

**DESCRIPTION OF H.R. 8293, THE  
“AMERICAN DONOR PRIVACY AND FOREIGN  
FUNDING TRANSPARENCY ACT”**

Scheduled for Markup  
by the  
HOUSE COMMITTEE ON WAYS AND MEANS  
on May 15, 2024

Prepared by the Staff  
of the  
JOINT COMMITTEE ON TAXATION



May 13, 2024  
JCX-18-24

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## INTRODUCTION

The House Committee on Ways and Means has scheduled a committee markup for May 15, 2024, of H.R. 8293, the “American Donor Privacy and Foreign Funding Transparency Act.” This document,<sup>1</sup> prepared by the staff of the Joint Committee on Taxation, provides a description of this bill.

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<sup>1</sup> This document may be cited as follows: Joint Committee on Taxation, *Description of H.R. 8293, the “American Donor Privacy and Foreign Funding Transparency Act”* (JCX-18-24), May 13, 2024. This document can also be found on the Joint Committee on Taxation website at [www.jct.gov](http://www.jct.gov). All section references in the document are to the Internal Revenue Code of 1986, as amended (the “Code”), unless otherwise stated.

## **A. Annual Disclosure of Data on Contributions Received by Tax-Exempt Organizations from Foreign Sources; Protecting Privacy of Donors to Tax-Exempt Organizations**

### **Present Law**

#### **Form 990 reporting by tax-exempt organizations**

##### **In general**

A tax-exempt organization generally is required to file an annual information return with the Internal Revenue Service (the “IRS”). An organization that has not received a determination of its tax-exempt status, but that claims tax-exempt status under section 501(a), is subject to the same annual reporting requirements and exceptions as organizations that have received a formal determination.

In general, organizations described in section 501(c) and exempt from taxation under section 501(a) are required to file an annual return (Form 990 series), stating specifically the items of gross income, receipts, disbursements, and such other information as the Secretary of the Treasury (the “Secretary”) may prescribe.<sup>2</sup> An organization that is required to file an information return, but that has gross receipts of less than \$200,000 during its taxable year, and total assets of less than \$500,000 at the end of its taxable year, may file Form 990-EZ. Section 501(c)(3) private foundations are required to file Form 990-PF rather than Form 990. Any organization that is subject to UBIT and that has \$1,000 or more of gross unrelated business taxable income must also file Form 990-T (Exempt Organization Business Income Tax Return).<sup>3</sup>

On the applicable annual information return, organizations are required to report their gross income, information on their finances, functional expenses, compensation, activities, and other information required by the IRS to permit a review of the organization’s activities and operations during the previous taxable year and to allow for review of whether the organization continues to meet the statutory requirements for exemption.

The requirement that an exempt organization file an annual information return (Form 990 or Form 990-EZ) does not apply to certain tax-exempt organizations, including organizations (other than private foundations) the gross receipts of which in each taxable year normally are not more than \$50,000. Organizations that are excused from filing an information return by reason of normally having gross receipts below such amount must furnish to the Secretary an annual notice (Form 990-N), in electronic form, containing certain basic information about the organization.<sup>4</sup>

Other organizations exempt from the annual information return requirement include: churches, their integrated auxiliaries, and conventions or associations of churches; the

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<sup>2</sup> Sec. 6033(a).

<sup>3</sup> Tax-exempt organizations also generally must file reports and returns applicable to taxable entities with respect to Social Security taxes and, in certain instances, Federal unemployment taxes.

<sup>4</sup> Sec. 6033(i).

exclusively religious activities of any religious order; certain State institutions whose income is excluded from gross income under section 115; an interchurch organization of local units of a church; certain mission societies; certain church-affiliated elementary and high schools; and certain other organizations, including some that the IRS has relieved from the filing requirement pursuant to its statutory discretionary authority.<sup>5</sup>

### Donor information

An organization that files Form 990, Form 990-EZ, or Form 990-PF and receives during the year \$5,000 or more (in money or property) from any one contributor generally must report such contributions on Schedule B (“Schedule of Contributors”).<sup>6</sup> An organization’s Schedule B is open to public inspection only if the organization is a section 501(c)(3) private foundation or a section 527 political organization.

