

CONTRIBUTION RESTRICTIONS

Although the Political Reform Act (“Act”) is primarily a disclosure law, there are several important restrictions and prohibitions on receiving contributions. This chapter reviews these restrictions and prohibitions, as well as some that are contained in laws other than the Act. For restrictions and prohibitions related to expenditures made with campaign funds, see Chapter 7.

A. Restrictions On Contributions

Reporting the True Donor

As noted throughout the manual, if a contribution of \$100 or more is received from a single source in a calendar year, the source must be identified on the committee’s Form 460. If a contribution is received through an intermediary, both the intermediary and the true source of the contribution must be identified. (See Chapter 4 for additional information about intermediaries.)

Failure to disclose the true source of a contribution is often referred to as campaign money laundering, which is a serious violation of the Act. One type of common violation is when an employer reimburses individual employees for contributions so that the committee receiving the contributions discloses the employees rather than the true source of the contribution (the employer) on campaign disclosure reports.

Another occurrence is when a person (e.g., organization, business, or individual) makes a contribution to another person with the condition, agreement, or understanding that the payment will be subsequently used for political purposes, such as a contribution to another committee. It is a violation for persons to conceal their identities by contributing through another person without proper disclosure.

Committee treasurers must inquire about any information that a person of reasonable prudence would question based on all available information. It is not possible to describe every situation that might trigger a duty for a treasurer to inquire if a contribution is identified correctly. Some examples are the size of the contribution, the reported source, the likelihood of that source making a contribution of the size reported, and all other circumstances surrounding receipt of the contribution.

If it is discovered that a committee received a contribution and the donor and intermediary were not properly identified, the contribution must be paid to the Secretary of State for deposit in the State General Fund. A local agency may deposit laundered funds into its general fund when the action is brought under its local campaign finance ordinance.

Ex 6.1 – A committee receives contributions of \$5,000 each from ten different individuals in the same week. The committee treasurer and campaign fundraiser did not make specific solicitations to the individuals. Upon request, the individuals state that they all work for the same employer. The committee treasurer has a duty to inquire to determine if the employer reimbursed the employees.

Cash Contributions

A committee may not accept a cash contribution of \$100 or more. Such a contribution may be returned to the contributor prior to the end of the reporting period, provided the cash was not previously deposited or spent. A cash contribution that is inadvertently deposited into the committee bank account must be refunded within 72 hours of receipt.

QUICK TIP: Even if change is immediately provided, a committee may not accept \$100 or more in cash from a single source. For example, if the committee is holding a fundraiser and charging \$50 per person, an attendee may not pay with a \$100 bill. The payment must be made by personal check, debit card, or credit card.

Anonymous Contributions

Anonymous contributions of \$100 or more are prohibited. If the committee receives a cash contribution of \$100 or more from an unknown source, it must be sent to the Secretary of State for deposit in the State General Fund.

Contributor's Legal Name

Contributions must be made in the name by which the contributor is identified for legal purposes.

Commingling Funds

Campaign funds may not be commingled with any individual's personal funds; they must be kept in an account separate from any account that contains personal funds. Campaign funds may not be used for personal expenses. (See Chapter 7 for information about the use of campaign funds.)

Contributions Made by Money Orders/Cashier's Checks/Traveler's Cheques

Contributions of \$100 or more made by money order, cashier's check, or traveler's cheque are prohibited and must be returned to the contributor, or, if made anonymously, sent to the Secretary of State for deposit in the State General Fund.

All monetary contributions of \$100 or more must be made by written instrument (such as a check) containing the name of the donor and drawn from the account of the donor or the intermediary. Contributions may also be received by credit card (including over the Internet), wire transfer, or other electronic means. (See Chapter 4.)

Contributions Delivered in State Office Buildings

A contribution may not be delivered personally, or through an agent, in the State Capitol or any other state office building for which the State of California pays the majority of the rent. "Personally delivered" includes the delivery of a copy or facsimile of a contribution, and the original or a copy of a contribution transmittal letter. This prohibition does not apply to contributions received or delivered in a legislative district office or those sent by mail.

Contribution Limits

Chapter 5 includes a detailed discussion about contribution limits to state candidate controlled committees and committees that make contributions to state candidates. In addition, the contribution limits chart is available on the FPPC website. Local committees should check with the city clerk or county elections office to determine if local limits apply in the jurisdiction. Effective January 1, 2021, a state campaign contribution limit will by default apply to city and county candidates when the city or county has not already enacted a contribution limit on such candidates.

Recurring Contributions

A “recurring contribution” is a contribution from a person to a candidate or committee that is automatically charged to the person’s bank account, credit card, or other payment account on a repeated basis, such as weekly or monthly, without approval or any other affirmative consent by the person after their initial contribution to the candidate or committee.

A committee must obtain affirmative consent from a person making a recurring contribution at the time of the initial contribution. Any solicitation for a recurring contribution must be in a form that requires affirmative consent from the person making the contribution. Passive action by the contributor, such as failing to uncheck a pre-checked box authorizing a recurring contribution, does not meet the requirement of affirmative consent. A committee that accepts a recurring contribution is required to provide a receipt for each contribution, provide information necessary to cancel the recurring contribution, and immediately cancel a recurring contribution upon request.

A recurring contribution accepted in response to a solicitation that did not require affirmative consent must be returned to the contributor within 14 days of the earlier of the following:

- receipt of a request from the contributor to return the contribution, or
- the date on which the candidate or committee becomes aware that the solicitation of the recurring contribution was in violation of the Act.

