

APPENDICES

- Appendix 1:** Charter Provisions on Campaign Finance – *Charter § 803*
- Appendix 2:** Excess Contribution Policy
- Appendix 3:** Audit Policy
- Appendix 4:** Federal Elections Commission's Brochure on Foreign Nationals

Appendix 1

Charter Provisions on Campaign Finance
Charter § 803

**Los Angeles City Charter
TABLE OF CONTENTS**

(a) Definitions. 1

(b) Campaign Contribution Limitations.3

(c) Adjustment of Limits.4

(d) Cash Contributions and Anonymous Contributions.4

(e) Campaign Contribution Checking Account.4

(f) Treasurer.5

(g) Training for Candidates and Treasurers.5

(h) Accountability.5

(i) Petty Cash Fund.5

(j) Assumed Name Contributions.5

(k) Campaign Expenditures – Uncontrolled by Candidate or Committee.5

(l) Recall Petition.5

(m) Suppliers of Goods and Services – Disclosure of Records Required.5

(n) Aggregation of Payments.5

(o) Family Contributions.6

(p) Return of Contributions.6

(q) Restrictions on When Contributions May Be Received.6

(r) Campaign Disclosure, Reporting and Recordkeeping.6

(s) Disclosure of Payments for Independent Expenditures and
Non-Behested Member Communications.7

(t) Verification.8

(u) Duties of City Ethics Commission.8

(v) Enforcement.8

(w) Effect of Violation on Outcome of Election.9

(x) Late Filing Penalties.9

(y) Severability.9

**Los Angeles City Charter
ARTICLE VIII – BOARD OF EDUCATION**

SEC. 803 ELECTION OF BOARD MEMBERS

The election of Members of the Board of Education of the Los Angeles Unified School District shall be conducted in accordance with Sections 400 through 440 of the Charter and applicable ordinances consistent with the Charter. In order to encourage a broader participation in the political process by placing limits on the amount any person may contribute or otherwise cause to be available to candidates for election to the Board of Education, the following campaign finance provisions apply to elections of the members of the Board of Education. This section is intended to supplement the Political Reform Act of 1974.

(a) Definitions.

(1) “Behested” means and will be treated in the following manner for purposes of this section:

(A) An expenditure behested by a candidate or candidate’s controlled committee is not an independent expenditure and shall be treated as a contribution to the candidate or committee that behests the expenditure.

A payment is behested if it is made:

- (i) at the request or suggestion of the candidate, committee, or the candidate or committee’s agent;
- (ii) in concert with, with the cooperation of, or in consultation with, the candidate, committee, or the candidate or committee’s agent; or
- (iii) under any arrangement, coordination, or direction between the candidate, committee, or the candidate or committee’s agent.

(B) An expenditure is behested without limitation under the following circumstances:

- (i) active involvement or participation by a candidate in the creation or design of a communication financed by the spender, including consultation between the spender and the candidate about content;
- (ii) solicitation by the spender and/or provision by the candidate of materials specifically for use in the communication or

procuring the candidate’s consent to include specific materials in the communication; or

(iii) arranging with the candidate for preparation of any materials used in the communication.

(C) There is a rebuttable presumption that an expenditure is behested, and therefore not independent, if:

(i) it is made by or through any agent of the affected candidate or member of the candidate’s controlled committee in the course of his/her involvement in the current campaign;

(ii) in the election cycle during which the expenditure is made, both the spender or the spender’s agent and the candidate on whose behalf the expenditure is made retain the same individual or entity to provide non-ministerial, campaign related professional services (non-ministerial, campaign related professional services include, but are not limited to: polling or other campaign research, media consulting or production, direct mail consultation, and fundraising);

(iii) the expenditure finances a communication that replicates, reproduces, republishes, distributes, or disseminates, in whole or substantial part, a broadcast, written, graphic, or other form of campaign material designed, produced, paid for, or distributed by the affected candidate, his or her committee, or agent;

(iv) the expenditure is based on information about a candidate’s campaign plans, projects, or needs not generally available to the public; or information provided directly or indirectly by that candidate, committee, or their agents to the spender or spender’s agent, with an express or tacit understanding that the expenditure was being considered;

(v) the spender or spender’s agent discusses or negotiates the content, timing, location, mode, intended audience, volume of distribution, or frequency of placement of a communication financed by the spender with the candidate whose election or nomination is

advocated by the spender or whose opponent's defeat is advocated by the spender;

(vi) in the election cycle during which the expenditure is made, the spender or spender's agent is serving or has served in a formal executive, policy-making, or advisory position with the candidate's campaign or has participated in strategic or policy-making discussions with the candidate's campaign relating to that candidate's pursuit of nomination or election to office, and the candidate is pursuing the same office as a candidate whose nomination or election the expenditure is intended to influence;

(vii) the expenditure is made after a request to the spender or spender's agent by the candidate, the candidate's controlled committee, or their agents for an expenditure on the candidate's behalf; or

(viii) the expenditure is made in connection with or as a consequence of fundraising events or campaign activities co-sponsored by the candidate and the spender or the spender's agent.

(D) An expenditure will not be deemed behested merely when:

(i) a spender or spender's agent interviews a candidate on legislative or policy positions or issues affecting the spender or discusses campaign-related issues with the candidate, such as platforms, polling information, which organizations support the candidate and which support his/her opponent, or the identity of the consultants the candidate plans to hire, provided that prior to making a subsequent expenditure based on that information, the spender or his agent has not communicated with the candidate, candidate's controlled committee, or their agents concerning the expenditure;

(ii) the spender solicits and/or obtains a photograph, biography, position paper, press release, or similar material from the candidate, candidate's controlled committee, or their agents and, without the prior knowledge, control, or involvement of the candidate, candidate's controlled committee, or their agents, subsequently utilizes or incorporates that information to create a communication in support of the candidate or in opposition to his or her opponent;

(iii) the spender made prior contributions to the candidate;

(iv) the spender communicates to the candidate, the candidate's controlled committee, or the agent of either, the intent to make an independent expenditure without discussing any of the items mentioned in Subparagraph (C)(v) of this section;

(v) a member of an organization that makes an expenditure renders volunteer personal services to or works for the affected candidate's campaign, unless the volunteer or campaign worker was also involved in the activities of the spender-organization's political action committee or makes payments on behalf of the spender-organization, or is serving or has served the affected candidate's campaign in one of the capacities described in Subparagraph (C)(vi) of this section;

(vi) the expenditure was made in response to an unsolicited request from political party leaders or their agents that the committee "support" the candidate or make an expenditure relating to the candidate;

(vii) the expenditure finances the cost of preparing or disseminating candidate evaluations to voters or conducting a political survey; or

(viii) the spender employs or is under contract with a political consultant or pollster who rendered services to a candidate in prior years.

(2) "Board of Education office" means the office of a member of the Board of Education of the Los Angeles Unified School District.

(3) "Candidate or Committee Agent" means any person who has express or implied authority to make or to authorize the making of expenditures on behalf of the candidate. There shall be a rebuttable presumption that the following have that authority: current or former officers of the candidate-controlled committee, employees of the campaign, persons who have received compensation or reimbursement from the campaign, or any person who has been placed in a position within the campaign organization where it would reasonably appear that in the ordinary course of campaign-related activities he or she may authorize expenditures. A candidate's agent is also any person who is serving or has served in an advisory, decision-making, or strategic role with a candidate's campaign, with or without compensation, where that person's duties and/or actions reflect or require direct knowledge of the candidate's campaign strategy, plans, or needs.

