

# Protect Nonprofit Speech and Private Giving

How would the DISCLOSE Act, Honest Ads Act, Stand by Every Ad Act and Spotlight Act impact your nonprofit?

## Tax Status: Is your organization a 501(c)?

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The **Secret Money Transparency** and **Spotlight Acts** authorize the **IRS to regulate nonprofit speech, and 501(c)(4), 501(c)(5), and 501(c)(6) organizations will have to report the names and addresses of donors** that give more than \$5,000.

- After the IRS was caught systematically harassing right-of-center groups, restrictions were placed on the agency to prevent it from regulating nonprofit organizations' speech and citizen advocacy. The Secret Money Transparency provision in H.R. 1 / S. 1. removes these restrictions, transforming the IRS into the "speech police."
- The bill reverses recent reforms that eliminated the requirement for certain nonprofits to report their supporters' confidential information. In addition to invading their privacy, the IRS does not need this information to enforce tax law.
- The Spotlight Act goes even further by requiring the disclosure of the names and addresses of all (c)(4), (c)(5), and (c)(6) nonprofit donors that give more than \$5,000.

## Advertising: Does your 501(c)(4), 501(c)(5), and/or 501(c)(6) nonprofit run ads about "national legislative issues of public importance" or mention a federal candidate (such as "Trump's border wall" or "Biden's infrastructure package")?

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The **Stand by Every Ad Act** will **require nonprofits to list donors' names in ads:**

- Video ads must list the names of the top five donors giving \$10,000 or more during the previous 12 months and display a photo of the nonprofit's leader while playing the disclaimer.
- Audio ads (including telephone calls) must list the organization's top two donors exceeding the same threshold.
- Ads must include the specific statement from the organization's CEO or highest-ranking officer, "I am (insert name), the (title) of (name of organization) and (insert donors' names) approves this message."
- Short video ads lasting less than 10 seconds will need to include a link to a website listing donor information.
- Donors who give general funds not specifically earmarked for campaign ads could end up being disclosed as top donors and identified as supporting a message they did not directly fund.
- A wide variety of popular internet-based platforms could fall under regulation, such as social media sites, search engine results, mobile apps, organizational websites, and email.




The **DISCLOSE Act** will require nonprofits to **report donors to the FEC** for common types of communications and **require organizations to declare whether they support or oppose a political candidate**, even if the ad was not about the campaign.

- The bill creates a new category of expenditures called "campaign-related disbursements" that include speech common for nonprofits, such as mentioning a federal candidate even if the ad has nothing to do with his or her campaign.

- Organizations making “campaign-related disbursements” totaling more than \$10,000 during a two-year “election reporting cycle” (or a calendar year for “federal judicial nomination communications”) must publicly report the names and addresses of all donors giving \$10,000 or more during that period to the FEC.
- Any speech that mentions a federal candidate would trigger a filing requirement to report whether that speech advocates for or against him or her—even if the message has nothing to do with a campaign.
- Requires reporting of all vendors paid \$1,000 or more.


## Grants: Does your organization issue grants to other 501(c) organizations (except 501(c)(3)) or receive grants from other organizations?

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 The **DISCLOSE Act** requires nonprofits that make grants or payments to another organization to **disclose their donors to the FEC** if the receiving organization made “campaign-related disbursements” totaling \$50,000 or more in the *past two years or plans to do so within the next two years*. Granting organizations will then be put in the difficult position of having to predict what the receiving organization will do in the future.

## Internet: Does your organization use the internet to get its message out?

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 The **Honest Ads Act** creates heavy **regulatory and cost burdens** for American nonprofits by **expanding reporting requirements** for paid internet and digital communications.

- Expands the definition of “electioneering communication” to include any paid ad mentioning a federal candidate within a 30- or 60-day window of their election. This impacts ads that are not targeted to a candidate’s voters, creating disclosure requirements for ads that are focused on an issue (such as “Trump’s border wall” or “Biden’s infrastructure package”) rather than the candidate’s election.
- Subjects popular internet-based platforms, such as social media sites, to potential regulation, including an organization’s regular content that is posted by staff, search engine results, mobile apps, organizational websites, and email.
- Creates confusing reporting requirements by requiring advertisers spending as little as \$500 annually on the online platform to report a long list of information about the ad in a “public file.”
- Requires online ads to include an inflexible and impractical disclaimer, such as those required for broadcast ads.
- Establishes legal liability for online platforms which will add regulatory costs.
- Hurts law-abiding American nonprofits, while doing little to discourage foreign interference in elections.
- Infringes on First Amendment rights. Notably, a federal appeals court struck down a similar law enacted in Maryland in 2019 for that reason.