

Know Your Limits: California and Federal Campaign Contributions for 2019-2020 Elections

IT'S A GOOD TIME TO BRUSH UP ON THE VARIOUS LAWS AFFECTING ELECTION SEASON GIVING.

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TAKEAWAYS

- *In general, campaign contributions are regulated by federal, state or local laws, depending on the jurisdiction of the recipient.*
- *California's Political Reform Act of 1974 (PRA) generally permits campaign contributions to elected officers, candidates, ballot measure committees, political parties, and PACs, unless those contributions are specifically prohibited by state or local laws. The PRA also imposes reporting obligations on donors who contribute a total of \$10,000 or more in a calendar year to California state and local candidates and committees.*
- *The Federal Election Campaign Act permits individuals and certain entities to make contributions to Federal candidates, political parties and PACs, but unlike the State of California, prohibits corporations, labor unions and national banks from making such contributions from their treasury funds.*

The 2019-2020 election season is upon us and picking up pace. Before making a contribution, it is important to understand that various campaign laws may restrict your ability to contribute and/or trigger disclosure requirements. Take a minute to learn the basics about these laws so that you can participate in the electoral process.

I. CAMPAIGN CONTRIBUTIONS

If you are an individual or entity and wish to participate in the political process by making campaign contributions to candidates, political parties, ballot measures, or political action committees (PACs), your contributions will be regulated by federal, state or local laws, depending on the jurisdiction of the recipient.

A campaign contribution is a donation of something of value to a candidate or his or her committee, a ballot measure committee, a political party, or to a PAC that collects funds for the purpose of making contributions or expenditures to support or oppose candidates, ballot measures, or other political committees. Contributions include payments of cash or by check, electronic transactions, the purchase of tickets to fundraising events, contributions in kind (e.g., use of corporate facilities, equipment or supplies, or the use of company personnel during compensated working hours), or any other expenditures which are made for the purpose of influencing voters at an election. Appearances by incumbent elected officials and candidates on corporate premises may be considered campaign contributions under certain circumstances.

The laws regulating campaign contributions vary from one jurisdiction to another. Some jurisdictions, including the Federal Government, prohibit corporate contributions, but may permit contributions from the corporation's PAC.

Many jurisdictions, such as California, permit corporate contributions, but impose limits on those contributions. A few jurisdictions, including California, impose reporting obligations on donors when contributions made by donors meet certain threshold levels.

Contributions may not be made, directly or indirectly, by foreign nationals in connection with Federal, state, or local elections or to political parties. Individuals who have been lawfully admitted into the United States for permanent residence (those with green cards), however, may make lawful contributions.

Depending on the jurisdiction, criminal and/or civil penalties may be imposed on donors, including individuals and entities, when the laws regulating campaign contributions are violated.

II. CALIFORNIA CAMPAIGN CONTRIBUTIONS

Pursuant to the Political Reform Act of 1974 (PRA), as amended, the State of California generally permits any individual or entity to make campaign contributions to elected officers, candidates, ballot measure committees, political parties, and PACs, unless those contributions are specifically prohibited by state or local laws.

Every odd-numbered year, the California Fair Political Practices Commission (FPPC), the state agency responsible for administering the PRA, is required to adjust, for inflation, the contribution limits imposed by the PRA. The most recently adjusted contribution limits became effective January 1, 2019, and will remain in effect through December 31, 2020.

A. Limits on Contributions to State Candidates and Committees

The current contribution limits are listed below. Some contribution limits are higher if the donor qualifies as a small contributor committee. A “small contributor committee” means a committee that has existed for at least six months, has at least 100 contributors, none of whom has contributed more than \$200 to the committee in a calendar year, and the committee has made contributions to at least five candidates.