(4) "Election" means any primary nominating election, a general election, a special election and a recall election.

(5) "Independent expenditure" means an expenditure made by any person in connection with a communication that expressly advocates the election or defeat of a clearly identified candidate; or, taken as a whole and in context, unambiguously urges a particular result in an election, but which is not made to or at the behest of the affected candidate or committee.

(6) "Loan" means and will be treated in the following manner for purposes of this section:

(A) A loan shall be considered a contribution from the maker and the guarantor of the loan and shall be subject to the contribution limitations of this section.

(B) The proceeds of a loan made to a candidate by a commercial lending institution in the regular course of business on the same terms available to members of the public and which is secured or guaranteed shall not be considered to be a contribution within the meaning of the contribution limitations of this section.

(C) Extensions of credit (other than loans referred to in Subdivision (6)(B)) for a period of more than 30 days are subject to the contribution limitations of this article.

(7) "Member communications" means payments made pursuant to Government Code Section 85312.

(A) For purposes of this article, payments for member communications that are behested by candidates, with the exception of payments for a regularly published newsletter or periodical limited solely to individual members not exceeding the amount of payments regularly made to publish a regular newsletter or periodical, shall be considered contributions to that candidate or candidate controlled committee for purposes of the contribution limits reporting requirements contained in this article.

(B) For purposes of this article, member communications that are not behested by a candidate, a candidate's controlled committee, or an agent of a candidate or a candidate's controlled committee are not considered contributions to a candidate.

(C) Member communications that are not behested by a candidate, a candidate's controlled committee, or an agent of a candidate or a candidate's controlled committee and are not

payments for a regularly published newsletter or periodical limited solely to individual members and do not exceed the amount of payments regularly made to publish a regular newsletter or periodical, are considered expenditures and are required to be reported pursuant to Subsection (s).

(8) "Non-Candidate Spending" means any combination of independent expenditures and/or member communications that are not behested by a candidate.

(b) Campaign Contribution Limitations.

(1) No intended candidate for the Board of Education, and no committee acting on behalf of such candidate, shall solicit or accept, or cause to be solicited or accepted, any contribution for use in any election for such office unless and until such candidate shall have filed a Declaration of Intent to Solicit and Receive Contributions in connection with candidacy for a specific Board of Education office. That declaration shall be filed with the City Ethics Commission on a form prescribed by the City Ethics Commission. Once the election takes place, the declaration is thereafter void.

No person may have on file at the same time more than one declaration for any single election. A candidate may, however, file a form canceling one declaration and may thereafter file a new declaration.

(2) The candidate and the treasurers of the candidate's controlled committees shall file with the City Ethics Commission on a form prescribed by the City Ethics Commission a statement under oath that the candidate and the treasurers have read and understood Section 803. This statement shall be filed concurrent with the filing of the Declaration of Intent to Solicit and Receive Contributions.

(3) No person shall contribute a total of more than \$1,000 to any candidate for the Board of Education and to his or her controlled committee for a single election. A candidate for the Board of Education shall not accept any contribution or contributions totaling more than \$1,000 from any person for a single election. Nothing in this section is intended to limit the amount a candidate can contribute to his or her candidacy for the Board of Education from his or her personal funds.

(4) [Repealed.]

(5) No person shall make a contribution in connection with a single election for a Board of Education office, which would cause the aggregate amount of such contributions by that person to exceed a sum equal to \$1,000 multiplied by the number of Board of Education offices appearing on the ballot at that election, but in no case less than \$2,000, in connection with all candidates in that election seeking election to all Board of Education offices; provided, however, that a candidate

shall not be limited by this Subdivision (5) in the amount he or she may contribute or expend in connection with his or her own campaign.

(6) No person shall make, and no person or candidate shall solicit or accept any loan of more than \$1,000 for use in connection with an election for the Board of Education. Further, no person shall make, and no person or candidate shall solicit or accept any loan for use in connection with an election for a Board of Education office for a period of more than 30 days. Loans to a candidate or to a candidate's controlled committees shall be counted against the contribution limitations applicable to the candidate. A candidate is not prohibited from obtaining a personal loan of any amount from a licensed financial lending institution in the regular course of business, unless the loan is made for political purposes. Every loan to a candidate or the candidate's controlled committee shall be by written agreement, which shall be filed with the candidate's or committee's campaign statement on which the loan is first reported. This Subdivision (6) shall not limit the amount or duration of loans from the candidate to his or her own campaign.

(7) Any contributions solicited or accepted pursuant to this section shall be expended only in connection with the candidacy for the office specified in the candidate's Declaration of Intent to Solicit and Receive Contributions. Contributions solicited or accepted pursuant to this section for one individual shall not be expended for the candidacy of any other individual seeking another Board of Education office or in support of or in opposition to any Los Angeles Unified School District ballot measure. No candidate, committee controlled by a candidate, or elected member of the Board of Education shall use contributed funds to make any contribution to any other candidate running for office or to any committee supporting or opposing a candidate for office. Provided, however, a candidate shall not be prohibited from making a contribution from his or her own personal funds to his or her own candidacy, to the candidacy of any other candidate or in support of or in opposition to any Los Angeles Unified School District ballot measure.

(c) Adjustment of Limits.

Every four years, the City Ethics Commission shall review whether the contribution limitations contained in this section should be adjusted to reflect changes in the Consumer Price Index (CPI) for the Los Angeles-Long Beach Metropolitan Statistical Area. The first review shall begin at the end of the calendar year 2011. If the contribution limitations are not adjusted during any review period, the limitations may be adjusted in a subsequent four-year review period, up to the overall increase in the CPI since the last adjustment. Any change to the contribution limitations shall be effective for any subsequent election for which the fundraising period has not yet opened as provided in Subsection (q). The City

Ethics Commission shall forward a report with its findings to the Council by March 1, following each review. Within 60 days after the City Ethics Commission forwards its report to the Council, the Council shall hold a public hearing concerning the matter and act to approve or disapprove the report. If the Council fails to disapprove within the 60 day period, the report shall be presented to the Mayor for approval or veto, and to the Council for override of the Mayor's veto. If approved by the Mayor, or if the Mayor fails to act, or if approved by the Council on override of the Mayor's veto, the amount specified in the report shall have the force of law as the contribution limitations applicable to this section, subject to all penalties and remedies in this section.

(d) Cash Contributions and Anonymous Contributions.

No person shall make, and no candidate or committee shall solicit or accept, any cash contribution in excess of \$25. Total anonymous contributions to a candidate or committee which exceed in the aggregate \$200 with respect to a single election shall not be used by the candidate or committee for whom such contributions were intended, but instead, such excess shall be paid promptly to the City Treasurer for deposit in the General Fund of the City.

(e) Campaign Contribution Checking Account.

No more than one campaign contribution checking account shall be established by each candidate for a Board of Education office, and by each committee supporting or opposing such candidate. The account shall be established at an office of a bank or savings and loan institution located in the City of Los Angeles. Upon opening such account, the candidate shall file with the City Ethics Commission within ten days of opening the campaign bank account, the name of the bank or savings and loan institution and the account number. Funds shall only be disbursed from such account by checks signed by the candidate, treasurer or designated agent of the treasurer. A candidate, treasurer or designated agent of the treasurer shall deposit into the campaign checking account all contributions received in connection with a Board of Education election. A candidate, treasurer or designated agent of the treasurer shall pay all campaign expenditures for a Board of Education election with monies from this campaign checking account.

