

Foreign nationals

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The FEC often receives questions about the rules governing foreign nationals' participation in U.S. elections. While this article responds to some of the most common questions, it does not cover all aspects of foreign national activity. Readers should consult the Federal Election Campaign Act (the Act) and Commission regulations, advisory opinions, and relevant case law for additional information. For questions involving proposed activity for which there may not be clear guidance, you may consider requesting your own advisory opinion (AO) from the Commission. Please note, however, that the Commission's jurisdiction is limited to provisions of the Act and does not include other laws that may also apply to foreign national activity.

The Act and Commission regulations include a **broad prohibition on foreign national activity in connection with elections in the United States**. 52 U.S.C. § 30121 and generally, 11 CFR 110.20. In general, foreign nationals are prohibited from the following activities:

- Making any contribution or donation of money or other thing of value, or making any expenditure, independent expenditure, or disbursement in connection with any **federal, state or local election** in the United States;
- Making any contribution or donation to any committee or organization of any **national, state, district, or local** political party (including donations to a party nonfederal account or office building account);
- Making any disbursement for an **electioneering communication**;
- Making any donation to a presidential **inaugural** committee.

Persons who knowingly and willfully engage in these activities may be subject to an FEC enforcement action, criminal prosecution, or both.

Definition

The following groups and individuals are considered "foreign nationals" and are subject to the prohibition:

- Foreign citizens (not including dual citizens of the United States);
- Immigrants who are not lawfully admitted for permanent residence;
- Foreign governments;
- Foreign political parties;

- Foreign corporations;
- Foreign associations;
- Foreign partnerships; and
- Any other foreign principal, as defined at 22 U.S.C. § 611(b), which includes a foreign organization or “other combination of persons organized under the laws of or having its principal place of business in a foreign country.”

Individuals: The "green card" exception

The Act does not prohibit individuals with permanent resident status (commonly referred to as “green card holders”) from making contributions or donations in connection with federal, state or local elections, as they are not considered foreign nationals.

Participation by foreign nationals in decisions involving election-related activities

Commission regulations prohibit foreign nationals from directing, dictating, controlling, or directly or indirectly participating in the decision-making process of any person (such as a corporation, labor organization, political committee, or political organization) with regard to any election-related activities. Such activities include, the making of contributions, donations, expenditures, or disbursements in connection with any federal or nonfederal elections in the United States, or decisions concerning the administration of any political committee. Foreign nationals are also prohibited from involvement in the management of a political committee, including any separate segregated fund (SSF), nonconnected committee, or the nonfederal accounts of any of these committees. See Explanation and Justification for 11 CFR 110.20 at 67 FR 69946 (November 19, 2002) [PDF].

The Commission has pursued a number of enforcement actions related to this prohibition. For example, in Matter Under Review (MUR) 3460, the Commission reached a conciliation agreement with a **U.S. subsidiary of a foreign corporation** and four of its foreign national directors. The directors, along with one director who was not a foreign national, passed a resolution authorizing a “contribution committee” to make political and charitable donations from a special account, and capitalizing the committee with \$50,000 in corporate funds. The one director who was not a foreign national was appointed as the sole member of the committee. The contribution committee subsequently made contributions to **state and local candidates**. The foreign nationals’ involvement in the decision to establish and fund the “contribution committee” meant that its subsequent contributions violated the ban on foreign nationals participating directly or indirectly in the making of contributions and donations in connection with elections. The corporation and the foreign national directors paid a civil penalty.

Volunteer activity

Generally, an individual (including a foreign national) **may volunteer personal services** to a federal candidate or federal political committee without making a contribution. The Act provides this volunteer "exemption" as long as the individual performing the service is not compensated by anyone. The Commission has addressed applicability of this exemption to several situations involving volunteer activity by a foreign national, as explained below.

In AO 2014-20 (Make Your Laws PAC), the Commission concluded that a political action committee could accept assistance from a foreign national in developing **intellectual property for the PAC**, such as trademarks, graphics, and **website design** because the services accepted by the PAC would fall under the volunteer exemption.

Similarly, in AO 2004-26 (Weller), the Commission held that a foreign national could **attend, speak at campaign events** for a federal candidate, and solicit contributions to the campaign. However, the Commission cautioned that the foreign national could not manage or participate in any of the campaign committee's decision-making processes. See also AOs 2007-22 (Hurysz) and 1987-25 (Otaola).

In MUR 5987, the Commission examined a situation in which a foreign national provided an **uncompensated musical concert performance** as a volunteer for a federal candidate's campaign as part of a fundraising event. The candidate's campaign had paid all of the costs of hosting the concert, including the rental of the venue and equipment and providing security. The **performer had merely provided his uncompensated volunteer services** to the campaign and had not participated in any of the campaign's decision-making. Based on these facts, the Commission found no reason to believe that the foreign national or the federal candidate's committee had violated the Act's foreign national prohibition.