The adjusted limits are as follows:

To Governor:

- \$31,000 per election from any person (includes an individual, entity or PAC)
- \$31,000 per election from a small contributor committee
- Unlimited from a political party

To a Member of the Legislature, Public Employees Retirement System (PERS), or the State Teachers Retirement System (STRS):

- \$4,700 per election from any person
- \$9,300 per election from a small contributor committee
- Unlimited from a political party

To Other State Candidates (Lt. Governor, Secretary of State, Attorney General, Treasurer, Controller, Superintendent of Public Instruction, Insurance Commissioner, and a Member of the Board of Equalization):

- \$7,800 per election from any person
- \$15,500 per election from a small contributor committee
- Unlimited from a political party

To PAC:

- \$7,800 per calendar year from any person, if the contribution was made for the purpose of making contributions to state candidates
- Unlimited if the contributions will be used for purposes other than making contributions to state candidates

To Political Party:

- \$38,800 per calendar year from any person, if the contribution was made for the purpose of making contributions to state candidates
- Unlimited if the contributions will be used for purposes other than making contributions to state candidates

B. Limits on Contributions to Officeholder Accounts of Elected State Officers

Elected state officeholders may also receive contributions to officeholder accounts, subject to the calendar year limits listed below. Contributions to an officeholder account will count against the contribution limit for election to state office that the officeholder seeks during the term of office, including reelection to the office currently held.

The adjusted limits are as follows:

To Governor:

- \$25,700 per contributor per calendar year
- \$257,500 from all sources per calendar year

To Members of the Legislature, PERS or STRS:

- \$3,900 per contributor per calendar year
- \$64,400 from all sources per calendar year

To Other State Candidates (Lt. Governor, Secretary of State, Attorney General, Treasurer, Controller, Superintendent of Public Instruction, Insurance Commissioner, and a Member of the Board of Equalization):

- \$6,400 per contributor per calendar year
- \$128,700 from all sources per calendar year

C. Limits on Contributions to Local Candidates and Committees

Contributions to local candidates and committees in the State of California will vary depending on whether the local jurisdiction has adopted a campaign contribution law. Many of the larger jurisdictions, such as Los Angeles, San Diego, San Jose, San Francisco, Oakland and Sacramento have enacted campaign laws which impose limits on contributions to candidates and committees campaigning within those specific jurisdictions. The Cities of San Diego and San Francisco also prohibit corporate contributions to candidates. For those local jurisdictions that have not enacted campaign contribution laws, generally there are no limits on contributions to candidates and committees in those jurisdictions.

It is thus critically important to determine if a local jurisdiction has enacted a campaign contribution ordinance prior to making any contributions in that jurisdiction.

D. Reporting Obligations

In addition to requiring candidates and other political committees to file campaign disclosure reports, California also requires “major donors” (individuals or entities) who make an aggregate of \$10,000 or more in campaign contributions in a single calendar year to California state and local candidates, ballot measure committees, political party committees, PACs and other political committees, to file a Major Donor and Independent Expenditure Committee Campaign Statement (FPPC Form 461) disclosing those contributions. Contributions totaling \$100 or more to a single candidate or committee must be itemized on the statement.

FPPC Form 461 is typically filed every six months when contributions are made during the previous six-month reporting period, and on a quarterly basis in odd-numbered years, depending on the amount and timing of the contributions. During the 90 days prior to an election through election day, reports may have to be filed within 24 hours (FPPC Form 497), depending on the amount and the recipient of the contribution. Other pre-election reports may also have to be filed.

Payments for public communications (campaign advertisements) which expressly advocate the election or defeat of a candidate, or the passage or defeat of a ballot measure, which are made by an individual or entity, but not made to, at the request of, or in coordination with, the affected candidate or ballot measure will qualify as “independent expenditures” (and not contributions) triggering disclosure obligations on FPPC Form 461 if the \$1,000 disclosure threshold is met in a single calendar year. When such payments are made during the 90 days prior to an election through election day, reports may have to be filed within 24 hours (FPPC Form 496). Such communications must also include certain disclaimers identifying the payor of the communication and may also be required to disclose certain donors who made donations to the payor for the communications.

Failure to file the required reports can result in the imposition of criminal and/or civil penalties.

