



Donors and Super PACs Beware: Reporting Sources of LLC Contributions Will Now Be Strictly Enforced

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A federal Super PAC has an affirmative duty to verify whether a contribution from an LLC is attributable to individuals behind the entity, according to a Federal Election Commission (FEC) statement in a recently closed enforcement matter. This marks a significant change in FEC enforcement policy. Before this decision, the FEC had failed to reach a majority decision on how to treat such contributions to a Super PAC. Citing regulatory uncertainty created by the newness of Super PACs, which sprang from the 2010 *Citizens United* Supreme Court decision, prior decisions by the FEC had “split” 3-3 on whether similar contributions by LLCs were permissible. However, with this decision, the FEC has issued notice to Super PACs and those who wish to contribute to them using LLCs that it will enforce its attribution rules as to the underlying source of the donor.

The change stemmed from Matter Under Review (MUR) 7454, which involved two \$100,000 contributions to a Super PAC. One from an LLC with a single member who was a natural person. The other was from an LLC that was treated as a disregarded entity and formed by two trusts, each controlled by the same individual. A majority of FEC commissioners concluded in their statement that the LLC attribution rules required the Super PAC to determine whether any attribution of the contributions to LLCs’ owners was required.

Although the FEC did not fine either the Super PAC or the LLCs, its statement puts the regulated community on notice that the FEC will be enforcing these LLC attribution rules as applied to Super PAC contributions. As stated in its Factual and Legal Analysis, the FEC found reason to believe that there was a violation of its reporting statute and its LLC attribution regulation. However, the FEC declined to find reason to believe that the LLC contribution was an unlawful contribution in the name of another (e.g. made by a “straw donor”). A violation of that latter prohibition carries with it the highest civil penalties available to the FEC under its civil

jurisdiction. Such violations often form the basis of criminal prosecutions because of the fraudulent intent to obscure the true source of the donor. However, on this record, the majority of commissioners decided to resolve the matter on the reporting issue and dismiss the more significant allegations.

In this particular matter, there may be more to come if Complainants seek judicial review or if additional statements from FEC commissioners are forthcoming. Regardless of what happens in this particular case, the FEC has signaled that it will enforce its LLC attribution rules more stringently than it has in the past.

Although this decision is groundbreaking at the FEC, it follows a trend by some states to require additional levels of transparency from business donations, especially those from LLCs. For example, as we previously identified, California requires LLCs that make state political contributions to disclose the individual officer responsible for making the LLC's political contributions decisions. Whether at the federal or state level, donors seeking to use LLCs or other similar vehicles for political contributions should closely examine these transactions to ensure compliance with the law or they could potentially face a civil penalty.