup> 11 CFR 104.7(b).

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

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

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

14           Current 11 CFR 104.7(b)(2) provides that for each contribution received aggregating in  
15   excess of \$200 per calendar year (or per election cycle, in the case of an authorized committee)  
16   that lacks required contributor information, such as the contributor's full name, mailing address,  
17   occupation or name of employer, the treasurer must make at least one effort after the receipt of  
18   the contribution to obtain the missing information. The Commission proposes to amend §  
19   104.7(b)(2) to clarify that it does not apply if the committee is excused from providing the  
20   information pursuant to 11 CFR 400.8.

21  
22           *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 of \$200 or more 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), (9), (10)*

Current 11 CFR 104.20(c)(8), (9), and (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), (9), and (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)*

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

7

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

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

10

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1    **List of Subjects in 11 CFR**

2    11 CFR Part 104

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

5    11 CFR Part 400

6            Personally identifiable information, Privacy, Reporting and Recordkeeping requirements.

7

For the reasons discussed in the preamble, the Federal Election Commission proposes to amend 11 CFR chapter 1 and to add 11 CFR part 400 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.

**§ 104.3 [Amended]**

2. Revise paragraph (a)(4) to read as follows:

**§ 104.3 Itemization of receipts for all political committees including authorized and unauthorized committees.**

(a) \* \* \*

(4) *Itemization of receipts for all political committees including authorized and unauthorized committees.* The identification (as defined at § 100.12 of this chapter) 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 contributor in each of the following categories shall be reported.

\* \* \* \* \*

**§ 104.7 [Amended]**

3. Revise paragraphs (b)(2) and (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. \* \* \*

\* \* \* \* \*

**§ 104.20 [Amended]**

4. Revise paragraphs (c)(8), (9), and (10) 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.

### **§ 110.6 [Amended]**

6. Revise paragraph (c)(1)(iv)(A) as follows:

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

1 \* \* \* \*

2 (c) \* \*

3 (1) \* \*

4 (iv) \* \*

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

9 \* \* \* \*

10 7. Add Part 400 to read as follows:

11

12 **Part 400 – Requests to modify or redact individual’s mailing address, occupation, or**  
13 **employer name**

14 **Sec.**

15 400.1 Scope

16 400.2 Computation of time

17 400.3 Requests to modify or redact contributor’s mailing address, occupation, or employer name

18 400.4 Contents of the request

19 400.5 Procedure for submitting a request

20 400.6 Initial request processing

21 400.7 Reasonable probability finding; notification

22 400.8 Modifications or redactions in future disclosure reports

23 400.9 Confidentiality

24

25 Authority: 52 U.S.C. 30102(i), 30101(8), 30101(9), 30102(g) and (i), 30104, 30111(a)(8),  
26 30107(a)(8)

27 **§ 400.1 Scope**

28 These regulations provide procedures for processing requests to modify or redact a contributor’s  
29 mailing address, occupation, or employer name in reports or statements that have been filed with  
30 the Commission under 52 U.S.C. 30104 and 52 U.S.C. 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, addressed to the Office of the General Counsel. An authorized agent of a contributor may submit a modification or redaction request, but the agent 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 these regulations 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: \_\_\_\_\_, 2024

On behalf of the Commission,

**Sean J. Cooksey,**

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- 1 *Chairman,*
- 2 *Federal Election Commission.*
- 3