



Individuals Behind LLC Political Contributions to be Disclosed in California Elections

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Limited Liability Companies (“LLCs”) that make political contributions or expenditures in California’s November 2020 general election are now subject to heightened disclosure.

On June 18, 2020, California’s Fair Political Practices Commission (“FPPC” or the “Commission”) voted 4-1 to adopt new regulations aimed at increasing the information available about LLCs active in California politics. Under the new regulations, LLCs will be required to identify the individual responsible for making political contribution decisions on behalf of the LLC (i.e., the “responsible officer”). California committees that receive contributions from LLCs must include the name of the responsible officer on publicly disclosed campaign finance reports.

Background

In California, LLCs are regulated by the FPPC when (1) making expenditures for communications that advocate for the election or defeat of a candidate or ballot measure (AKA “independent expenditures” or “IEs”) and (2) making contributions to California candidates and political committees.

When an LLC makes IEs totaling \$1,000 or more or contributions totaling \$10,000 or more in a calendar year, it is required to file a “Major Donor and Independent Expenditure Committee Campaign Statement” (Form 461). The Form 461 provides a summary of all contributions and expenditures made, as well as the LLC’s name, mailing address, responsible officer, and a brief description of its business interests. Similarly, when a California committee received a contribution from an LLC, it was only required to disclose the LLC’s name and address in connection with the contribution.

However, as neither the Political Reform Act nor the Commission Regulations defined “responsible officer,” LLCs often listed a registered agent, attorney, or accountant on the Form 461, as opposed to the individual(s)

responsible for directing and controlling the LLC's contributions and expenditures.

In a memorandum presented to the Commission, FPPC staff detailed how an LLC could be formed shortly before an election and make large contributions or expenditures in California elections without disclosing any information about—or providing a way to determine—the identities of the LLC's owners, funders, or individuals responsible for approving its political activity.

Because of this, according to the Commission, LLCs are attractive vehicles for disguising the true source of political activity and California's state and local elections are vulnerable to LLC "dark money" without these additional regulations.

The Regulations

Regulation 18402.2 now defines the "Responsible Officer" that is to be listed on Form 461 for LLCs as "the individual primarily responsible for approving the political activity of the limited liability company." The Responsible Officer is not required to be a member of the LLC.

Regulation 18421.10 now requires a committee that receives a contribution of \$100 or more from an LLC to include the name of both the LLC and the individual responsible for the LLC's political activity as the true source of the contribution. If more than one individual shares in the primary responsibility for approving political activity, only one must be identified. If a recipient committee cannot obtain the name of the responsible officer within 60 days of receipt of a contribution from an LLC, the contribution must be refunded in full.

Practical Implications

Donors, recipients, fundraisers, and treasurers will have to adapt quickly to new political reporting and recordkeeping protocols, as these regulations will go into effect just before 2020 General election cycle reporting begins. Although the Chair of the FPPC discouraged the Enforcement Division from pursuing enforcement actions against inadvertent or negligent noncompliance with the new regulations during this first election cycle, it should be noted that the person identified as responsible officer will have personal liability for violations.

Recommendations

- LLCs should adopt internal policies or written records (like minutes) to substantiate the responsible officer.
- Political treasurers and fundraisers should update their remittance forms for donors to include the required information. (*Note:* as the responsible officer can change from contribution to contribution, recipients cannot rely on information provided with a prior contribution.)