

**STATE ADMINISTRATIVE BOARD
OF ELECTION LAWS**

**PUBLIC DISCLOSURE REQUIREMENTS FOR ENTITIES DOING BUSINESS
WITH STATE, COUNTY OR MUNICIPAL AGENCIES:**

**SUPPLEMENT TO INSTRUCTIONS/ANSWERS TO COMMONLY ASKED
QUESTIONS**

JUNE 1998

When is the Initial Report due?

The Initial Report is due “prior to the completion” of the contract that has triggered the business entity’s reporting requirement. In context, it is clear that “prior to the completion” means upon the execution of the contract. Section 30-2 establishes the two types of filings--the Initial Report and Semiannual Reports. The Initial Report is due “prior to the completion” of the contract and the Semiannual Reports are due every six(6) months during the performance of the contract. The structure of these filings serves the statute’s purpose only if the filing of the Initial Report is triggered by the execution of the contract. Recognizing that a business entity may not have the Initial Report completed on the same day that the contract is executed, an Initial Report should be filed as soon as reasonably possible after the execution of the contract.

A business entity that filed an Initial Report upon execution of its first government contract and has been filing Semiannual Reports for the past two years need not file a new Initial Report upon the execution of a new government contract. For example, ABC Company executed a contract with a State agency in January 1995 and filed an Initial Report covering the preceding twenty-four (24) months (January 1993 through December 1994). ABC Company has been filing Semiannual Reports regularly since the execution of the contract (February 5, 1995, August 5, 1995, February 5, 1996, August 5, 1996 and so on). ABC Company executes a new contract with Baltimore

County in January 1998. ABC Company has no Initial Report to file and should continue to file Semiannual Reports until no longer performing the government contracts.

How is a business entity's amount of business calculated to determine whether the \$100,000 minimum has been reached and how is the total amount of business reported?

If any individual government contract of the business entity, or the total of all government contracts of the business entity, amounts to \$100,000 of consideration being paid by or to the business entity, the minimum amount of business standard has been met. The fact that a contract will be performed over a period of several years does not change this result; a business entity does not aggregate the total contract amount for each year or reporting period. The fact that the total amount of business is the result of several small contracts with a variety of State, county and municipal agencies does not change the result; it is the cumulative value of all government contracts that determines whether the \$100,000 minimum has been met. The statute and reporting form instructions make clear that the "Amount of Consideration" to be listed for each contract is the total consideration to be paid or received under the contract, not the amount of consideration paid or received during the reporting period. If the total consideration to be paid or received under the contract is not ascertainable with reasonable accuracy, a reasonable estimate should be provided along with the actual amount paid or received during the reporting period.

Are partnerships included in the scope of business entities required to file reports?

Yes. The definition of business entity is broad, including such terms as "firms" and "other organizations." This definition is clearly broad enough to encompass partnerships. Further, §30-3(a) explains that "each officer, director, and partner of a business entity... shall report" contributions to the business entity. The inclusion of the term "partner" in this section confirms that the definition of business entity includes partnerships.

Are C Corporations, formerly known as S Corporations, included in the scope of business entities required to file reports?

Yes. C Corporations are like any other corporation with respect to their ability to enter into contracts with government agencies. The distinction between a C Corporation and a traditional corporation is purely related to the tax obligations of the entities, which is not a basis for an exemption from the reporting requirements. This same analysis and conclusion would apply with respect to other “specialty” companies, such as professional corporations, professional associations and limited liability companies.

Must contributions to slates and political action committees (PACs) be disclosed if in excess of \$500?

By definition, a slate is “a political committee of 2 or more candidates.” Art. 33, §1-1(a)(17A). Because a business entity must report all contributions to “a political committee for a candidate,” §30-1(d), a contribution to a slate must be disclosed if in excess of \$500. The contribution shall be considered a single contribution of the total amount and not aggregated among the slate members. The slate shall be listed under the heading “Candidate” on the relevant chart. For a more detailed explanation of this conclusion, see 61 Opinions of the Attorney General 372 (1976).

A political action committee, or PAC, is not by definition a political committee for a candidate. Contributions made to the traditional form of a PAC, one designed to support a variety of candidates and issues for the benefit of a specific company or trade, are not considered contributions for reporting purposes because such PACs are considered independent of any particular candidate. Contributions made to a PAC that was created to support a specific candidate or group of candidates must be reported if in excess of \$500 for the reporting period. A contribution made to any PAC must be reported if the contributor designates the contribution for transfer to a particular candidate.

Must in-kind contributions to candidates be disclosed in the fair market value of the in-kind contribution exceeds \$500?

Yes. In-kind contributions that exceed \$500 in value must be reported. The definition of contribution in §30-1(e) includes any “gift, donation, or payment of money in excess of \$500” and excludes gifts between certain relatives as well as honorary memberships to

certain organizations. The exclusions make clear that the broad definition of contribution is intended to reach those in-kind contributions not excepted.

When are contributions aggregated to determine if the \$500 limit has been exceeded?