If a candidate has other controlled committees and such committees have checking accounts, the candidate shall notify the City Ethics Commission in writing of these committees and the names and addresses of the banks or savings and loan institutions and the account numbers of any such accounts. A candidate shall notify the City Ethics Commission of these committees, the banks or savings and loan institutions, and the account numbers concurrent with the filing of the Declaration of Intent to Solicit and Receive Contributions. If committees are thereafter formed or accounts thereafter opened, then the candidate shall notify the City Ethics Commission on the next regular business day on which the City Ethics Commission office is open. No

contribution shall be commingled with the personal funds of the candidate or any other person.

This subsection shall not prohibit the establishment of savings accounts or certificates of deposit, provided that no campaign expenditures may be made therefrom.

(f) Treasurer.

A candidate having campaign committees for election to the Board of Education shall appoint a treasurer of each committee. No expenditure shall be made by or on behalf of a committee without the authorization of the treasurer or that of his or her designated agents. No contribution or expenditure shall be accepted or made by or on behalf of a committee at a time when there is a vacancy in the office of treasurer. It shall be the duty of the candidate and the treasurer to approve and authorize such payments and to retain such authorizations, detailed accounts, records, bills and receipts.

(g) Training for Candidates and Treasurers.

Every candidate for the Board of Education, and every treasurer of such candidate's controlled committee, shall attend a training program conducted or sponsored by the City Ethics Commission prior to the election at which the candidate's name will appear on the ballot.

(h) Accountability.

The candidate and the treasurer shall maintain such detailed accounts, records, bills and receipts as are necessary to prepare campaign statements. The candidate and the treasurer shall retain the detailed accounts, records, bills and receipts for the periods specified in the Political Reform Act of 1974 as amended. Every candidate and committee shall make available on demand to any public officer having legal authority to enforce this section, details of checking and financial accounts of each committee controlled by the candidate and all records supporting such details.

(i) Petty Cash Fund.

Subsection (e) notwithstanding, a candidate, campaign treasurer and other designated agents authorized to issue checks on a campaign contribution checking account may disburse to the candidate or committee establishing the checking account an amount not greater than \$50 per week to be used for petty cash purposes by the candidate or committee.

(j) Assumed Name Contributions.

No contribution shall be made, directly or indirectly, by any person or combination of persons, acting jointly in a name other than the name by which they are identified for legal purposes, nor in the name of another person or combination of persons. No person shall make a contribution in his, her or its name of anything belonging to another person or received from another person on the condition that it be used as a contribution. In the event it is discovered by a candidate or committee treasurer that a contribution has been received in violation of this subsection, the candidate or treasurer shall promptly pay the amount received in violation of this subsection to the City Treasurer for deposit in the General Fund of the City.

(k) Campaign Expenditures – Uncontrolled by Candidate or Committee.

Persons or organizations not subject to the control of a candidate or committee but who make independent expenditures for or against a candidate or committee shall indicate clearly on any material published, displayed or broadcast that it was not authorized by a candidate or a committee controlled by a candidate.

(l) Recall Petition.

In the event a recall petition is filed, the committee or individual filing the petition shall be subject to the same campaign disclosure provisions as are applicable to candidates for the Board of Education.

(m) Suppliers of Goods and Services – Disclosure of Records Required.

No person who supplies goods or services or both goods and services to a candidate or committee for use in connection with the campaign for a Board of Education office shall knowingly refuse to divulge or disclose to the City Ethics Commission or to any public officer having legal authority to enforce this section, the details and the records supporting such details of any expenditures made by the candidate or committee in payment for such goods or services or both.

(n) Aggregation of Payments.

For the purposes of the contribution limitations contained in this section, contributions and/or expenditures from two or more persons will be aggregated and considered to be made by a single person for the purposes of the contribution limitations and reporting provisions contained in this section, if any of the circumstances listed below is applicable:

- (1) Contributions and/or expenditures from a person will be aggregated with contributions and/or

expenditures from any other person that controls his, her, or its contribution or expenditure activity;

(2) Contributions and/or expenditures from a sponsored committee, as defined in Government Code Section 82048.7, shall be aggregated with contributions and/or expenditures from its sponsoring organization;

(3) Contributions and/or expenditures from an entity shall be aggregated with contributions and/or expenditures from any other entity that has the same individuals constituting a majority of the members of each entity's board of directors;

(4) Contributions and/or expenditures from an entity shall be aggregated with contributions and/or expenditures from any other entity that has the same officers or with whom it shares a majority of officers. For the purposes of this subdivision, an officer does not include an individual who serves only as a member of the entity's board of directors;

(5) Contributions and/or expenditures from a corporation or limited liability company shall be aggregated with contributions and/or expenditures from any other corporation or limited liability company that has the same majority shareholder and/or member or that holds a majority of voting rights in that corporation or limited liability company;

(6) Contributions and/or expenditures from a corporation shall be aggregated with contributions and/or expenditures from any parent or subsidiary corporation, provided that at least one of the corporations is not publicly traded;

(7) Contributions and/or expenditures from an individual shall be aggregated with contributions and/or expenditures from any corporation, limited liability company, firm, joint venture, syndicate, business trust, company or other business entity not described in Subdivisions (8) or (9) below, in which the individual owns an investment of 50% or more or holds a majority of voting rights;

(8) Contributions and/or expenditures from an individual shall be aggregated with contributions and/or expenditures from any sole proprietorship the individual owns; or

(9) Contributions and/or expenditures from a general partner shall be aggregated with contributions and/or expenditures from any general or limited partnership in which the general partner owns an investment of 50% or more or in which the general partner holds a majority of voting rights.

(o) Family Contributions.

Contributions by a husband and wife shall be treated as separate contributions. Contributions by children under eighteen years of age shall be treated as contributions by their parents and attributed proportionately to each parent (one-half to each parent or the total amount to a single custodial parent).

(p) Return of Contributions.

A contribution shall not be considered to be received if it is not negotiated, deposited, or utilized, and is returned to the donor within 14 days of receipt.

(q) Restrictions on When Contributions May Be Received.

No candidate for the Board of Education, or the controlled committee of that candidate, shall solicit or accept or cause to be solicited or accepted any contribution more than 18 months before the date of the election at which the candidate seeks office. No candidate for the Board of Education, or his or her controlled committee, shall solicit or receive or cause to be solicited or received a contribution to his or her own campaign committee from any person later than nine months after the date of the election.

Contributions solicited or received or caused to be solicited or received by a candidate for the Board of Education, or his or her controlled committee, following his or her election shall be used to retire campaign debt.

(r) Campaign Disclosure, Reporting and Recordkeeping.

(1) In addition to the campaign statements required to be filed pursuant to the Political Reform Act, commencing with Government Code Section 81000, as amended, candidates for the Board of Education, their controlled committees and committees primarily formed to support or oppose these candidates shall file a pre-election statement on the Friday before the election. This statement shall have a closing date of the Wednesday before the election and shall cover activity and payments occurring through that day. Candidates for the Board of Education, their controlled committees and committees primarily formed to support or oppose these candidates shall also file campaign statements as follows in connection with a primary election held in March of an odd-numbered year:

(A) For the period ending September 30 of the year prior to the election, a statement shall be filed no later than October 10, for the period from July 1 through September 30.

(B) For the period ending December 31 of the year prior to the election, a statement shall be filed no later than January 10, of the year of the election for the period from October 1 through December 31.

statement that is filed with the City Ethics Commission.

