

California Fair Political Practices Commission

Limited Liability Company Contributions and Expenditures

Introduction

The Political Reform Act (the “Act”)¹ requires the disclosure of a person who makes a campaign contribution, defining “person” broadly to include “an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, limited liability company, association, committee, or any other organization or group of persons acting in concert.” (Section 82047.) A limited liability company (LLC)² that receives payments totaling \$2,000—including from its members—in a calendar year for political purposes qualifies as a recipient committee. (Section 82013(a).) By contrast, LLCs that make independent expenditures totaling \$1,000 or more in a calendar year qualify as Independent Expenditure (“IE”) Committees, while LLCs that make contributions totaling \$10,000 or more in a calendar year qualify as Major Donor Committees. (Section 82013(b), (c).)

Additionally, should an LLC qualify as a recipient, independent expenditure, or major donor committee as outlined above, or qualify as a “sponsor” of a committee (discussed further below), it must file a Form 409 (Limited Liability Company (LLC) Statement of Members). (Section 84109.) This Statement of Members identifies those individuals or entities that hold a membership³ interest in the LLC of 10% or more; or made a cumulative capital contribution⁴ of \$10,000 or more to the LLC after it qualified as a committee or sponsor of a committee, or within the preceding 12 months before it qualified. There are specific rules discussed below and in the Form 409 instructions regarding whether certain capital contributions to the LLC qualify as contributions to a committee, and how contributions may need to be aggregated among individuals/entities. The Form 409 must also identify an individual who is the responsible officer or principal officer of the LLC.

Recipient committees must file periodic campaign statements and reports by completing Form 460, which details all contributions received and expenditures made in a given period, in addition to listing the committee’s principal officer and treasurer. IE Committees and Major Donors, meanwhile, must complete Form 461 (Major Donor and Independent Expenditure Committee Campaign Statement), which provides a summary of all contributions and expenditures made, as well as information regarding the filer, such as the filer’s name and mailing address, responsible officer, and business interests.⁵

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code. The regulations of the FPPC are contained in sections 18104 through 18998 of Title 2 of the California Code of Regulations. All regulatory references are to this source.

² “LLC” means an entity defined in subdivision (j) or (k) of Section 17701.02 of the Corporations Code.

³ “Member” has the same meaning as defined in subdivision (p) of Section 17701.02 of the Corporations Code.

⁴ “Capital contribution” means money, or the fair market value of any other property, contributed to an LLC in exchange for a membership interest in the LLC.

⁵ A committee that makes or receives contributions whose combined total is \$1,000 or more in the 90 days before an election must also file a late contribution report (Form 497) within 24 hours of making or receiving the contribution. (Section 84203(a), (b).) In addition, a committee that makes independent expenditures totaling \$1,000 more to support or oppose a single candidate or ballot measure in the 90 days before or on the date of the election must file a late independent expenditure report (Form 496). (Section 82036.5.)

This fact sheet provides an overview of the information required to be included on campaign statements and reports for LLCs that make contributions and expenditures in California elections, as well as recipient committees that receive contributions from LLCs.

Effective August 21, 2020:

- An LLC that qualifies as an independent expenditure committee or major donor committee must list “the individual primarily responsible for approving the political activity of the limited liability company” as its “responsible officer” on all statements and reports filed. (Regulation 18402.2.)
 - On the Form 461 (Independent Expenditure Committee and Major Donor Committee Campaign Statement), list the LLC’s responsible officer in the Responsible Officer box under Part 1.
 - On all other forms list the LLC’s responsible officer in the same box as the name of the filer. For example, on the Form 497 (24-Hour/10-Day Contribution Report) or Form 496 (24-Hour/10-Day Independent Expenditure Report), include the LLC’s responsible officer in the Name of Filer box.
- A recipient committee that receives a contribution of \$100 or more from an LLC must include as part of the contributor information on its campaign statement the name of the LLC’s responsible officer, as defined in Regulation 18402.2. (Regulation 18421.10.)

A. What is a Limited Liability Company?

An LLC is a common type of business structure recognized by law that combines elements of a partnership and a corporation. An LLC’s owners are referred to as “members,” and are similar to shareholders of a corporation. Though LLCs are not subject to strict governance requirements, many LLCs are governed by a “manager”—similar to a director of a corporation—who may or may not be a member. The corporate laws of California and most other states require LLCs to disclose the LLC’s (company) name, address, manager, and its registered agent—an individual or entity that accepts legal and tax documents on behalf of the LLC. (See Form LLC1.)⁶ An LLC’s registered agent or manager is often not the same individual(s) responsible for directing or approving the LLC’s political activities.