If during the reporting period—two (2) years for the Initial Report and six (6) months for Semiannual Reports—a contribution exceeding \$500 is made by the entity, a subsidiary, a director, or any other individual whose contributions must be reported pursuant to §30-3, the contribution must be reported. Contributions to a single candidate made by any one contributor during the reporting period must be aggregated to determine if the total contribution amount exceeds \$500. For example, if ABC Company contributes \$300 to Mr. Smith’s campaign in March 1999 and another \$300 in May 1999, the Semiannual Report covering February 1999 through July 1999 must include these contributions. Contributions of less than \$500 to a single candidate made by several contributors need not be reported unless the contributions were made as part of a coordinated effort by the contributors. For example, if Director A, Director B and Director C of ABC Company each purchase a \$250 ticket to Mr. Smith’s fundraiser, those contributions need not be reported unless the contributions were caused by the request or demand of a single officer or director. The strength of the request or demand determines whether aggregation, and therefore reporting, is required. This is a fact-intensive inquiry to be decided on a case-by-case basis. See 60 Opinions of the Attorney General 223, 229 (1975).

A business entity need only report those contributions to a single candidate in excess of \$500 regardless of the total amount of contributions to all candidates during the reporting period. For example, if ABC Company contributed \$300 each to Mr. Smith, Ms. Jones and Ms. Doe, the contributions need not be reported.

Contributions to a slate must be aggregated with the contributions to each candidate member of the slate to determine whether the total contributions to a candidate have exceeded \$500. A contribution to a slate should be allocated equally among its members to determine each member’s “share” of the contribution to determine the total amount contributed to any single candidate. For example, if ABC Company contributes \$400 to Mr. Smith and \$300 to a two-person slate of which Mr. Smith is a member, a total contribution to Mr. Smith of \$550 must be reported (\$400 individual contribution,

plus half of the \$300 slate contribution). This calculation will vary if the contribution to the slate is designated to be used for a particular candidate--in which case the contribution will be attributed solely to that candidate--or if the contribution to a slate is made with the restriction that it not be used for the benefit of a particular candidate--in which case the excluded candidate's "share" of the contribution will be allocated equally among all other members of the slate.

What period of time is to be covered by the Initial Report?

The Initial Report should cover the twenty-four (24) months preceding the execution of the contract. For example, if ABC Company executed a government contract in September 1998, the company would be required to file an Initial Report covering September 1996 through August 1998.

What is the obligation of the reporting entity with respect to collection of the information necessary to complete the report and in timely reporting contributions?

A business entity must make a good faith effort to gather the contribution information required by §30-3. For a small entity, such efforts include contacting all officers, directors and partners and requesting contribution information. For very large entities with subsidiaries, it may not be necessary to contact all directors and officers of each subsidiary. Such an entity should make a good faith effort to collect information from all of the directors and officers of the parent company and from any subsidiaries that have done business with a government agency as well as from that subsidiary's directors and officers. Other subsidiaries, and officers and directors of those subsidiaries, should be surveyed only if a reasonable likelihood exists that the subsidiary or officer or director made a reportable contribution. To minimize data collection efforts, a business entity may impose a rule prohibiting officers and directors from making contributions to Maryland candidates. If such a rule was well publicized within the entity and the entity was not aware of any violations of the policy, the company may avoid surveying directors and officers. See 60 Opinions of the Attorney General 223, 227 (1975).

Reports are due five (5) days after the close of the reporting period. For some very large entities, it is necessary to begin collecting contribution information well in advance of the end of the reporting period. Because of the short turn-around time for filing, some

contributions made late in the period may not be included on the report despite the business entities reasonable efforts. Under these circumstances, the business entity should be certain to include the “missed” contribution on the next report. See §30-2(e)(1). If no further reports are required, a supplement to the last report should be filed.

When should a waiver under §30-2(c) be requested and for what period of time will a waiver be granted?

A waiver request should be submitted to the Attorney General several weeks in advance of the February 5 filing deadline each year. The request may seek a waiver for both the February 5 filing and the July 5 filing for that year.

If the business entity has not made any reportable contributions during the reporting period, but an officer or director has, is a filing required?

Yes. Section §30-3 makes clear that a contribution of an officer or director is to be attributed to the business entity for reporting purposes. Therefore, a report listing the contributions of the director and officers must be filed even if the entity made no contributions.

If a business entity establishes a political action committee (PAC) to which contributions are made and makes no direct contributions to any candidate is the business entity required to file a report?

If the PAC makes contributions to a candidate, the business entity must file a report listing the contributions of the PAC. A PAC is merely a conduit through which political contributions can be made. See 59 Opinions of the Attorney General 272, 306(1974). When a business entity establishes a PAC through which it makes its political contributions, it has merely established a filter through which the contributions reach the candidate. A PAC created by a business entity does not take on a life of its own; rather, established and operated by the business entity, the PAC makes contributions that are attributed to the entity for reporting requirements.

If an individual who serves, as a director, officer or partner of a business entity must disclose political contributions through the filing of one entity, must that

individual's contributions also be reported through the filing of another entity for which the individual serves as a director, officer or partner?

Yes. Each business entity's reporting requirements are unique to that entity. Although the individual directors, officers and partners bear responsibility for providing contribution information to the business entity, the filing responsibility is born by the business entity. The goal of the statute is not to capture the contribution information from a particular individual but from business entities that contract with the government agencies. Therefore, each entity must file a report listing all reportable contributions, regardless of whether the contributions are listed on another entity's report.

Are the contributions of the chief executive officer of a not-for-profit organization required to be reported even if the officer is unpaid?

Yes. The contributions of trustees or members of the board of directors of a not-for-profit entity need not be reported and are not attributable to the entity if the trustee or board member is not paid by the entity. §30-3(e). Nothing in the code provides such an exemption for the chief executive officer of such an entity.