A contribution accepted after a contributor requested to cancel a recurring contribution must be returned to the contributor within 14 days of the request to cancel the recurring contribution.

Contributions From State Lobbyists

A lobbyist may not make a contribution to an elected state officer or a candidate for elective state office if the lobbyist is registered to lobby the governmental agency for which the candidate is seeking election or the governmental agency of the elected state officer.

A general purpose committee that receives personal funds from a lobbyist and includes the lobbyist (or a cohabitant of a lobbyist) in decisions regarding the making of contributions is also prohibited from making contributions to state candidates who are seeking or holding an office of an agency the lobbyist is registered to lobby.

A lobbyist is not prohibited from advising their clients (including sponsored general purpose committees) regarding the making of contributions to state candidates.

State Lobbyist and Lobbying Firm Fundraisers

A fundraiser held in the home of a lobbyist is considered a contribution; therefore, a lobbyist (or a cohabitant of a lobbyist) is prohibited from holding a fundraiser in their home for a state candidate seeking election to a governmental agency that the lobbyist is registered to lobby. A similar prohibition applies to lobbying firms holding fundraisers at their offices.

Contributions from Foreign Governments or Principals in Connection with State or Local Ballot Measure Prohibited

A foreign government or foreign principal may not make contributions, expenditures or independent expenditures in connection with the qualification or support of, or opposition to, any state or local ballot measure. The term “foreign principal” includes:

- A foreign political party;
- An individual outside the United States, unless the individual is a U.S. citizen;
- A person, other than an individual, outside the United States unless the person is organized under or created by the laws of the United States or of any state or other place subject to the jurisdiction of the United States and has its principal place of business within the United States;
- A partnership, association, corporation, or organization organized under the laws of, or having its principal place of business in, a foreign country; and
- A domestic subsidiary of a foreign corporation if the decision to contribute or expend funds is made by an officer, director, or management employee of the foreign corporation who is not a U.S. citizen or lawful permanent resident.

Contributions, expenditures, or independent expenditures made by a lawfully-admitted permanent resident (e.g., a “green card” holder) of the United States are permitted. (See Government Code Section 85320.)

Federal Law Prohibitions: Contributions from Foreign Nationals (including Foreign Principals and Foreign governments)

Committees may not solicit or accept contributions from foreign nationals. Federal law prohibits contributions and expenditures solicited, directed, received or made directly or indirectly by or from foreign nationals in connection with any election — federal, state or local. This prohibition includes contributions made to political committees. Furthermore, it is a violation of federal law to knowingly provide substantial assistance in the making, acceptance or receipt of contributions or in connection with federal and nonfederal elections to a political committee. This prohibition includes, but is not limited to, acting as an intermediary for foreign national contributions. (52 USCS Section 30121.) Contact the Federal Election Commission for information at (800) 424-9530 or info@fec.gov.

Federal Law Prohibitions: Contributions from National Banks, or Federally-Chartered Corporations

National banks and federally-chartered corporations are subject to federal law prohibiting particular contributions and expenditures in connection with local, state, or federal elections. (The Federal Election Campaign Act, 52 USCS Section 30101, et seq. and specifically Section 30118; and see 11 C.F. R. Section 114.2.) Contact the Federal Election Commission for information at (800) 424-9530 or info@fec.gov.

B. Public Funds and Public Resources

The Political Reform Act prohibits the payment of public moneys, in the form of matching funds or cash subsidies, for the financing of elections, except for elections in charter cities and counties. (*Howard Jarvis Taxpayers Association, et al. v. Gavin Newsom, et al.* (2019).)

Laws outside the Act prohibit the use of public resources, such as office equipment, staff time, etc., for campaign or personal purposes. (Education Code Section 7054; Gov. Code Section 8314; Penal Code Section 426; *Vargas v. City of Salinas* (2009) 46 Cal 4th 1.

Government Code Section 54964 restricts an officer, employee, or consultant of a local agency from expending or authorizing the expenditure of any local agency funds to support or oppose a ballot measure or a candidate. For further information on laws outside the Act, contact the Attorney General's office at (800) 952-5225 or the local district attorney.

Authority

The following Government Code sections and Title 2 Regulations provide authority for the information in this chapter:

Government Code Sections

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| 82015 | Contribution. |
| 82025 | Expenditure. |
| 84300 | Cash and In-Kind Contributions; Cash Expenditures. |
| 84301 | Contributions Made Under Legal Name. |
| 84302 | Contributions by Intermediary or Agent. |
| 84304 | Anonymous Contributions; Prohibition. |
| 84307 | Commingling with Personal Funds. |
| 84309 | Transmittal of Campaign Contributions in State Office Buildings; Prohibition. |
| 84607 | Prohibition Against Political or Campaign Use. |
| 85320 | Foreign Entities. |
| 85701 | Laundered Contributions. |
| 85701.5 | Recurring Contributions. |
| 85702 | Contributions from Lobbyists. |

Title 2 Regulations and Opinions

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| 18215 | Contribution. |
| 18432.5 | Intermediary and Earmarked Funds Disclosure. |
| 18439 | Definition of “Personally Deliver.” |
| 18572 | Lobbyist Contributions-Making a Contribution Defined <i>Pelham Opinion (2001) 15 FPPC Ops 1.</i> |