III. FEDERAL CAMPAIGN CONTRIBUTIONS

The Federal Election Campaign Act (FECA) permits individuals and certain entities to make contributions to Federal candidates, political parties and PACs, but unlike the State of California, prohibits corporations, labor unions and national banks from making such contributions from their treasury funds. FECA does permit a corporation, labor union or national bank to create a PAC, raise funds for the PAC, and then make contributions from PAC funds to Federal candidates, political parties and other PACs.

FECA also prohibits Federal government contractors from making contributions to Federal candidates, political parties and PACs; however, corporations with Federal government contracts may make such contributions from PAC funds. Individuals or sole proprietors who are Federal contractors may not make contributions or expenditures from their business, personal or other funds under their dominion or control.

A. Limits on Contributions to Federal Candidates and Committees

Every odd-numbered year, the Federal Election Commission (FEC), the agency responsible for administering FECA, is required to adjust, for inflation, the federal contribution limits. The most recently adjusted limits will apply to the 2019 - 2020 election cycle; however, the new limit on contributions to candidates applies to contributions made as of November 7, 2018. The adjusted limits on contributions to political parties and PACs apply as of January 1, 2019.

The adjusted limits are as follows:

Contributions by Individuals and Federal PACs

- \$2,800 per election to a candidate (Primary, general, runoff, and special election are each considered a separate election.)
- \$5,000 per calendar year to a federal PAC
- No limits on contributions to a “Super PAC” (makes independent expenditures only; no contributions)
- \$35,500 per calendar year to a national party committee
- \$106,500 per calendar year to each of the three separate segregated accounts of a national party committee (presidential nominating convention; election recounts, contests, and other legal proceedings; and national party headquarters buildings).

Contributions by Multicandidate Federal PACs

A multicandidate federal PAC is a PAC which has been registered with the FEC for six months, received contributions for federal elections from more than 50 persons, and made contributions to five or more federal candidates.

- \$5,000 per election to a candidate
- \$5,000 per calendar year to another federal PAC
- No limits on contributions to a “Super PAC”

- \$15,000 per calendar year to a national party committee
- \$45,000 per calendar year to each of the three separate segregated accounts of a national party committee

B. Reporting Obligations

Unlike the State of California, making contributions to federal candidates and committees will not trigger any reporting obligations by individuals who are donors. The candidates and committees which receive the contributions will have the obligation to file periodic reports disclosing all contributions received. Contributions aggregating more than \$200 from a donor in a calendar year will be itemized on the recipient's report, including the donor's name, mailing address, occupation and employer.

C. Special Contribution Limits in Presidential Elections

Primary elections. In federal elections, a donor may generally make a contribution, subject to the applicable limits, to a federal candidate for the primary election and another contribution to the same candidate for the general election. During the Presidential primary elections, all primary elections held during the election year are considered one election for purposes of the contribution limits. An individual or PAC may, therefore, make a maximum contribution of \$2,800 to a Presidential candidate's primary campaign, regardless of the number of separate state Presidential primaries in which that candidate participates. A multicandidate PAC is similarly limited to making a maximum contribution of \$5,000 to a Presidential candidate's primary campaign.

General election. In the general election for President, if the major party (Democratic or Republican) nominee chooses to receive general election public funds, then contributions to that Presidential/Vice Presidential campaign for the general election are not permitted. If the major party Presidential nominee, however, chooses not to receive general election public funds, then contributions to that Presidential/Vice Presidential campaign may be made. Such contributions are subject to the applicable per candidate, per election limits, namely \$2,800 from individuals and PACs, and \$5,000 from multicandidate PACs.

In addition to the above, any major party Presidential candidate may receive, as of April 1st of the general election year, donations to the Presidential candidate's "compliance fund" to be used solely for legal and accounting expenses incurred in complying with federal law. Contributions to the compliance fund are subject to FECA's limitation and prohibition provisions. Contributions to this fund are thus limited to \$2,800 for individuals and PACs and \$5,000 for multicandidate PACs.