Non-election activity by foreign nationals

Despite the general prohibition on foreign national contributions and donations, foreign nationals **may lawfully engage in political activity** that is **not connected with any election** to political office at the federal, state, or local levels. The Commission has issued advisory opinions that help to define the parameters of that activity.

In AO 1989-32 (McCarthy), the Commission concluded that a foreign national **could not contribute to a ballot measure committee** that had coordinated its efforts with a nonfederal candidate's re-election campaign. Also, in AO 1984-41 (National Conservative Foundation), the Commission allowed a foreign national to underwrite the broadcast of apolitical ads that attempted to expose the alleged political bias of the media. The Commission found that these ads were permissible because they were not "election influencing" in that they did not mention candidates, political offices, political parties, incumbent federal officeholders or any past or future election.

In a decision that was later affirmed by the Supreme Court, the U.S. District Court for the District of Columbia ruled that the foreign national ban **"does not restrain foreign nationals from speaking out about issues or spending money to advocate their views about issues.** It restrains them only from a certain form of expressive activity **closely tied to the voting**

process—providing money for a candidate or political party or spending money in order to expressly advocate for or against the election of a candidate.” Bluman v. FEC, 800 F. Supp. 2d 281, 290 (D.D.C. 2011), aff’d 132 S. Ct. 1087 (2012).

Providing assistance with foreign national election activity

Under Commission regulations, it is unlawful to knowingly provide “substantial assistance” to foreign nationals making contributions or donations in connection with any U.S. election. Further, no person may provide substantial assistance in the making of any expenditure, independent expenditure, or disbursement by a foreign national. "Substantial assistance" refers to active involvement in the solicitation, making, receipt or acceptance of a foreign national contribution or donation with the intent of facilitating the successful completion of the transaction. This prohibition includes, but is not limited to individuals who act as conduits or intermediaries. See Explanation and Justification for 11 CFR 110.20 at 67 FR 69945-46 (November 19, 2002) [PDF].

Soliciting, accepting, or receiving contributions and donations from foreign nationals

The Act prohibits knowingly soliciting, accepting or receiving **contributions** or **donations** from foreign nationals. In this context, "knowingly" means that a person:

- Has actual knowledge that the **funds** solicited, accepted, or received are from a foreign national;
- Is aware of facts that would lead a reasonable person to believe that the **funds** solicited, accepted, or received are likely to be from a foreign national; or
- Is aware of facts that would lead a reasonable person to inquire whether the source of the **funds** solicited, accepted or received is a foreign national.

Pertinent facts that should cause the recipient of a contribution or donation to question whether it was given by a foreign national include, but are not limited to the following: a donor or contributor uses a foreign passport, provides a foreign address, makes a contribution from a foreign bank, or resides abroad. Commission regulations provide for a safe harbor: obtaining a copy of a current and valid U.S. passport would satisfy the duty to inquire whether the funds solicited, accepted, or received are from a foreign national.

In AO 2016-10 (Parker), the Commission determined that a U.S. citizen living abroad could solicit contributions on behalf of federal candidates and committees from other U.S. citizens residing abroad. She was required to ascertain the citizenship of the individuals whom she might solicit if she were aware of facts that would lead a reasonable person to inquire or believe that those individuals were foreign nationals. However, the Commission advised the requestor, “Limiting your solicitations to friends and family who live in the U.S. and who have not, to your knowledge, lived abroad, would not obligate you to conduct further inquiry about citizenship

status due to the residence of the individuals whom you solicit.” If, however, she were to obtain a copy of a valid U.S. passport, she would be covered by the safe harbor provision noted above.

In MUR 4834, an individual admitted knowingly and willfully soliciting a contribution from a foreign national and causing a foreign contribution to be made falsely in the name of a U.S. citizen. The individual also admitted that at the time of the solicitation, he knew that the person he was soliciting was a foreign national and that contributions from foreign nationals were prohibited. The Commission entered into a conciliation agreement with the individual, and he agreed to pay a civil penalty.

In MUR 4638, the Commission found reason to believe that a law firm had violated the Act by knowingly solicited and provided “substantial assistance” to a foreign national making donations. Individuals at the firm participated in conversations with a known foreign national and his agents that resulted in his making donations to state and local candidates. As a result of the Commission’s finding, the firm entered into a conciliation agreement with the Commission and agreed to pay a civil penalty.

Monitoring prohibited contributions

When a federal political committee (a committee active in federal elections) receives a contribution it believes may be from a foreign national, it must:

- Return the contribution to the donor without depositing it; or
- Deposit the contribution and take steps to determine its legality, as described below.

Either action must be taken **within 10 days** of the treasurer's receipt.

If the committee decides to deposit the contribution, the treasurer must make sure that the funds are not spent because they may have to be refunded. Additionally, he or she must maintain a written record explaining why the contribution may be prohibited. The legality of the contribution must be confirmed within 30 days of the treasurer's receipt, or the committee must issue a refund.

Evidence of legality may include a written statement from the contributor explaining why the contribution is legal (e.g., donor has a green card or provides a copy of his or her valid U.S. passport), or an oral explanation that is recorded in memorandum.

