



Parties, Participants, Agents, and Section 84308

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CONTENTS

Introduction	2
A. What is a “Proceeding Involving a License, Permit, or Other Entitlement for Use”? ..	3
B. Am I a “Party,” “Participant,” or “Agent”?.....	4
1. Parties.....	4
2. Participants	4
3. Agents.....	5
C. Who Qualifies as an “Officer of an Agency”?.....	7
D. When is an Entitlement Proceeding “Pending”?	8
E. How is the \$250 Limit Calculated?.....	9
F. What Are My Responsibilities If I Have Made Greater Than \$250 in Contributions Within the Past 12 Months?	10
1. Prohibition on Further Contributions During a 12-Month Period.....	10
2. Disclosure	11
G. Frequently Asked Questions.....	12

INTRODUCTION

Section 84308 is a California law aimed at preventing “pay-to-play practices,” in part, by prohibiting parties, participants, and their respective agents in a proceeding involving a license, permit, or other entitlement for use (collectively referenced as a “entitlement for use proceeding” or “proceeding”) from contributing more than \$250 to an officer of the agency the proceeding is before during a 12-month period. The prohibition applies to any 12-month period while the proceeding is pending and for 12 months following the date a final decision is rendered in the proceeding.

Additionally, in an entitlement for use proceeding, a party—but not a participant—is required to disclose any contributions exceeding an aggregate \$250 that the party and their agents have made to an officer of the agency within the preceding 12 months.

When it was first enacted in 1982, Section 84308 applied to appointed members of boards and commissions who were running for elective office. (Stats. 1982, ch. 1049 § 1 (“Levine Act”).) However, effective January 1, 2023, the Legislature expanded the scope of its prohibitions to apply to agencies whose members are directly elected by voters and extend the prohibitions from 3 months to 12 months after the final decision in a proceeding. (Stats. 2022, ch. 848 § 1 (“SB 1439”).)

The following is a step-by-step guide to help you determine:

- What is a “proceeding involving a license, permit, or other entitlement for use”?
- Am I a “party,” “participant,” or “agent”?
- Who qualifies as an “officer of an agency”?
- When is the proceeding “pending”?
- How is the \$250 limit calculated?

Frequently Asked Questions are also addressed.

A. WHAT IS A “PROCEEDING INVOLVING A LICENSE, PERMIT, OR OTHER ENTITLEMENT FOR USE”?

Section 84308 defines the term “license, permit, or other entitlement for use” to mean “all business, professional, trade, and land use licenses and permits and all other entitlements for use, including all entitlements for land use, all contracts (other than competitively bid, labor, or personal employment contracts), and all franchises.”

The term “entitlement for use” is not defined by Section 84308. The overall scheme and purpose of Section 84308 suggests that the types of proceedings which should be covered by Section 84308 are those in which specific, identifiable persons are directly affected or in which there is a direct substantial financial impact upon the participants. The California courts have examined the term “entitlement for use” in other contexts. These decisions provide useful guidance; however, interpretation of the Act is not necessarily limited by interpretation of other laws. Below is a list of proceedings FPPC staff have previously advised are entitlement for use proceedings. (See, e.g., *Velasquez* Advice Letter, No. I-23-065; *Quadri* Advice Letter, No. A-02-096; *Washington* Advice Letter, No. I-91-521.)

Examples of Entitlement for Use Proceedings

- Building and development permits
- Charter school petitions
- Conditional use permits
- Contracts generally, including small purchase order agreements, unless an exception applies
- Public street abandonments
- Private development plans
- Professional license revocations
- Rezoning of specific real estate parcels
- Event Permits
- Rulemaking procedures affecting a particular industry where only a small number of businesses are affected
- Special district formation proceedings involving the creation of a special use or benefit to the persons in the district
- Tentative subdivision and parcel maps
- Zoning variances

Note: Section 84308 does not cover proceedings in which general policy decisions or rules are made or where the interests affected are many and diverse.

B. AM I A “PARTY,” “PARTICIPANT,” OR “AGENT”?

1. Parties

Section 84308 defines “party” as “any person who files an application for, or is the subject of, a proceeding involving a license, permit, or other entitlement for use.”

In general, if you applied for a permit, license or for a right to use property in a particular way (for example, a short-term vacation rental application) that requires the agency’s discretionary approval, you will qualify as a party in an entitlement for use proceeding.