In May 2020, the IRS published final regulations under section 6033 under which most organizations (other than section 501(c)(3) and section 527 organizations) are no longer required to report to the IRS on Schedule B the *names and addresses* of substantial contributors to the organization (that is, donor-identifying information).<sup>7</sup> Such an organization, including a section 501(c)(4), (5), or (6) organization, must still report on Schedule B the *amounts* of substantial contributions and maintain other information about the contributions in the organization’s books and records.<sup>8</sup>

### Public disclosure of applications for exemption and certain returns and other forms

An application for exemption filed by a section 501(c) tax-exempt organization or a notice of exempt status filed by a section 527 political organization generally must be made available by the IRS for public inspection.<sup>9</sup> Similarly, an annual information return (generally, a

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<sup>5</sup> Sec. 6033(a)(2)(A); Treas. Reg. secs. 1.6033-2(a)(2)(i) and (g)(1).

<sup>6</sup> Certain section 501(c)(3) organizations that meet a 33-1/3-percent public support test of the regulations under sections 509(a)(1) and 170(b)(1)(A)(vi) generally must report contributions totaling \$5,000 or more from a single contributor only to the extent that such contributions exceed two percent of the organization’s total contributions. Additional special reporting rules apply to organizations described in section 501(c)(7), (8), or (10).

<sup>7</sup> Because donor-identifying information reported to these organizations had previously been shielded from public inspection (see sec. 6104(b)), the new regulations change only what is required to be reported to the IRS, not what is made available to the public.

<sup>8</sup> Labor organizations with annual receipts of \$250,000 or more, however, are required to submit detailed information regarding receipts, including certain contributions, with the Office of Labor Management Standards of the U.S. Department of Labor on Form LM-2. Certain smaller labor organizations may submit a less detailed Form LM-3 or LM-4. See Form LM-2 (Labor Organization Annual Report), Schedule 14 (Other Receipts); 29 U.S.C. sec. 431(b)(2); Instructions for Form LM-2 (revised January 2022), p. 1. Schedule 14 of Form LM-2 requires a labor organization to list the name and business address of an individual or entity from which the organization received \$5,000 or more in “other receipts” during a reporting period, as well as certain other information about the receipts. See *ibid.* pp. 23-24. Form LM-2 generally must be electronically filed and is made available to the public. *Ibid.* pp. 1-2.

<sup>9</sup> See sec. 6104(a).

Form 990-series return) filed by such an organization must be made available for public inspection, except that the name or address of any contributor to such organization generally is not made available to the public.<sup>10</sup> This public disclosure exception for donor-identifying information does not apply to a section 501(c)(3) private foundation or a section 527 political organization.<sup>11</sup>

In addition, a section 501(c) tax-exempt organization or section 527 political organization generally must make available for public inspection, at the organization's principal office, its application for exemption (if any), notice of exempt status (for a section 527 organization), annual information returns for the last three years (with the exception of certain information about contributors, as described above), and section 527 reports of contributions of expenditures filed on Form 8872, if applicable.<sup>12</sup>

## **Description of Proposal**

### **Disclosure of foreign source contributions**

Under the proposal, a section 501(c) tax-exempt organization that is required to file with the IRS an annual information return under section 6033(a)(1) (generally, a Form 990 series return) is required to include in its return certain information relating to contributions from a foreign source. Specifically, with respect to any contributions from a foreign source received during the year, an organization must report (1) whether the organization accepted any such contributions, (2) the aggregate amount of all such contributions received (if any), (3) the country of citizenship or principal place of business (as the case may be) of any foreign source making such a contribution to the organization, and (4) the aggregate amount of contributions received, grouped by source country. For this purpose, the term "foreign source" means (i) a foreign principal,<sup>13</sup> except that the term does not include any individual if it is established that the individual is a U.S. citizen; and (ii) an agent of a foreign principal,<sup>14</sup> determined by only treating foreign principals (within the meaning of (i)) as foreign principals. The term "source country" means the country of citizenship or principal place of business (as the case may be) of a foreign source.