B. Who is an LLC’s “Responsible Officer”?

Campaign statements that are filed by LLCs that are major donors or IE committees are signed by a responsible officer. (Section 81004; see also, FPPC Form 461.) Regulation 18402.2(a) defines “responsible officer” for LLCs that qualify as IE Committees or Major Donors as the individual primarily responsible for approving the political activity of the limited liability company. The “political activity” of an LLC includes, but is not limited to, authorizing expenditures, including contributions, on behalf of the limited liability company, and developing or approving campaign strategy on behalf of the limited liability company. If more than one individual shares in the primary responsibility for approving an LLC’s political activities, any one of these individuals may be listed as the LLC’s responsible officer. (18402.2(b).) A responsible officer

⁶ See, e.g., SOS Form LLC1, available at: <https://bpd.cdn.sos.ca.gov/llc/forms/llc-1.pdf>.

may be held liable not only for violations of the Act he or she caused, but also those violations which he or she “purposefully or negligently” caused another to commit, as well as for violations he or she aided or abetted. (Section 83116.5.)

Examples:

- **A Registered Agent who is not a Responsible Officer.** *James is a member of a member-managed LLC called XYZ Systems, LLC (“XYZ”). XYZ has recently qualified as a major donor after making \$20,000 worth of contributions to candidates for city council and county board of supervisors in 2020. James alone devised XYZ’s campaign strategy and directed all of XYZ’s campaign contributions. Kelly is XYZ’s Nevada-based attorney and registered agent who has no knowledge of, or responsibility for XYZ’s political activities. James should be listed as XYZ’s responsible officer on its Form 461 (Major Donor Campaign Statement) and on all other reports filed by the LLC.*

C. Reporting Contributions Received from LLCs

Recipient committees must report all contributions received and expenditures made. For each contributor of \$100 or more, a recipient committee must include on its campaign statements and reports the name, address, occupation, and employer of the contributor. (Section 84211(f).) Regulation 18421.10 requires a recipient committee that receives a contribution of \$100 from an LLC that has qualified as an IE committee or major donor committee to include the name of the LLC’s responsible officer on its campaign statement, as defined in Regulation 18402.2.

Recipient committees that receive contributions of \$100 or more from LLCs that have not qualified as committees under the Act must list, as part of the “name” of such contributors, the individual primarily responsible for approving the contribution. (Regulation 18421.10(b).) If more than one individual shares in the primary responsibility for approving a contribution, a committee should report at least one such individual. For contributions of \$100 or more received from an LLC that has qualified as a recipient committee under the Act, the “name” must include the LLC’s principal officer as defined in Section 82047.6.

Contributions lacking the “name” information required by Regulation 18421.10 must be returned within 60 days of receipt, pursuant to Section 85700 and Regulation 18570.

Examples:

- **Recipient Committee Receives Contribution from Major Donor LLC.** *Ed Smith for City Council 2020, a candidate-controlled recipient committee, receives a \$1,000 contribution from Biz Holdings, LLC. The check lists only “Biz Holdings, LLC” as the payor; it is unclear who authorized, directed, or approved the contribution. A Cal-Access search turns up Biz Holdings’ Major Donor Campaign Statement (Form 461), which lists Maria Gomez as Biz Holdings’ responsible officer. On his recipient committee campaign statements and reports, Ed should include Maria Gomez’s full legal name as part of the Biz Holdings’ contributor “name.”*
- **Recipient Committee Receives Contribution from LLC.** *Wilhelmina Brown for State Assembly 2020 receives a \$500 contribution from Premium Services, LLC. Premium Services, LLC has not qualified as a major donor, nor as an independent expenditure*

committee. Premium Services, LLC's contribution to Wilhelmina was approved by Alfred, a member of the LLC. Wilhelmina's campaign statement should list the contribution from the LLC, and include in the name of the contributor both the name of the LLC and Alfred as the responsible officer.

- **Returning LLC Contributions Lacking Required "Name" Information.** North County Citizens for Fairness and Justice, a county ballot measure committee, receives a \$101 contribution from StealthCorp, LLC, a major donor. The check lists only "StealthCorp, LLC," along with the name and address of a corporate registered agent, AgentCorp, and no other identifying information. Unless the committee can ascertain the name of StealthCorp's responsible officer, the contribution must be returned within 60 days of receipt.