If the committee deposits a contribution that appears to be legal, but later discovers that the deposited contribution is from a foreign national, it **must refund the contribution** within 30 days of making the discovery. If a committee lacks sufficient funds to make a refund when a prohibited contribution is discovered, it must use the next funds it receives.

In MUR 4530 and several related MURs (MURs 4531, 4587, 4642, 4909, and 5295), the Commission found that several foreign nationals and corporations had made prohibited

contributions to a federal candidate committee and to a national party committee. Several committees were assessed civil penalties for failing to issue refunds when they became aware that the funds were illegal.

Domestic subsidiaries and foreign-owned corporations

A U.S. subsidiary of a foreign corporation or a U.S. corporation that is owned by foreign nationals or by a foreign parent corporation may be subject to the prohibition, as discussed further below.

PAC contributions for federal activity

Based on a series of FEC advisory opinions, domestic subsidiaries of foreign corporations may establish federal political action committees (known as separate segregated funds or SSFs) for the purpose of make federal contributions and expenditures, so long as:

1.The foreign parent corporation does not finance the SSF’s establishment, administration, or solicitation costs through the subsidiary; and

2.Individual foreign nationals:

- Do not participate in the operation of the PAC;
- Do not serve as officers of the PAC;
- Do not participate in the selection of persons who operate the PAC; and
- Do not make decisions regarding any PAC contributions or expenditures.

For example, in AO 2000-17 (Extendicare), the Commission determined that a U.S. subsidiary of a foreign corporation could establish an SSF even though the subsidiary’s board of three directors included only one U.S. citizen because the committee established to oversee all of the SSF’s operations comprised only U.S. citizens or permanent residents. See also AOs 2009-14 (Mercedes Benz USA/Sterling), 1999-28 (Bacardi-Martini), 1995-15 (Allison Engine PAC), and 1990-08 (CIT).

Corporate donations and disbursements for nonfederal activity

A domestic subsidiary of a foreign corporation (or a domestic corporation owned by foreign nationals) may make donations and disbursements in connection with state or local elections (if permissible under state and local law) provided that:

- These activities are not financed in any part by the foreign parent or owner; and

- Individual foreign nationals are not involved in any way in the making of donations to nonfederal candidates and committees.

For example, in AO 2006-15 (TransCanada), the Commission concluded that two wholly-owned U.S. subsidiaries of a foreign corporation could make donations and disbursements in connection with state and local elections so long as the funds used were generated by the U.S.-based subsidiary's operations and not from the foreign parent and that all decisions regarding political donations would be made by U.S. citizens or permanent residents. Since the domestic subsidiaries maintained bank accounts in the U.S. that were separate from the foreign parent and did not receive subsidies from the foreign parent or from any other foreign national, the Commission concluded that the proposal was permitted under the Act.

Similarly, in AO 1992-16 (Nansay Hawaii, Inc.), the Commission considered a situation in which a foreign parent corporation provided "regular subsidies [to its domestic subsidiary] in the form of loans or [donations] to capital..." The Commission determined that the domestic subsidiary could make state and local donations, provided that all decisions as to political donations were made by U.S. citizens or permanent residents and also that the subsidiary be able to demonstrate through a reasonable accounting method that it had sufficient funds in its account (other than funds given or loaned by its foreign national parent) from which the donations were made. The Commission explicitly cautioned that, "[t]he amount that the foreign parent distributes to the subsidiary cannot replenish all or any portion of the subsidiary's political [donations] during the period since the preceding subsidy payment."

In contrast, in AO 1989-20 (Kuilima Development Company, Inc.), the Commission declined to approve a U.S. company's plan to donate to state and local candidates using a PAC funded primarily by donations from its foreign parent corporation. The Commission held that this arrangement was prohibited by the Act and Commission regulations. See also AOs 1989-29 (GEM of Hawaii, Inc.), 1985-03 (Diridon), and 1982-10 (Syntex).

In MUR 2892, the Commission entered into conciliation agreements with a number of respondents, including foreign individuals and businesses, who agreed to pay civil penalties for violations of the Act that involved prohibited contributions made to state and local candidates through U.S. corporations owned by foreign corporations or by foreign individuals. In this particular case, the Commission found reason to believe that the donations in question violated the foreign national prohibition because they were allegedly financed directly by the foreign parent/owner or because individual foreign nationals were allegedly involved in making decisions concerning the contributions. (See also MURs 2864 and 3004.)

Relevant citations

22 U.S.C. § 611(b)

Foreign principal definition

52 U.S.C. § 30121

Contributions and donations by foreign nationals

11 CFR 100.74
Uncompensated services by volunteers

11 CFR 103.3(b)
Deposit of receipts and disbursements

11 CFR 110.20
Prohibition on contributions, donations, expenditures, independent expenditures, and disbursements by foreign nationals (52 U.S.C. § 30121, 36 U.S.C. § 510)

Read next:

- Who can and can't contribute
- Handling a questionable contribution
- Search enforcement cases

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