

WSR 21-08-047

PERMANENT RULES

PUBLIC DISCLOSURE COMMISSION

[Filed April 2, 2021, 11:21 a.m., effective May 3, 2021]

Effective Date of Rule: Thirty-one days after filing.

Purpose: These rules are being added to chapter 390-16 WAC to implement the requirements and processes of chapter 152, Laws of 2020 (SSB 6152) for certifying certain campaign activity is not financed by or involving a foreign national.

Citation of Rules Affected by this Order: New WAC 390-16-330 and 390-16-335.

Statutory Authority for Adoption: RCW 42.17A.110, 42.17A.240, 42.17A.250, 42.17A.255, 42.17A.260, 42.17A.265, and 42.17A.305.

Adopted under notice filed as WSR 20-20-133 on October 7, 2020.

Changes Other than Editing from Proposed to Adopted Version: WAC 390-16-330(1): Changes were made to provide that financing in any part by a foreign national did not include: (1) Anything received of a de minimis amount; (2) anything within the personal funds of an individual; and (3) membership dues paid to the general treasury of a membership organization where the general treasury has sufficient funds to finance the political activity apart from any portion of the total dues paid by foreign nationals.

WAC 390-16-330(2): Changes were made to provide that involvement by a foreign national included the foreign parent organization of a domestic subsidiary where the parent organization had made an endorsement or collaborated with the subsidiary on the same campaign.

WAC 390-16-335: Changes were made to the certification process to allow a contributor to provide: (1) A single certification that would apply to future contributions within the same election cycle if the future contributions were regularly scheduled and funded from the same source; (2) an exemption of the certification requirement for a registered political committee contributing to another political committee; and (3) an exemption of the certification for in-kind contributions with a value of fifty dollars or less.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 2, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 25, 2021.

Sean Flynn
General Counsel

OTS-2309.6

NEW SECTION**WAC 390-16-330 Prohibited financing and involvement by foreign nationals. (1) Prohibited financing by foreign nationals.**

(a) For purposes of RCW 42.17A.417, and throughout chapter 42.17A RCW, a contribution, expenditure, political advertising, or electioneering communication is "financed in any part by a foreign national" if the funding source includes anything of value greater than a de minimis amount provided by a foreign national for less than full consideration. Such value may include, but is not limited to, a loan, gift, deposit, subscription, forgiveness of indebtedness, donation, advance, pledge, payment, transfer of funds, or goods and services.

(b) A contribution, expenditure, political advertising, or electioneering communication is not "financed in any part by a foreign national" if the person making the contribution or expenditure, or sponsoring the advertisement or communication, is an individual citizen or legal permanent resident using their own personal funds.

(c) A contribution, expenditure, political advertising, or electioneering communication is not "financed in any part by a foreign national" if:

(i) The funding source is the general treasury of a membership organization, such as a trade association or labor union, not otherwise qualifying as a political committee, which includes funding from regular and predetermined membership dues;

(ii) Any additional funding of the general treasury is not from a foreign national, as provided in (a) of this subsection; and

(iii) The organization can demonstrate through a reasonable accounting method that the general treasury has sufficient funds to finance the contribution, expenditure, advertisement, or communication, apart from the aggregate amount of any membership dues received from foreign national members of the organization.

(d) Any funding from a foreign national, as provided in (a) of this subsection, and except as excluded under (b) or (c) of this subsection, must be segregated, using a reasonable accounting method, from the funding source used to finance a contribution, expenditure, advertisement, or communication. Funding from a foreign national may not be used to supplant, replace, or replenish the funding source for the contribution, expenditure, advertisement, or communication.

(2) Prohibited decision-making involvement by foreign nationals.

(a) For purposes of RCW 42.17A.417, and throughout chapter 42.17A RCW, a foreign national is "involved in making decisions regarding the contribution, expenditure, political advertising, or electioneering communication in any way" if the foreign national directs, dictates, controls, or directly or indirectly participates in the decision-making process regarding the financing any such contribution, expenditure, advertisement, or communication.

(b) In addition to the criteria under (a) of this subsection, a foreign national is involved in the decision-making regarding a contribution, expenditure, political advertising, or electioneering communication made by an entity that is a subsidiary, branch, unit, or division of a foreign national, or otherwise established, financed, maintained, or controlled by a foreign national, if the foreign national has:

(i) Made an endorsement or recommendation to support or oppose the same candidate or ballot proposition; or

(ii) Directly or indirectly collaborated or consulted with the entity on matters relating to the support of or opposition to the same candidate or ballot proposition.

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NEW SECTION

WAC 390-16-335 Certification for contributions from entities— Prohibited activity by foreign nationals. (1) The certification required for a candidate or political committee to accept each contribution from a partnership, association, corporation, organization, or other combination of persons must be received in writing, either:

(a) By the date the report including the contribution is due, or within ten business days, whichever is later; or

(b) Within thirty days from the date the contribution is received, so long as the candidate or committee separates uncertified contributions using reasonable accounting methods, to prevent commingling with other contributions, until the certification is received.

(2) Any uncertified contribution must be refunded or returned by the applicable deadline in subsection (1) of this section. The failure to timely refund or return an uncertified contribution constitutes a violation of chapter 42.17A RCW.

(3) A single certification may apply to future contributions within the same election cycle if the certification provides, in addition to the requirements under subsection (5) of this section, a statement that:

(a) Future contributions included in the certification will be part of a regularly scheduled transaction cycle, and funded from the same source as the original contribution; and

(b) The entity will provide a separate certification for any additional contribution that does not meet the criteria of (a) of this subsection.

(4) A candidate or political committee is not required to obtain a certification for:

(a) A contribution from a political committee if the contributing committee is:

(i) Currently registered with the commission at the time the contribution is received, and reporting its contributions received; and

(ii) Entirely funded through contributions received; or

(b) Any in-kind contribution from an entity, that in the aggregate within the same reporting period, does not exceed fifty dollars.

(5) Candidate or political committees may make certifications available to entities for electronic or other written submission. Certifications may include the suggested format below, or a different format that includes the following information:

(a) The name of the entity making the contribution and the authorized agent;

(b) A statement that the entity is not a foreign national, as defined in RCW 42.17A.005(24);

(c) A statement that the contribution is not financed in any part by a foreign national;

(d) A statement that foreign nationals were not involved in making decisions regarding the contribution in any way;

- (e) The amount of the contribution and the date it was made; and
- (f) The date the certification was submitted.

Certification that Contribution Is Not From a Foreign
National

I certify that the entity _____
(name of entity) making this contribution is not organized under the laws of, and does not have its principal place of business in, a foreign country. This contribution is not financed in any part by a foreign national, and foreign nationals were not involved in making decisions regarding the contribution in any way.

Amount of Contribution:
Date of Contribution:
Name of Authorized Agent:
Date Submitted:

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