2. Participants

Section 84308 defines “participant” as any person who is not a party but who **actively supports or opposes a particular decision** in an entitlement for use proceeding and who has a **financial interest** in the decision.

In general, you will qualify as a participant if you have a financial interest in the proceeding and you communicate with an officer or employee of the agency for the purpose of influencing a decision in the proceeding.

Note: You would not qualify as a “participant” based on communications made to the public outside of the proceeding, such as publishing an op-ed in a local newspaper or protesting outside of a government building.

Participant Example 1

You send a letter to the City Council regarding an entitlement for use proceeding. If you have a financial interest in the proceeding, you qualify as a **participant**.

Participant Example 2

You make a public comment regarding an entitlement for use proceeding during a public meeting. If you have a financial interest in the proceeding, you qualify as a **participant**.

Participant Example 3

You write an op-ed article, published in the local paper, in support or opposition of a particular outcome in an entitlement for use proceeding. Even if you have a financial interest in the proceeding, as long as you do not communicate directly with the officer or agency regarding the proceeding, you **do not qualify as a participant**.

Participant Example 4

You protest outside of City Hall before an entitlement for use proceeding is held, yelling and chanting that the City Council should vote “no” on the underlying project. Because the communication is made in a public setting outside of the proceeding itself, you **do not qualify as a participant** based on your protesting.

Financial Interests

Central to many of the above examples is the question of whether you have a “financial interest” in the proceeding such that you may qualify as a “participant.” In general, you are considered to have a “financial interest” for purposes of Section 84308 if it is **reasonably foreseeable the proceeding, or a governmental decision within the proceeding, would have a material financial effect on one or more of your economic interests.** Relevant economic interests include your interests in business entities, real property, sources of income, sources of gifts, and personal finances.

Determining whether you have a financial interest in a proceeding or particular governmental decision can be a complex matter. For this reason, if you have participated or are continuing to take part in an entitlement for use proceeding and you are not sure whether you have a financial interest in the decision, you should contact the FPPC for assistance. **If you have a financial interest in the proceeding, such that you qualify as a “participant” for purposes of Section 84308, you are prohibited from contributing more than \$250 to an officer of the agency while the proceeding is pending and for 12 months thereafter.** More information on financial interests and when a financial interest is “material” can be found in our “Officers and Section 84308” Guide.

3. Agents

A person is your “agent” (as a party or participant) in an entitlement for use proceeding if the person:

- Represents you for compensation; and
- Appears before or otherwise communicates with the governmental agency for the purpose of influencing the pending proceeding.

Note: An individual will qualify as an agent only if the individual’s communication with an agency is *for the purpose of influencing the pending proceeding*. An individual whose communications with an agency are *not* made for the purpose of influencing the proceeding is not considered an agent, even if the individual receives compensation from a party or participant.

Agent Example 1

Ainsley Atkinson, an attorney, is paid to represent you in obtaining a real estate development agreement and drafts a letter in support of the project on your behalf. Atkinson sends the letter to the County Planning Commission ahead of the Commission's consideration on whether to approve a building permit. Because Atkinson is paid to represent you and has communicated with the agency for the purpose of influencing the proceeding, Atkinson **is your agent**.

Agent Example 2

Continuing the above example, suppose Atkinson's letter in support of the project is sent to the County Planning Commission by the attorney's assistant, rather than Atkinson herself. Although the letter is intended to influence the proceeding, the assistant's purpose in sending the letter is not; rather, the assistant's purpose in sending the letter is administrative/secretarial. Likewise, the assistant is not paid to represent you; the assistant is paid to assist Atkinson. For these reasons, the assistant **is not your agent**.

Agent Example 3

Continuing the above examples, suppose a public meeting is held where the Planning Commission considers the project application. At the meeting, the project architect you hired, Priyanka Archer, attends in order to provide purely technical data or analysis in response to any questions the Planning Commission has. As long as the information is not provided for the purpose of influencing the proceeding, Archer **is not your agent**.

C. WHO QUALIFIES AS AN “OFFICER OF AN AGENCY”?

Section 84308 defines “officer” as “any elected or appointed officer of an agency, any alternate to an elected or appointed officer of an agency, and any candidate for elected office in an agency.” In general, the term “officer of an agency” encompasses any individual who:

- (1) Is appointed, elected, or is an employee of the agency who is also running for office; and
- (2) May make, participate in making, or attempt to use their official position to influence a decision in the entitlement for use proceeding, or exercises authority or budgetary control over the agency of officers who may do so.

