

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 person making the contribution or expenditure, or sponsoring the advertisement or communication, uses a funding source that includes, in whole or in part, anything of value received from 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:

(i) It is funded by the general treasury of a non-profit membership organization, such as a trade association or labor union, not otherwise qualifying as a political committee;

Commented [SF1]: No recommendation. Concerns were raised that membership dues to non-profit organizations are not characterized as contributions and therefore restricting the use of general treasury funds that comingle foreign nationals' dues for expenditures would be unduly burdensome.

However, there would need to be some accounting to ensure that the source of foreign money is not a significant amount used to pay for the activity. The conditions proposed here attempt to set such a limit on the amount of foreign money.

(ii) The general treasury is funded exclusively by general membership dues provided for general operational functions of the organization; and

(iii) The organization can demonstrate through a reasonable accounting method that the general treasury has sufficient funds from non-foreign national sources to finance the contribution, expenditure, advertisement, or communication, but in no case may the aggregate ~~The~~ dues paid by all foreign national members ~~, in the aggregate, make up~~ no more than ~~five~~ten percent of such funding source.

(c) Anything of value received from a foreign national for less than full consideration must be segregated, using reasonable accounting methods, from the funding source used by the entity 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 or any of the resources or activities funded by that source.

(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 of~~ any such contribution, expenditure, advertisement, or communication. ~~For purposes of this section, an individual is not involved in making decisions merely by expressing a personal opinion, if the individual does not have any authority or influence within the decision making process of the entity.~~

Commented [SF2]: The phrase "directly or indirectly participates in the decision making process" comes from the FEC guidance. To the extent "indirect" participation could implicate First Amendment rights to speech and association, it may require more definition.

Commented [SF3]: This focuses the scope of the prohibited decision-making on the financing, as opposed to the policies, content, or purpose of the activity.

(b) If any entity is a subsidiary, branch, unit, or division of a foreign national, or otherwise established, financed, maintained or controlled by a foreign national, under the criteria provided in WAC 390-16-309(3), the decision-making authority of such entity regarding the contribution, expenditure, advertisement, or communication, must be clearly established to be comprised exclusively of United States citizens or legal permanent residents, in order to exclude involvement by any foreign national.

[]

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 (65) of this section, a statement that:

Commented [SF4]: Recommended. Several comments received suggested a single certification per year would be sufficient to achieve the intent of the law, avoid redundancy, and limit the transactional costs of campaign fundraising. The key here is the ongoing effect of the certification that the campaign can rely upon, and that can hold the contributor accountable for future contributions.

(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 subsection (3) (a) of this section.

(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.

~~Entities may use a certification that conforms to~~Certifications may

Commented [SF5]: Recommended. Probably the most frequent comment received to exempt certifications from one PAC to another, under the theory that the contributing PAC already receives certifications from its donors. The only caveat here is that some PACs are not entirely funded by contributions (when the primary purpose test applies), so there is a limit that this only applies where the contributing PAC is funded entirely by contributions that require the certification.

Commented [SF6]: No recommendation. This exemption for small in-kind contributions would acknowledge the practical difficulty of a campaign reporting a small in-kind contribution from tracking down the donor for a certification. Since some in-kind contributions are not necessarily processed and deposited, there is limited opportunity for the campaign to seek the certification. As the value of the in-kind contribution grows, however, more vigilance is due as to the source of financing.

Commented [SF7]: No recommendation. This addresses a comment to expressly provide that certifications may be electronic, such as on a campaign website, or through a solicitation platform.

use the suggested format below or ~~provide~~ a different format, so long as it provides 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:

Commented [SF8]: We received comments questioning whether the certain information was required to be included in the certification. There were concerns that adding such information to the certification created administrative burdens. While there is no specified format in the law, the purpose of is to make sure the certification is identifiable and traceable to a particular contribution.

[]