(2) No contribution shall be deposited into a campaign checking account of a candidate for the Board of Education unless the name, address, occupation and employer of the contributor is on file in the records of the recipient of the contribution.

(3) Each candidate, and each committee making independent expenditures or member communications in support of or opposition to a candidate, who sends a mailing or distributes more than 200 substantially similar pieces of campaign literature, shall send a copy of the mailing or other literature to the City Ethics Commission at the same time the mailing or other literature is given to the post office or otherwise distributed. During the election campaign, the Commission shall merely serve as a repository for this literature and shall not judge or comment on the contents of the literature.

(4) Any candidate for the Board of Education and the candidate's controlled committee required to file campaign statements with the City Ethics Commission shall file those campaign statements online, using the Commission's Electronic Filing System (EFS), after the candidate and/or committee has received contributions or made expenditures of \$25,000 or more in connection with election to a Board of Education office.

(A) Once a candidate or committee is required to file campaign statements online, that candidate or committee shall continue to file statements online until the committee has officially terminated. Committees and other persons not required to file online by this subsection may do so voluntarily.

(B) A person required to file online shall continue to file a paper copy of each campaign statement, as required by the California Political Reform Act and this article, until the person is no longer required to file campaign statements with the City Ethics Commission. The paper copy shall continue to be the original campaign statement for audit and other legal purposes.

(C) In addition to any late filing penalties that may be imposed for a late filing of a paper copy pursuant to the California Political Reform Act or this article, any person who fails to comply with the online filing requirement of this subsection will, in addition, be subject to an additional late filing penalty of \$25 per day after the deadline for the late filing of the online copy.

(D) The information contained on a campaign statement filed online shall be the same as that contained on the paper copy of the same

(s) Disclosure of Payments for Independent Expenditures and Non-Behested Member Communications.

(1) Any person, including any committee, who makes or incurs independent expenditures of \$1,000 or more in support of or in opposition to any candidate for the Board of Education, or one or more payments for member communications as defined by this section, totaling \$1,000 or more in support of or in opposition to a candidate for the Board of Education, shall notify the City Ethics Commission within 24 hours by certified mail or fax or e-mail each time one or more payments, which meet this threshold, are made.

(2) The notification shall consist of a declaration specifying each candidate supported or opposed by the expenditure, the amount spent to support or oppose each candidate, whether the candidate was supported or opposed, and that the expenditure was not behested by the candidate or candidates who benefited from the expenditure. This declaration shall be made under penalty of perjury and signed by the person or officer and the treasurer of the group making the expenditure. In addition, the date and amount of the payment, a description of the type of communication for which the payment was made or incurred, the name and address of the person making the payment, the name and address of the payee, and a copy of the mailing or advertisement, or a copy of the script or recording of the call, transmission, or advertisement, shall also be provided to the City Ethics Commission. The notification also shall include disclosure of contributions of \$100 or more received by the committee since the day after the closing date of the committee's last campaign disclosure report filed within the Commission or since the first day of the current calendar year, whichever date occurs later; however, contributions that are received, but earmarked for any other candidate outside the Los Angeles Unified School District need not be disclosed. The notification also shall include disclosure of contributions of \$100 or more made in the current calendar year by the person to Board of Education candidates or their controlled committees.

(3) City Ethics Commission staff will notify all candidates by phone, fax or e-mail in the affected race within one business day after receiving the notice of payments for independent expenditures and uncoordinated member communications of \$1,000 or more. The notification will indicate the candidate who was supported or opposed by the expenditure as indicated on the signed declaration and include a copy of the communication provided by the person or group making the expenditure.

(4) For purposes of the notification required in Subdivision (1), payments by an organization for its regularly published newsletter or periodical, if the circulation is limited to the organization's members, employees, shareholders, other affiliated individuals and those who request or purchase the publication, shall not be required to be reported.

(5) Any committee, including but not limited to a candidate controlled committee and an independent expenditure committee, that makes or incurs payments for 1,000 or more recorded telephone calls or any other forms of electronic or facsimile transmission of substantially similar content, or that makes or incurs expenditures of \$1,000 or more for a radio or television advertisement, in support of or opposition to any candidate(s) for Board of Education office, shall send a copy of the script or recording used for each communication to the Ethics Commission within 24 hours of the first time the calls, transmissions, or advertisements are made or aired.

(t) Verification.

All declarations, reports and statements filed under this section shall be signed and verified by the filer under penalty of perjury. The candidate and any person signing declarations, reports and statements under this provision shall read, know and understand the contents of all these declarations, reports and statements.

(u) Duties of City Ethics Commission.

The City Ethics Commission shall administer the provisions of this section. In addition to other duties required under the terms of this section, the City Ethics Commission shall:

- (1) Conduct audits and investigations of reports and statements filed by candidates and committees supporting or opposing candidates for Board of Education offices as required under the Political Reform Act of 1974, as amended, and Article VII and this section of the Charter. The City Ethics Commission shall employ investigators where necessary to fully investigate any person subject to this section.
- (2) Enforce or cause to be enforced the provisions of this section pursuant to Section 90002(c) of the Government Code, in accordance with Article VII of the Charter.
- (3) Report apparent violations of this section and applicable state law to the City Attorney or another appropriate law enforcement agency.

(v) Enforcement.

(1) Criminal Enforcement – Any person who knowingly or willfully violates any provisions of this section is guilty of a misdemeanor. Any person who knowingly or willfully causes any other person to violate any provision of this section, or who aids and abets any other person in the violation of any provision of this section, shall be liable under the provisions of this section. Prosecution for violation of any provision of this section must be commenced within four years after the date on which the violation occurred. No person convicted of a misdemeanor under this section shall act as a lobbyist or as a City contractor for a period of four years following the date of the conviction unless the court at the time of sentencing specifically determines that this provision shall not be applicable. For purposes of this section, a plea of nolo contendere shall be deemed a conviction.

(2) Civil Enforcement.

(A) Any person who intentionally or negligently violates any provision of this section shall be liable in a civil action brought by the City Attorney, the City Ethics Commission or by a person residing within the boundaries of the Los Angeles Unified School District for an amount not more than \$5,000 per violation, or for more than three times the amount the person failed to report properly or unlawfully contributed, gave or received.

(B) Any person who intentionally or negligently makes or receives a contribution, or makes an expenditure, in violation of any provision of this section shall be liable in a civil action brought by the City Attorney or by a person residing within the City for an amount up to three times the amount of the unlawful contribution or expenditure.

(C) If two or more persons are responsible for any violation, they shall be jointly and severally liable.

(D) Any person, other than the City Attorney, before filing a civil action pursuant to this subsection, shall first file with the City Ethics Commission a written request for the City Ethics Commission to commence the action. The request shall contain a statement of the grounds for believing a cause of action exists. The City Ethics Commission shall respond within 40 days after receipt of the request, indicating whether it intends to file a civil action. If the City Ethics Commission indicates in the affirmative, and files suit within 40 days thereafter, no other action may be brought unless the action brought by the City Ethics Commission is dismissed without prejudice.

(E) Not more than one judgment on the merits with respect to any violation may be obtained under this

subsection. Actions brought for the same violation or violations shall have precedence for purposes of trial in the order of the time filed. Such actions shall be dismissed once judgment has been entered or a settlement approved by the court in a previously filed action. The court may dismiss a pending action without prejudice to any other action for failure of the plaintiff to proceed diligently and in good faith. The action may be so dismissed on motion by the City Attorney or any plaintiff in an action based on the same violation.