As a party, participant, or agent thereof, you are prohibited from contributing more than \$250 in the aggregate to an **officer of an agency** during a 12 month period while the proceeding is pending and for 12 months after the final decision in the proceeding.

Officer Example 1

You have submitted a building permit application to the City Planning Commission. Because the City Council exercises authority or budgetary control over the Planning Commission, you are not only prohibited from contributing more than \$250 to a member of the Planning Commission who is running for elective office while the proceeding is pending and for 12 months thereafter, but that prohibition also applies to contributions made to members of the City Council as “officers of the agency,” as well as certain City officials who are also running for elective office and have decision-making authority with respect to the proceeding.

Officer Example 2

You are negotiating with City representatives regarding the City’s potential purchase of a parcel of land you own. While the proceeding is pending, you contribute \$500 to a candidate for City Council. Although the candidate meets the definition of “officer,” they do not meet the more specific definition of “**officer of an agency**,” to whom you are prohibited to contribute more than \$250 to while an entitlement for use proceeding is pending. Accordingly, your contribution of \$500 does not violate Section 84308. However, if the candidate won their election and your \$500 contribution occurred within the preceding 12 months, the new City Councilmember would be prohibited from taking part in the proceeding if it was still pending before the City Council.

D. WHEN IS AN ENTITLEMENT PROCEEDING “PENDING”?

For a party or party’s agent, or a participant or participant’s agent, an entitlement for use proceeding is “pending” when it is before the jurisdiction of the agency for its decision or other action.

In other words, for a party and party’s agent, an entitlement for use proceeding is considered pending **the moment the proceeding is initiated**, most often triggered by the party’s filing of an application with the agency.

Note: As described above, in order to be considered a “participant,” an individual has to have a financial interest in the entitlement for use proceeding and have communicated with an officer or employee of the agency for the purpose of influencing the proceeding. Accordingly, although an entitlement for use proceeding may have already been initiated by, say, a party’s filing of an application, **an individual other than a party or the party’s agent is not prohibited from contributing more than \$250 in the aggregate until *after* they qualify as a participant or participant’s agent.**

Pending Proceeding Example 1

You file an application with the City Parks Department to host a large, ticketed event at a City park. The application will initially be considered and decided by the Parks Department, but a denial by the Parks Department may be appealed to the City Council. For you, the project is pending with respect to the City Parks Department, and with respect to the City Council.

Pending Proceeding Example 2

Continuing the above example, suppose the Parks Department denies your application, but you decide not to appeal the decision to the City Council. Although you have privately decided not to appeal the decision, no “final decision” has been reached during the period in which the Parks Department’s decision may still be appealed. Accordingly, the proceeding is still considered pending with respect to the City Council for purposes of Section 84308.

E. HOW IS THE \$250 LIMIT CALCULATED?

Section 84308's prohibition on contributions exceeding \$250 over a 12 month period refers to the *aggregate* value of contributions made over that time period. For example, you are not permitted to contribute a total of \$1,000 to an officer in a 12 month period simply by making four \$250 contributions.

Knowing the aggregate value of contributions you have made to an officer of an agency over a 12-month period is important for purposes of: (1) avoiding a violation of Section 84308 by contributing more than \$250 during a 12-month period; and (2) if you are a party, ensuring contributions over \$250 made in the preceding 12 months are properly disclosed.

To determine whether you have contributed more than \$250 as a party or participant during a 12-month period, you must aggregate the following:

- (1) All contributions you have made;
- (2) All contributions made by your agent during the shorter of: (A) the previous 12-month period; or (B) the period beginning on the date you first hired the agent as either a paid employee, contractor, or consultant.
- (3) All contributions made by an individual, other than an uncompensated officer of a non-profit organization, required to be aggregated with contributions made by you and your agent under Section 82015.5 of the Political Reform Act.

Section 82015.5

Section 82015.5 provides:

- If you direct or control an entity's contributions, the entity's contributions shall be aggregated with contributions made by you; and any other entity whose contributions that individual directs or controls.
- If two or more entities make contributions that are directed or controlled by a majority of the same persons, the contributions of those entities shall be aggregated.
- Contributions made by entities that are majority owned by you shall be aggregated with your contributions, as well as the contributions of all other entities majority owned by you, unless those entities act independently in their contribution-making decisions.