The proposal requires that the Secretary make publicly available in a searchable database the information furnished by section 501(c) organizations relating to foreign-source

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<sup>10</sup> See sec. 6104(b).

<sup>11</sup> *Ibid.*

<sup>12</sup> See sec. 6104(d).

<sup>13</sup> As such term is defined in section 1 of the Foreign Agents Registration Act of 1938 (22 U.S.C. sec. 611).

<sup>14</sup> As such term is defined in section 1 of the Foreign Agents Registration Act of 1938 (22 U.S.C. sec. 611).

contributions, as described above, and the names of the organizations furnishing such information.

### **Prohibition on collection or disclosure of donor information**

The proposal also provides that an entity of the Federal government may not collect or require the submission of information on the identification of any donor to a tax-exempt organization, with the following exceptions: (1) the IRS, acting lawfully pursuant to section 6033 or any successor provision; (2) the Secretary of the Senate and the Clerk of the House of Representatives, acting lawfully pursuant to section 3 of the Lobbying Disclosure Act of 1995;<sup>15</sup> (3) the Federal Election Commission, acting lawfully pursuant to section 510 of title 36 of the United States Code; and (4) an entity acting pursuant to a lawful order of a court or administrative body which has the authority under law to direct the entity to collect or require the submission of the information, but only to the extent permitted by the lawful order of such court or administrative body. The proposal further provides that an entity of the Federal government may not disclose to the public information revealing the identification of any donor to a tax-exempt organization, with the following exceptions: (1) the IRS, acting lawfully pursuant to section 6104 or any successor provision; (2) the Secretary of the Senate and the Clerk of the House of Representatives, acting lawfully pursuant to section 3 of the Lobbying Disclosure Act of 1995;<sup>16</sup> (3) the Federal Election Commission, acting lawfully pursuant to section 510 of title 36 of the United States Code; (4) an entity acting pursuant to a lawful order of a court or administrative body which has the authority under law to direct the entity to collect or require the submission of the information, but only to the extent permitted by the lawful order of such court or administrative body; and (5) an entity which discloses the information as authorized by the tax-exempt organization. For this purpose, the term “tax-exempt organization” means an organization which is described in section 501(c) and exempt from taxation under section 501(a). However, the provision also provides that “[n]othing in this subsection may be construed to treat a political organization under section 527 . . . as a tax-exempt organization.”

Under the provision, it is unlawful for an officer or employee of the United States, or any former officer or employee, to willfully disclose to any person, except as authorized under the proposal, any information revealing the identification of any donor to a tax-exempt organization. A violation is a felony punishable upon conviction by a fine in any amount not exceeding \$250,000, or imprisonment of not more than five years, or both, together with the costs of prosecution, and if such offense is committed by an officer or employee of the United States, such officer or employee must be dismissed from office or discharged from employment upon conviction for such offense.

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<sup>15</sup> 2 U.S.C. sec. 1604.

<sup>16</sup> *Ibid.*

### **Effective Dates**

The portion of the proposal relating to the disclosure of foreign source contributions is effective for returns filed for taxable years beginning after the date of enactment. The portion of the proposal generally prohibiting the Federal government from collecting or disclosing information about donors to tax-exempt organizations is effective on the date of enactment.



## **B. Estimated Revenue Effects of the Proposal**

The Joint Committee on Taxation estimates that this proposal will have a negligible effect on Federal fiscal year budget receipts over the 2024-2034 budget period.

The Congressional Budget Office estimates that this proposal will have an insignificant effect on Federal fiscal year budget outlays over the 2024-2034 budget period.