(F) In determining the amount of liability under this subsection, the court may take into account the seriousness of the violation and the degree of culpability of the defendant. If a judgment is entered against the defendant or defendants in an action, a private plaintiff shall receive 50% of the amount recovered. The remaining 50% shall be deposited into the City's General Fund. In an action brought by the City Attorney or the City Ethics Commission, the entire amount shall be paid to the General Fund.

(G) No civil action alleging a violation of this section shall be filed more than four years after the date the violation occurred.

(H) Any person residing within the Los Angeles Unified School District, including the Los Angeles City Attorney, may sue for injunctive relief to enjoin violations or to compel compliance with the provisions of this section. The court may award to a party, other than an agency, who prevails in any civil action authorized by this article, his or her costs of litigation, including reasonable attorneys' fees; provided, however, that no such award may be granted against the City of Los Angeles.

(w) Effect of Violation on Outcome of Election.

(1) If a candidate is convicted of a misdemeanor violation of any provision of this section, the court shall make a determination as to whether the violation had a material effect on the outcome of the election. If the court finds such a material effect, then:

(A) If such conviction becomes final before the date of the election, the votes for such candidate shall not be counted, and the election shall be determined on the basis of the votes cast for the other candidates in that race;

(B) If such conviction becomes final after the date of the election, and if such candidate was declared to have been elected, then such candidate shall not assume office, the office shall be deemed vacant and shall be filled as otherwise provided in the Charter;

(C) If such conviction becomes final after the candidate has assumed office, then the candidate shall be removed from office, the office shall be deemed vacant and shall be filled as otherwise provided in the Charter; and

(D) The person so convicted shall be ineligible to hold any elected City office or the office of a member of the Board of Education for a period of five years after the date of such conviction.

(2) The City Clerk shall not issue any certificate of nomination or election to any candidate until his or her pre-election campaign statements required by the Political Reform Act of 1974, as amended, or if no campaign statement is required, the written declaration permitted under Section 84205 of the Government Code, have been filed in the form and at the place required by the Political Reform Act of 1974.

(x) Late Filing Penalties.

If any person files an original statement or report after any deadline imposed by this article, he or she shall, in addition to any other penalties or remedies established by the article, be liable to the City Ethics Commission in the amount of \$25 per day after the deadline until the statement or report is filed. Liability need not be enforced by the Commission if on an impartial basis it determines that the late filing was not willful and that enforcement of the liability will not further the purposes of the article, except that no liability shall be waived if a statement or report is not filed within 30 days.

(y) Severability.

If any provision or portion of this section, or its application to any person or circumstance, is held invalid by any court, the remainder of this section or the application of such provisions to persons or circumstances other than those as to which it is held invalid, shall not be affected.

Appendix 2

Excess Contribution Policy

Excess Contribution Policy

Adopted September 22, 2004

Amended March 9, 2010

Amended June 12, 2014

A. Introduction

The City Ethics Commission (Commission) continues and reaffirms its commitment to the fullest possible enforcement of the laws under its jurisdiction. The Commission has determined, however, that candidates, committees, and officeholders may refund excess contributions in certain circumstances, to comply with City law. The Commission, therefore, adopts this policy, which may be applied in those cases that meet all of the requirements noted below.

B. Definitions

1. "Applicable law" means a City law that limits or prohibits contributions to participants but does not include the limitation in Los Angeles Municipal Code § 49.7.23(C)(4).
2. "Board of Education office" means the office of a member of the Board of Education of the Los Angeles Unified School District.
3. "City office" means the office of mayor, controller, city attorney, or councilmember of the City of Los Angeles.
4. "Days" means calendar days, not business days, and includes weekends and holidays.
5. "Excess contribution" means all or part of a contribution that is received by a participant in excess of a limit or prohibition in an applicable law.
6. "Participant" means either of the following:
 - An individual who seeks, holds, or has sought or held City or Board of Education office; or
 - A committee controlled by an individual who seeks, holds, or has sought or held City or Board of Education office.
7. "Sufficient documentation" means documents that show the proper refund of an excess contribution, including but not limited to written verification that an excess contribution was made, that the excess contribution was deposited into the participant's bank account, that the excess contribution was refunded to the contributor or remitted to the City, that the excess contribution cleared the participant's bank account, and that matching funds related to the excess contribution were returned or justified with an alternate contribution.

C. Applicability

1. A participant who receives an excess contribution will not be penalized for a violation of the applicable law for that contribution if the participant cures the contribution by meeting the following requirements:

- a. The participant refunds the excess contribution to the contributor or remits the excess contribution to the City.
 - i. The excess contribution must clear the participant's checking account within 75 days after the filing deadline for the statement in which the excess contribution must be disclosed.
 - ii. If the excess contribution is cured by refund to the contributor, it must be done through a reverse charge to the contributor's credit card, a cashier's check, or a check drawn on the participant's checking account.
 - iii. If the excess contribution is cured by remittance to the City, it must be done through a cashier's check or a check drawn on the participant's checking account, either of which must be made payable to the General fund of the City of Los Angeles and sent to the Commission by certified mail.
 - b. The participant returns any public matching funds received as a result of the excess contribution to the City of Los Angeles Public Matching Funds Trust Fund or submits alternate qualified contributions to justify receipt of the public matching funds.
 - c. The participant maintains and provides to Commission staff sufficient documentation to substantiate that the necessary refund or remittance and, if applicable, return have been made.
2. If an excess contribution is properly cured, the contributor will not be penalized for a violation of the applicable law for that contribution.
 3. Excess contributions that are properly cured will be identified in the Commission's public audit reports for participants who make use of this policy.
 4. This version of the policy applies to contributions that must be disclosed in statements that are due on or after June 12, 2014.

D. Staff Discretion

The Commission staff determines whether this policy may be applied in cases in which the applicability requirements are met. This policy does not apply if, in the judgment of the Commission staff, extenuating circumstances exist. Extenuating circumstances include but are not limited to a pattern of violating laws within the Commission's jurisdiction; evidence of intentional conduct; a participant's or contributor's enforcement history; a failure to cooperate during the audit or investigation process; and the overall interests of justice.

Appendix 3

Audit Policy

Audit Policy

Adopted August 2, 2004
Amended June 13, 2013
Amended June 12, 2014
Amended August 9, 2016

A. Introduction

In 2004, the Ethics Commission adopted an audit policy to promote timely campaign audits. The Ethics Commission continues and reaffirms its commitment to efficient audits and the fullest possible enforcement of the laws within its jurisdiction.

The Ethics Commission recognizes that most audit findings are a result of administrative errors or unintentional oversights. This policy is designed to allow participants to resolve audit findings outside of any enforcement proceedings and is based on the following premises:

1. City campaigns involve increasingly more contributions and expenditures, which requires increasingly more time and resources to audit and be audited;
2. The expedient and accurate resolution of audits is the best use of scarce public resources that can be used to investigate other cases that involve significant or intentional misconduct;
3. Voluntary cooperation with Ethics Commission staff is a factor that must be considered when framing a penalty under Los Angeles Administrative Code § 24.27(f)(3)(a)(vi); and
4. Prompt admission of violations benefits the public, whereas delay and false denial undermines the public trust.

This policy, therefore, provides for the early resolution of audit findings when a participant clearly demonstrates acceptance of responsibility for its violations by complying with the terms below. This policy provides only guidance and does not create any substantive or procedural rights, nor does it limit any enforcement prerogative of the Ethics Commission.