D. When to File Form 409 and Amendments?

Who Files

The Form 409 (Limited Liability Company "LLC" Statement of Members) is required to be filed by LLCs that qualify as a "committee" pursuant to Section 82013, or by LLCs that qualify as a sponsor of a committee pursuant to Section 82048.7.

- **LLCs that qualify as a "committee" pursuant to Section 82013.** This includes any person or combination of persons who directly or indirectly do any of the following:
 - Receive contributions totaling \$2,000 or more in a calendar year;
 - Make independent expenditures totaling \$1,000 or more in a calendar year; or
 - Make contributions totaling \$10,000 or more in a calendar year to or at the behest of candidates or committees.
- **LLCs that qualify as a "sponsor" of a committee pursuant to Section 82048.7.** Any person, other than a candidate or individual, may sponsor a committee. A person sponsors a committee if any of the following apply:
 - The committee receives 80 percent or more of its contributions from the person or its members, officers, employees or shareholders;
 - The person collects contributions for the committee by use of payroll deductions or dues from its members, officers, or employees;
 - The person, alone or in combination with other organizations, provides all or nearly all of the administrative services for the committee; or
 - The person, alone or in combination with other organizations, sets the policies for soliciting contributions or making expenditures of committee funds.

When to File Form 409

Generally, the Form 409 is due within **10 days** of the LLC qualifying as a committee or sponsor of a committee.

However, the Form 409 is due within **24 hours** of the LLC qualifying as a committee or sponsor of a committee if it qualifies within **30 days** of an election and the LLC has made a contribution to, or an independent expenditure supporting or opposing, a candidate or ballot measure on the

ballot in that election, or made a contribution to a committee that made a contribution to, or an independent expenditure supporting or opposing a candidate or ballot measure on the ballot in that election.

When to File Amendments

Generally, an LLC required to file the Form 409 shall file an amended statement within **10 days** if it receives a capital contribution of \$10,000 or more after qualifying as a committee or sponsor of a committee.

However, an LLC is required to file an amended Form 409 within **24 hours** of receiving the additional capital contribution if the LLC receives that contribution within **90 days** of an election and the LLC has made a contribution to, or independent expenditure supporting or opposing, a candidate or ballot measure on the ballot in that election.

The Form 409 is filed by email with the Secretary of State, email to form409@sos.ca.gov.

E. Notes

A capital contribution or other payment made to an LLC that qualified as a committee or sponsor of a committee that is earmarked, in whole or in part, for political purposes shall be deemed a contribution to the committee.

Aggregation: Contributions from a member of an LLC identified in a statement of members must be aggregated with contributions from the LLC pursuant to Section 82015.5:

- If an individual directs or controls an entity's contributions, the entity's contributions shall be aggregated with contributions made by that individual 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 a person shall be aggregated with the contributions of the majority owner and all other entities majority owned by that person, unless those entities act independently in their contribution making decisions.

F. Frequently Asked Questions

Q. Is the Form 409 required to be amended if after the initial filing there is no change in members and there are no additional capital contributions?

A. No. An amendment to the Form 409 is not required if there is no change in members and if no additional capital contributions are received by the LLC.

Q. ShieldCorp, LLC qualified as a committee in the prior calendar year and filed a Form 409 within 10 days of qualifying. Is ShieldCorp, LLC required to file a Form 409 each time it qualifies as a committee or a sponsor of a committee?

A. No. ShieldCorp, LLC is not required to file a new Form 409 each time it qualifies as a committee or a sponsor of a committee. If additional capital contributions of \$10,000 or more are received, a Form 409 amendment would be required to be filed.

- Q. Major Donor and Independent Expenditure Committees automatically terminate at the end of each calendar year. If an LLC no longer qualifies as a committee or sponsor of a committee during the subsequent year, is a Form 409 amendment required?**
- A. No. If an LLC is no longer a committee or sponsor of a committee as defined by the Act, no amendment is required.
- Q. ABC Construction and Affiliated Entities is a Major Donor Committee that consists of five affiliated LLCs. Two of the five affiliated LLCs, EasyAs123, LLC, and Nuts & Bolts, LLC, each qualify as “sponsors” of separate committees. The other three LLCs did not have any political activity. Is ABC Construction and Affiliated Entities required to aggregate contributions of all five of the affiliated LLCs to determine if a Form 409 is triggered?**
- A. No. Each individual LLC will trigger separately the filing of the Form 409 if requirements under Section 84109 are met. Therefore, EasyAs123, LLC and Nuts & Bolts, LLC each separately would be required to file the Form 409 since they each qualified as a sponsor of a committee.