In practice, Section 82015.5's aggregation rules will most frequently come into play when you make a contribution in your personal capacity, and make another contribution through a business that you direct or control.

Aggregation Example

You contributed \$100 to a Planning Commissioner's campaign committee on January 1, the day before you submitted a building permit application to the planning commission. On February 1, you contributed another \$50 to the campaign committee, but did so through your business. On March 1, you hired an attorney to represent you and, that same day, your attorney submitted a letter in support of your application to the Planning Commission. Your attorney had previously contributed \$100 to the Planning Commissioner's campaign committee on February 1, before she became your agent. On April 1, your attorney contributes another \$50 to the Planning Commissioner's campaign committee. For purposes of aggregation, the relevant contributions are:

- January 1: Your personal \$100 contribution
- February 1: Your business's \$50 contribution
- April 1: Your agent's \$50 contribution

In total, your aggregate contribution to the Planning Commissioner is \$200 and does not need to be disclosed. Although your agent also donated another \$100 to the Commissioner's campaign committee on February 1, that contribution was made before she became your agent and, consequently, is not aggregated with your contributions. Accordingly, you (and those whose contributions are aggregated with yours, including your agent) may contribute an additional \$50 within a 12-month period, but any more than that during the 12-month period would violate Section 84308 and must be disclosed.

F. WHAT ARE MY RESPONSIBILITIES IF I HAVE MADE GREATER THAN \$250 IN CONTRIBUTIONS WITHIN THE PAST 12 MONTHS?

1. Prohibition on Further Contributions During a 12-Month Period

Section 84308 prohibits parties, participants, *and their agents* from "mak[ing] a contribution of more than two hundred fifty dollars (\$250) to any officer of [the agency the entitlement for use proceeding is before] during the proceeding and for 12 months following the date a final decision is rendered by the agency in the proceeding."

Each contribution beyond the \$250 limit may constitute a separate violation of this provision. Accordingly, if you have already violated Section 84308 by contributing more than \$250 to an officer during a 12-month period while a proceeding is pending and for 12 months thereafter, you should be aware that additional contributions in violation of Section 84308 may carry additional penalties.

2. Disclosure

If you are a party to an entitlement for use proceeding and your aggregate contribution to an officer of the agency over the past 12 months is greater than \$250, you are required to disclose the contribution as follows:

- **Timing:**
 - **Contributions Made Before Pending Proceeding:** If you made the contribution before the proceeding is pending, you must make the disclosure on the date you file your application or otherwise initiate the proceeding (**Note:** you do not violate Section 84308 by making a contribution greater than \$250 during the 12 months preceding an entitlement for use proceeding, but such contributions must still be disclosed);
 - **Contributions Made During Pending Proceeding:** If you made a contribution exceeding \$250 while the proceeding is pending (in violation of Section 84308), you are required to disclose that contribution within 30 days of making the contribution, or the date on which you make your first appearance before or communication with the agency regarding the proceeding following the contribution, whichever is earliest.
 - **Agents:** If an agent of yours makes an appearance before or communicates with the agency subsequent to your previous disclosure, you or the agent must disclose the agent's identity on the date of the agent's first appearance or communication with the agency following your disclosure.
- **Contents:** The disclosure must include:
 - The amount contributed by you, your agent, and those required to be aggregated with your contributions under Section 82015.5 within the preceding 12 months; and
 - The name(s) of the contributor(s).
- **Form:** Neither Section 84308 nor its related regulations specify the exact form disclosure must take beyond the requirements discussed in the "Disclosure" section above. Given the wide variety of agencies and jurisdictions Section 84308 applies to, disclosure may take different forms. Your disclosure must be made "on the record of the proceeding," and, if applicable, conform to the format specified by the agency. This may include, for example, noting the contribution on your application or submitting a separate form to accompany your application.

Note: While a party to a proceeding is required to follow the disclosure procedure described above, a **participant in a proceeding does not have any disclosure requirements**. However, a participant is still prohibited from contributing more than \$250 while the proceeding is pending and for 12 months thereafter.