B. Definitions

1. "Board of Education office" means the office of a member of the Board of Education of the Los Angeles Unified School District.
2. "City office" means the office of mayor, controller, city attorney, or councilmember of the City of Los Angeles.
3. "Early resolution audit (ERA)" means an audit that may be resolved under Section D because the participant has complied with the requirements of this policy.

4. "Participant" means either of the following:
 - An individual who seeks, holds, or has sought or held City or Board of Education office; or
 - A committee controlled by an individual who seeks, holds, or has sought or held City or Board of Education office.

C. Time Lines

The goal of this policy is to complete each campaign audit within a reasonable amount of time without compromising quality, oversight, or public policy.

1. A participant who does all of the following may be eligible for an early resolution audit (ERA):
 - a. Attends a candidate training conducted by the Ethics Commission for the election that triggers an audit cycle for the participant.
 - b. Files all campaign reports using the Ethics Commission's electronic filing system.
 - c. Maintains all financial data and records for the committee in an organized manner and makes them available by the target audit start date in an electronic format prescribed by the Ethics Commission.
 - d. Provides to the Ethics Commission an original or an easily readable paper copy of any record or other documentation regarding committee activity, including but not limited to credible and contemporaneous third-party records, within seven calendar days after the Ethics Commission makes the request.
 - e. Has 10 or fewer audit findings during a single audit cycle.
2. If a participant is not eligible for an ERA or is disqualified or removed from ERA eligibility, the participant's audits may not start when originally scheduled, and the guidelines identified in paragraph 3 may not apply.
3. An audit of a single committee will be completed according to the following guidelines:
 - a. For committees that raised or spent up to \$500,000, the audit should be completed within 45 calendar days after the audit start date.
 - b. For committees that raised or spent more than \$500,000, the audit should be completed within 60 calendar days after the audit start date.
 - c. For any committee, the completion date may be extended for good cause by the Director of Audits up to 180 calendar days after the audit start date.
4. Ethics Commission staff will provide as much notice as possible of target audit start dates, to assist participants in preparing their financial data and other

records. Every effort will be made to follow the target audit schedules, but they may be revised by Ethics Commission staff at any time.

5. When draft audits of all of a participant's committees for a single audit cycle have been completed, the following apply:
 - a. Ethics Commission staff will issue to the participant a draft audit report for each committee, and the participant will have 21 calendar days to respond to all of the draft audit reports.
 - b. For each committee audited, Ethics Commission staff will issue to the participant a final audit report within 14 calendar days after the later of the deadline for the participant to respond to the draft audit report or the date the Ethics Commission has addressed all of the participant's timely responses to the draft audit report.
 - c. If an audit is eligible for early resolution, the participant must comply with the requirements in Section D within 45 calendar days after the date the final report is issued in order to resolve audit findings under this policy. If the participant fails to comply within 45 calendar days, the audit report will automatically become ineligible for early resolution.
 - d. If an audit is not eligible for early resolution solely because the participant exceeded the threshold in Section C(1)(e), the Ethics Commission's Enforcement Division may subsequently determine that one or more findings do not support action in an administrative enforcement proceeding. If the number of findings is lowered as a result of that determination and, therefore, meets the threshold in Section C(1)(e), the participant's audit may become eligible for early resolution, despite the fact that a final audit report has been issued. An explanatory addendum will be added to all final audit reports that become eligible for early resolution after they are issued.
 - e. Audit reports will be publicly released after they become final.

D. Resolution of Findings

1. If a participant properly complies with all of the requirements of this policy, the participant is not subject to Ethics Commission enforcement proceedings for findings in an ERA report, including a probable cause report, a probable cause determination, a public accusation, and an administrative hearing.
2. This policy has the following minimum requirements and applies only to a participant who complies with all of the following:
 - a. Full Admission. The participant must execute a written ERA agreement fully admitting all findings identified in the ERA reports. The terms of the ERA agreement are not subject to modification, and the participant may not strike or interlineate any portion of the ERA agreement. The ERA agreement will be signed by the Ethics Commission's Executive Director or the Executive

Director's designee, will be incorporated into all related final audit reports, and will be a public record.

- b. Payment. The participant must make a payment to resolve all findings identified in the ERA reports. The amount of the payment is \$1,000 per audit finding. Payment must be made by cashier's check, must be payable to the City's general fund, and must be delivered to the Ethics Commission.
 - c. Deadline. Within 45 calendar days after Ethics Commission staff issues an ERA report, the participant must return the original executed ERA agreement and cashier's check to the Ethics Commission. All of the participant's ERA reports for that audit cycle will become final and will be publicly released after the earlier of the date Ethics Commission staff receive the original executed ERA agreement and cashier's check or 45 calendar days after Ethics Commission staff issues the ERA reports to the participant. Until the original executed ERA agreement and cashier's check are received, Ethics Commission staff may revoke the ERA agreement and limit or deny participation in this policy.
 - d. Waiver of Procedural Rights. The participant must waive all procedural rights under Los Angeles City Charter § 706 and Los Angeles Administrative Code §§ 24.21– 24.29. These rights include but are not limited to the right to receive a probable cause report, a determination of probable cause, and a public accusation; the right to have an administrative hearing held to determine liability; the right to personally appear at an administrative hearing, to subpoena and cross-examine witnesses, and to have the Ethics Commission or an administrative law judge hear the case.
 - e. Waiver of Judicial Review, Appeal, and Collateral Attack. The participant must waive, to the full extent of the law, any right to seek judicial review of, appeal, or collaterally attack the findings identified in the ERA reports, the related payment, or any action by the Ethics Commission or Ethics Commission staff with respect to the audit findings. If the participant breaches the ERA agreement at any time, in any way, including but not limited to seeking judicial review of, appealing, or collaterally attacking the audit findings, the Ethics Commission may commence enforcement proceedings for audit findings that were the subject of the ERA agreement. Additionally, the Ethics Commission may use any factual admissions made by the participant in the ERA agreement in any such enforcement proceeding.
3. Ethics Commission staff determine whether audit findings may be resolved under this policy in cases in which the requirements are met. Audit findings may not be resolved under this policy if, in the judgment of Ethics Commission staff, extenuating circumstances exist. Extenuating circumstances include but are not limited to evidence of egregious conduct, including but not limited to money laundering; evidence of intentional conduct; a pattern of audit findings regarding the same or similar issues; a pattern of violating laws within the Ethics Commission's jurisdiction; the amount of money at issue; the enforcement history of a participant; a failure to cooperate during the audit process; and the overall interests of justice.

4. Ethics Commission staff retain the discretion to impose additional procedural requirements for ERA agreements.
5. If a participant enters into an ERA agreement and evidence emerges of other violations not set forth in an ERA report, the participant may be subject to Ethics Commission enforcement proceedings for those other violations. If evidence emerges that the participant was not truthful regarding audit findings in the ERA agreement, the participant may be subject to Ethics Commission enforcement proceedings for those findings. A penalty assessed through the Ethics Commission's enforcement process for audit findings will be reduced by any payment made for those findings under this policy.
6. An ERA agreement is limited to the Ethics Commission and the participant only and cannot bind any other federal, state, or local prosecuting, administrative, or regulatory authority. The Ethics Commission will bring an ERA agreement to the attention of other authorities if requested by the participant.

E. Effective Date

This revised policy is effective as of August 9, 2016, and may only be applied, if at all, to mandatory or discretionary Ethics Commission audits completed after that date.