G. FREQUENTLY ASKED QUESTIONS

1. What are the potential consequences for violating Section 84308?

As with most provisions of the Political Reform Act, a violation of Section 84308 may result in a civil action brought by the FPPC for an amount up to five thousand dollars (\$5,000) *per violation*.

The Political Reform Act also provides that, as a criminal matter, any person who knowingly or willingly violates any provision of the Act is guilty of a misdemeanor and subject to a fine of up to the greater of ten thousand dollars (\$10,000) or three times the amount the person unlawfully contributed upon conviction *for each violation*.

2. What is the best way to know if I have a financial interest in an entitlement for use proceeding?

If you are a **party** in an entitlement for use proceeding, Section 84308's requirements and prohibitions automatically apply to you. The relevance of a "financial interest" in an entitlement for use proceeding is only relevant to determining whether an individual qualifies as a "participant" for purposes of Section 84308.

If you have participated, or would like to participate in an entitlement for use proceeding but are unsure of whether you may qualify as a "participant," under Section 84308, you should contact the FPPC with any questions. As a general rule, however, you have a financial interest in an entitlement for use proceeding if it is **reasonably foreseeable** the proceeding, or a governmental decision that is a part of the proceeding, would have a **material financial effect** on an economic interest of yours, such as a business interest, a real property interest, or a source of income. You may also find it helpful to review our guide on **Officers and Section 84308**, available on our website (<https://www.fppc.ca.gov/learn/pay-to-play-limits-and-prohibitions.html>), as it contains a more detailed discussion regarding the determination of financial interests for Section 84308 purposes. Additional information on conflicts of interest may be found at <https://www.fppc.ca.gov/learn/conflicts-of-interest-rules.html>.

3. If I am a party or qualify as a participant in an entitlement for use proceeding, does the \$250 limit include contributions made by my spouse?

In general, spouses' contributions are not aggregated for purposes of disqualification under Section 84308, except in the following two scenarios:

- (1) Where the proceeding involves property or a business that is owned jointly by the spouses; or
- (2) Where the spouse is acting as the agent of the party or participant spouse.

4. If my employer is a party in an entitlement for use proceeding, am I prohibited from contributing more than \$250 to an officer of the agency? Are my contributions aggregated with my employer’s contributions?

In most cases, the fact that your employer is a party in a proceeding will not impact your ability to contribute more than \$250 to an officer of the agency the proceeding is pending before. The mere fact that you are an employee of a company does not mean you also qualify as a party, participant, or agent; rather, additional circumstances would have to apply.

- **Parties:** In order to be treated as a party based on the fact that your employer is a party—and therefore have your contributions aggregated with your employer’s—you would have to be more than merely a “rank-and-file” employee. Rather, you would have to be an individual who directs or controls your employer’s campaign contributions or be the majority owner of the company.
- **Agents:** To be considered an agent based on your employer’s status as a party, as discussed above, you would have to: (1) represent your employer for compensation; and (2) appear before or otherwise communicate with the governmental agency for the purpose of influencing the pending proceeding.

Example: if you felt strongly about the proceeding and decided to submit a public comment in support of your employer’s application in a proceeding—but did so in your personal capacity rather than as an employee as a part of your job—you would not qualify as an “agent” on the basis of your employment and communication with the agency, but you may still qualify as a participant.

- **Participants:** If you communicate with an officer or agency for the purpose of influencing a proceeding, but do not do so as an agent, you may qualify as a participant. As discussed above, you will generally qualify as a participant in situations where: (1) you communicate with the agency or an officer of the agency for purposes of influencing the proceeding; and (2) you have a financial interest in the proceeding—that is, where the proceeding would have a reasonably foreseeable, material financial effect on your source of income.

In the ordinary context where your employer is a business entity or non-profit organization, a proceeding will be considered to have a reasonably foreseeable, material financial effect on the entity or organization if the entity/organization is a party in the proceeding.

5. Does Section 84308 apply the same way to non-profit organizations as it does to businesses?

In general, Section 84308 applies the same to non-profit organizations as it does to businesses and any other entity or individual. A non-profit organization may be subject to the \$250 limit if the organization qualifies as a party, participant, or agent of a

party or participant. Similarly, as discussed in Question 4 above, officers and employees of a non-profit organization are not subject to Section 84308 unless the officers or employees themselves qualify as parties, participants, or agents.

The one distinction between Section 84308's treatment of non-profit organizations compared to other entities is that the contributions of a non-profit officer whose contributions would ordinarily be aggregated with contributions by the non-profit pursuant to Section 82015.5 (see discussion above) are *not* aggregated if the non-profit officer is uncompensated.

6. What if the entitlement for use proceeding lasts longer than one year? Am I prohibited from contributing more than \$250 even if the proceeding extends to, say, two or three years?

Section 84308's \$250 contribution limit applies to any 12-month period before, during, and immediately after an entitlement for use proceeding. In the event that a proceeding extends longer than 12 months, a party, participant, or agent would not violate Section 84308 by making an additional contribution, as long as the total contribution within the preceding 12 months was \$250 or less.

For example, if on January 1, 2023, a party filed an application for an entitlement that would eventually be considered by the city council and, that same day, the party contributed \$250 to each city councilmember, then on January 1, 2024, the party would be permitted to contribute an additional \$250 to each city councilmember and would not be required to disclose those contributions.

Re-framing the above example, suppose the party contributed only \$150 to each councilmember on January 1, 2023, then contributed an additional \$100 to each councilmember on July 1, 2023. On January 1, 2024, the party would be permitted to contribute an additional \$150, not \$250 as in the above example. This is because the \$100 contribution from July 1, 2023 occurred within the preceding 12 months. If the party contributed \$150 on January 1, 2023, and \$100 on July 1, 2023, the party would be permitted to contribute another \$250 on July 1, 2024, because at that point the party would not have made any contribution within the preceding 12 months.

7. What if it has been less than 12 months since I made a contribution in 2022? Do contributions made in 2022 count toward the \$250 limit?

Under Regulation 18438, Section 84308's provisions, as amended by SB 1439 and effective as of January 1, 2023, do not apply to contributions received prior to that date. Accordingly, if you made a contribution to an elected official in 2022, that contribution does not implicate Section 84308's prohibitions and requirements (e.g., a party is not required to disclose a \$250+ contribution that occurred in 2022).

8. May I contribute \$250 to one committee controlled by a candidate and also contribute \$250 to another committee controlled by the same candidate?

The \$250 limit applies to each candidate, not each committee, such that a party, participant, or agent may not donate more than \$250 across all of an officer's controlled committees.

9. Are project labor agreements establishing the terms and conditions of employment for workers on certain projects considered exempt "labor contracts" under Section 84308?

Yes. A "labor contract" is defined as "a contract or agreement reached through collective bargaining or with a representative group regarding the salary, benefits, or terms and conditions under an employment or retirement policy for employees or retirees, including a project labor agreement entered into under Public Contract Code Section 2500."

10. If a union representative provides public comment in support or in opposition of a governmental decision and indicates the decision will have a financial impact on its members, is the union considered a "participant"?

To be a "participant," a person or entity (including a non-profit organization) must have a financial interest in the proceeding. A non-profit organization such as a union does not necessarily have a financial interest in a proceeding solely because it would be beneficial to the organization's members. Rather, the proceeding would need to have a reasonably foreseeable, material financial effect on the organization itself. The relevant standards for determining a reasonably foreseeable, material financial effect on a non-profit organization are:

- **Change in Receipts:** The decision may result in an increase or decrease of the organization's annual gross receipts, or the value of the organization's assets or liabilities, in an amount equal to or more than: \$1,000,000; or five percent of the organization's annual gross receipts and the increase or decrease is equal to or greater than \$10,000.
- **Change in Expenses:** The decision may cause the organization to incur or avoid additional expenses or to reduce or eliminate expenses in an amount equal to or more than: \$250,000; or one percent of the organization's annual gross receipts and the change in expenses is equal to or greater than \$2,500.
- **Impact on Real Property:** The official knows or has reason to know that the organization has an interest in real property and: the property is a named party in, or the subject of, the decision; or there is clear and convincing evidence the decision would have a substantial effect on the property.

Accordingly, unless it is reasonably foreseeable that a non-profit organization would experience any of the above financial effects (e.g., the union's receipt of union dues increases by \$1,000,000 as a result of the increased union wages caused by a

government contract), the non-profit organization will not qualify as a “participant” and an officer is not prohibited from receiving more than \$250 from the organization advocating for or against a particular decision in an entitlement proceeding.