Appendix 4

Federal Elections Commission's Brochure on Foreign Nationals

Foreign nationals

June 23, 2017

The FEC often receives questions about the rules governing foreign nationals' participation in U.S. elections. While this article responds to some of the most common questions, it does not cover all aspects of foreign national activity. Readers should consult the Federal Election Campaign Act (the Act) and Commission regulations, advisory opinions, and relevant case law for additional information. For questions involving proposed activity for which there may not be clear guidance, you may consider [requesting your own advisory opinion \(AO\)](#) from the Commission. Please note, however, that the Commission's jurisdiction is limited to provisions of the Act and does not include other laws that may also apply to foreign national activity.

The Act and Commission regulations include a broad prohibition on foreign national activity in connection with elections in the United States. 52 U.S.C. § 30121 and generally, 11 CFR 110.20. In general, foreign nationals are prohibited from the following activities:

- Making any contribution or donation of money or other thing of value, or making any expenditure, independent expenditure, or disbursement in connection with any federal, state or local election in the United States;
- Making any contribution or donation to any committee or organization of any national, state, district, or local political party (including donations to a party nonfederal account or office building account);
- Making any disbursement for an electioneering communication;
- Making any donation to a presidential inaugural committee.

Persons who knowingly and willfully engage in these activities may be subject to an FEC [enforcement action](#), criminal prosecution, or both.

Definition

The following groups and individuals are considered "foreign nationals" and are subject to the prohibition:

- Foreign citizens (not including dual citizens of the United States);
- Immigrants who are not lawfully admitted for permanent residence;
- Foreign governments;
- Foreign political parties;
- Foreign corporations;
- Foreign associations;
- Foreign partnerships; and
- Any other foreign principal, as defined at 22 U.S.C. § 611(b), which includes a foreign organization or "other combination of persons organized under the laws of or having its principal place of business in a foreign country."

Individuals: The "green card" exception

The Act does not prohibit individuals with permanent resident status (commonly referred to as "green card holders") from making contributions or donations in connection with federal, state or local elections, as they are not considered foreign nationals.

Participation by foreign nationals in decisions involving election-related activities

Commission regulations prohibit foreign nationals from directing, dictating, controlling, or directly or indirectly participating in the decision-making process of any person (such as a corporation, labor organization, political committee, or political organization) with regard to any election-related activities. Such activities include, the making of contributions, donations, expenditures, or disbursements in connection with any federal or nonfederal elections in the United States, or decisions concerning the administration of any political committee. Foreign nationals are also prohibited from involvement in the management of a political committee, including any separate segregated fund (SSF), nonconnected committee, or the nonfederal accounts of any of these committees. See Explanation and Justification for 11 CFR 110.20 at [67 FR 69946 \(November 19, 2002\)](#) [PDF].

The Commission has pursued a number of enforcement actions related to this prohibition. For example, in Matter Under Review (MUR) 3460, the Commission reached a conciliation agreement with a U.S. subsidiary of a foreign corporation and four of its foreign national directors. The directors, along with one director who was not a foreign national, passed a resolution authorizing a “contribution committee” to make political and charitable donations from a special account, and capitalizing the committee with \$50,000 in corporate funds. The one director who was not a foreign national was appointed as the sole member of the committee. The contribution committee subsequently made contributions to state and local candidates. The foreign nationals’ involvement in the decision to establish and fund the “contribution committee” meant that its subsequent contributions violated the ban on foreign nationals participating directly or indirectly in the making of contributions and donations in connection with elections. The corporation and the foreign national directors paid a civil penalty.

Volunteer activity

Generally, an individual (including a foreign national) may volunteer personal services to a federal candidate or federal political committee without making a contribution. The Act provides this volunteer “exemption” as long as the individual performing the service is not compensated by anyone. The Commission has addressed applicability of this exemption to several situations involving volunteer activity by a foreign national, as explained below.

In [AO 2014-20 \(Make Your Laws PAC\)](#), the Commission concluded that a political action committee could accept assistance from a foreign national in developing intellectual property for the PAC, such as trademarks, graphics, and website design because the services accepted by the PAC would fall under the volunteer exemption. Similarly, in [AO 2004-26 \(Weller\)](#), the Commission held that a foreign national could attend, speak at campaign events for a federal candidate, and solicit contributions to the campaign. However, the Commission cautioned that the foreign national could not manage or participate in any of the campaign committee’s decision-making processes. See also AOs [2007-22 \(Hurysz\)](#) and [1987-25 \(Otaola\)](#).

In MUR 5987, the Commission examined a situation in which a foreign national provided an uncompensated musical concert performance as a volunteer for a federal candidate’s campaign as part of a fundraising event. The candidate’s campaign had paid all of the costs of hosting the concert, including the rental of the venue and equipment and providing security. The performer had merely provided his uncompensated volunteer services to the campaign and had not participated in any of the campaign’s decision-making. Based on these facts, the Commission found no reason to believe that the foreign national or the federal candidate’s committee had violated the Act’s foreign national prohibition.

Non-election activity by foreign nationals

Despite the general prohibition on foreign national contributions and donations, foreign nationals may lawfully engage in political activity that is not connected with any election to political office at the federal, state, or local levels. The Commission has issued advisory opinions that help to define the parameters of that activity.

In [AO 1989-32 \(McCarthy\)](#), the Commission concluded that a foreign national could not contribute to a ballot measure committee that had coordinated its efforts with a nonfederal candidate's re-election campaign. Also, in [AO 1984-41 \(National Conservative Foundation\)](#), the Commission allowed a foreign national to underwrite the broadcast of apolitical ads that attempted to expose the alleged political bias of the media. The Commission found that these ads were permissible because they were not “election influencing” in that they did not mention candidates, political offices, political parties, incumbent federal officeholders or any past or future election.

In a decision that was later [affirmed by the Supreme Court](#), the U.S. District Court for the District of Columbia ruled that the foreign national ban “does not restrain foreign nationals from speaking out about issues or spending money to advocate their views about issues. It restrains them only from a certain form of expressive activity closely tied to the voting process—providing money for a candidate or political party or spending money in order to expressly advocate for or against the election of a candidate.” [Bluman v. FEC](#), 800 F. Supp. 2d 281, 290 (D.D.C. 2011), *aff'd* 132 S. Ct. 1087 (2012).

Providing assistance with foreign national election activity

Under Commission regulations, it is unlawful to knowingly provide “substantial assistance” to foreign nationals making contributions or donations in connection with any U.S. election. Further, no person may provide substantial assistance in the making of any expenditure, independent expenditure, or disbursement by a foreign national. “Substantial assistance” refers to active involvement in the solicitation, making, receipt or acceptance of a foreign national contribution or donation with the intent of facilitating the successful completion of the transaction. This prohibition includes, but is not limited to individuals who act as conduits or intermediaries. See Explanation and Justification for 11 CFR 110.20 at [67 FR 69945-46 \(November 19, 2002\)](#) [PDF].

Soliciting, accepting, or receiving contributions and donations from foreign nationals

The Act prohibits knowingly soliciting, accepting or receiving contributions or donations from foreign nationals. In this context, “knowingly” means that a person:

- Has actual knowledge that the funds solicited, accepted, or received are from a foreign national;
- Is aware of facts that would lead a reasonable person to believe that the funds solicited, accepted, or received are likely to be from a foreign national; or
- Is aware of facts that would lead a reasonable person to inquire whether the source of the funds solicited, accepted or received is a foreign national.

Pertinent facts that should cause the recipient of a contribution or donation to question whether it was given by a foreign national include, but are not limited to the following: a donor or contributor uses a foreign passport, provides a foreign address, makes a contribution from a foreign bank, or resides abroad. Commission regulations provide for a safe harbor: obtaining a copy of a current and valid U.S. passport would satisfy the duty to inquire whether the funds solicited, accepted, or received are from a foreign national.

In [AO 2016-10 \(Parker\)](#), the Commission determined that a U.S. citizen living abroad could solicit contributions on behalf of federal candidates and committees from other U.S. citizens residing abroad. She was required to ascertain the citizenship of the individuals whom she might solicit if she were aware of facts that would lead a reasonable person to inquire or believe that those individuals were foreign nationals. However, the Commission advised the requestor, “Limiting your solicitations to friends and family who live in the U.S. and who have not, to your knowledge, lived abroad, would not obligate you to conduct further inquiry about citizenship status due to the residence of the individuals whom you solicit.” If, however, she were to obtain a copy of a valid U.S. passport, she would be covered by the safe harbor provision noted above.

In MUR 4834, an individual admitted knowingly and willfully soliciting a contribution from a foreign national and causing a foreign contribution to be made falsely in the name of a U.S. citizen. The individual also admitted that at the time of the solicitation, he knew that the person he was soliciting was a foreign national and that contributions from foreign nationals were prohibited. The Commission entered into a conciliation agreement with the individual, and he agreed to pay a civil penalty.

In MUR 4638, the Commission found reason to believe that a law firm had violated the Act by knowingly solicited and provided “substantial assistance” to a foreign national making donations. Individuals at the firm participated in conversations with a known foreign national and his agents that resulted in his making donations to state and local candidates. As a result of the Commission’s finding, the firm entered into a conciliation agreement with the Commission and agreed to pay a civil penalty.

Monitoring prohibited contributions

When a federal political committee (a committee active in federal elections) receives a contribution it believes may be from a foreign national, it must:

- Return the contribution to the donor without depositing it; or
- Deposit the contribution and take steps to determine its legality, as described below.

Either action must be taken within 10 days of the treasurer's receipt.

If the committee decides to deposit the contribution, the treasurer must make sure that the funds are not spent because they may have to be refunded. Additionally, he or she must maintain a written record explaining why the contribution may be prohibited. The legality of the contribution must be confirmed within 30 days of the treasurer's receipt, or the committee must issue a refund.

Evidence of legality may include a written statement from the contributor explaining why the contribution is legal (e.g., donor has a green card or provides a copy of his or her valid U.S. passport), or an oral explanation that is recorded in memorandum.

If the committee deposits a contribution that appears to be legal, but later discovers that the deposited contribution is from a foreign national, it must refund the contribution within 30 days of making the discovery. If a committee lacks sufficient funds to make a refund when a prohibited contribution is discovered, it must use the next funds it receives.

In MUR 4530 and several related MURs (MURs 4531, 4587, 4642, 4909, and 5295), the Commission found that several foreign nationals and corporations had made prohibited contributions to a federal candidate committee and to a national party committee. Several committees were assessed civil penalties for failing to issue refunds when they became aware that the funds were illegal.

Domestic subsidiaries and foreign-owned corporations

A U.S. subsidiary of a foreign corporation or a U.S. corporation that is owned by foreign nationals or by a foreign parent corporation may be subject to the prohibition, as discussed further below.

PAC contributions for federal activity

Based on a series of FEC advisory opinions, domestic subsidiaries of foreign corporations may establish federal political action committees (known as separate segregated funds or SSFs) for the purpose of make federal contributions and expenditures, so long as:

1. The foreign parent corporation does not finance the SSF's establishment, administration, or solicitation costs through the subsidiary; and
2. Individual foreign nationals:
 - Do not participate in the operation of the PAC;
 - Do not serve as officers of the PAC;
 - Do not participate in the selection of persons who operate the PAC; and
 - Do not make decisions regarding any PAC contributions or expenditures.

For example, in [AO 2000-17 \(Extendicare\)](#), the Commission determined that a U.S. subsidiary of a foreign corporation could establish an SSF even though the subsidiary's board of three directors included only one U.S. citizen because the committee established to oversee all of the SSF's operations comprised only U.S. citizens or permanent residents. See also AOs [2009-14 \(Mercedes Benz USA/Sterling\)](#), [1999-28 \(Bacardi-Martini\)](#), [1995-15 \(Allison Engine PAC\)](#), and [1990-08 \(CIT\)](#).

Corporate donations and disbursements for nonfederal activity

A domestic subsidiary of a foreign corporation (or a domestic corporation owned by foreign nationals) may make donations and disbursements in connection with state or local elections (if permissible under state and local law) provided that:

- These activities are not financed in any part by the foreign parent or owner; and
- Individual foreign nationals are not involved in any way in the making of donations to nonfederal candidates and committees.

For example, in [AO 2006-15 \(TransCanada\)](#), the Commission concluded that two wholly-owned U.S. subsidiaries of a foreign corporation could make donations and disbursements in connection with state and local elections so long as the funds used were generated by the U.S.-based subsidiary's operations and not from the foreign parent and that all decisions regarding political donations would be made by U.S. citizens or permanent residents. Since the domestic subsidiaries maintained bank accounts in the U.S. that were separate from the foreign parent and did not receive subsidies from the foreign parent or from any other foreign national, the Commission concluded that the proposal was permitted under the Act.

Similarly, in [AO 1992-16 \(Nansay Hawaii, Inc.\)](#), the Commission considered a situation in which a foreign parent corporation provided "regular subsidies [to its domestic subsidiary] in the form of loans or [donations] to capital..." The Commission determined that the domestic subsidiary could make state and local donations, provided that all decisions as to political donations were made by U.S. citizens or permanent residents and also that the subsidiary be able to demonstrate through a reasonable accounting method that it had sufficient funds in its account (other than funds given or loaned by its foreign national parent) from which the donations were

made. The Commission explicitly cautioned that, “[t]he amount that the foreign parent distributes to the subsidiary cannot replenish all or any portion of the subsidiary’s political [donations] during the period since the preceding subsidy payment.”

In contrast, in [AO 1989-20 \(Kuilima Development Company, Inc.\)](#), the Commission declined to approve a U.S. company’s plan to donate to state and local candidates using a PAC funded primarily by donations from its foreign parent corporation. The Commission held that this arrangement was prohibited by the Act and Commission regulations. See also AOs [1989-29 \(GEM of Hawaii, Inc.\)](#), [1985-03 \(Diridon\)](#), and [1982-10 \(Syntex\)](#).

In MUR 2892, the Commission entered into conciliation agreements with a number of respondents, including foreign individuals and businesses, who agreed to pay civil penalties for violations of the Act that involved prohibited contributions made to state and local candidates through U.S. corporations owned by foreign corporations or by foreign individuals. In this particular case, the Commission found reason to believe that the donations in question violated the foreign national prohibition because they were allegedly financed directly by the foreign parent/owner or because individual foreign nationals were allegedly involved in making decisions concerning the contributions. (See also MURs 2864 and 3004.)

Relevant citations

22 U.S.C. § [611\(b\)](#)
Foreign principal definition

52 U.S.C. § [30121](#)
Contributions and donations by foreign nationals

11 CFR [100.74](#)
Uncompensated services by volunteers

11 CFR [103.3\(b\)](#)
Deposit of receipts and disbursements

11 CFR [110.20](#)
Prohibition on contributions, donations, expenditures, independent expenditures, and disbursements by foreign nationals (52 U.S.C. § 30121, 36 U.S.C. § 510)

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