

# Foreign Nationals

Federal Election Commission

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## Introduction

The ban on political contributions and expenditures by foreign nationals was first enacted in 1966 as part of the amendments to the Foreign Agents Registration Act (FARA), an “internal security” statute. The goal of the FARA was to minimize foreign intervention in U.S. elections by establishing a series of limitations on foreign nationals. These included registration requirements for the agents of foreign principals and a general prohibition on political contributions by foreign nationals. In 1974, the prohibition was incorporated into the Federal Election Campaign Act (the FECA), giving the Federal Election Commission (FEC) jurisdiction over its enforcement and interpretation.



This brochure has been developed to help clarify the rules regarding the political activity of foreign nationals; however, it is not intended to provide an exhaustive discussion of the election law. If you have any questions after reading this, please contact the FEC in Washington, D.C., at 1-800-424-9530 or 202-694-1100. Members of the press should contact the FEC Press Office at 202-694-1220 or at the toll free number listed above.

Except where otherwise noted, all citations refer to the Act and FEC regulations. Advisory Opinions (AOs) issued by the Commission are also cited.

## The Prohibition

The Federal Election Campaign Act (FECA) prohibits any foreign national from contributing, donating or spending funds in connection with any federal, state, or local election in the United States, either directly or indirectly. It is also unlawful to help foreign nationals violate that ban or to solicit, receive or accept contributions or donations from them. Persons who knowingly and willfully engage in these activities may be subject to fines and/or imprisonment.

## **Who is a Foreign National?**

The following groups and individuals are considered “foreign nationals” and are, therefore, subject to the prohibition:

- Foreign governments;
- Foreign political parties;
- Foreign corporations;
- Foreign associations;
- Foreign partnerships;
- Individuals with foreign citizenship; and
- Immigrants who do not have a “green card.”

## **Individuals: The “Green Card” Exception**

An immigrant may make a contribution if he or she has a “green card” indicating his or her lawful admittance for permanent residence in the United States.

## **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 may be subject to the prohibition, as discussed below.

## **PAC Contributions for Federal Activity**

A domestic subsidiary of a foreign corporation may not establish a federal political action committee (PAC) to make federal contributions if:

- (1) The foreign parent corporation finances the PAC’s establishment, administration, or solicitation costs; or
- (2) Individual foreign nationals:
  - Participate in the operation of the PAC;
  - Serve as officers of the PAC;
  - Participated in the selection of persons who operate the PAC; or
  - Make decisions regarding PAC contributions or expenditure.

11 CFR 110.20(i).

(See also AOs 2000-17, 1995-15, 1990-8, 1989-29, and 1989-20.)

## **Corporate Contributions for Nonfederal Activity**

Additionally, a domestic subsidiary of a foreign corporation (or a domestic corporation owned by foreign nationals) may not donate funds or anything of value in connection with state or local elections if:

- (1) These activities are financed by the foreign parent or owner; or
- (2) Individual foreign nationals are involved in any way in the making of donations to nonfederal candidates and committees.<sup>1</sup>

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<sup>1</sup> This means that foreign nationals may not participate in donation activity, allocate funds for donations, or make decisions regarding donations (e.g., selecting the recipients, approving the making of donations, or approving the issuance of donation checks).

Please note that many states place additional restrictions on donations made to nonfederal candidates and committees. 11 CFR 110.20(i). (See also AOs 1992-16, 1985-3, 1982-10, and MUR 2892.)

## Volunteer Activity

Generally, an individual 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. 11 CFR 100.74. The Commission has addressed applicability of this exemption to volunteer activity by a foreign national, as explained below.

In Advisory Opinion 1987-25, the Commission allowed a foreign national student to provide uncompensated volunteer services to a Presidential campaign. By contrast, the decision in AO 1981-51 prohibited a foreign national artist from donating his services in connection with fundraising for a Senate campaign.<sup>2</sup>



## Nonelection 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 FEC has clarified such activity with respect to individuals’ activities.

In Advisory Opinion 1989-32, the Commission concluded that although foreign nationals could make disbursements solely to influence ballot issues, a foreign national could not contribute to a ballot committee that had coordinated its efforts with a nonfederal candidate’s re-election campaign.

In Advisory Opinion 1984-41, 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 not election influencing because they did not mention candidates, political offices, political parties, incumbent federal officeholders or any past or future election.<sup>3</sup>

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<sup>2</sup> The Commission has stated that this opinion is not superceded by AO 1987-25. Individuals may obtain further guidance in this area by requesting an advisory opinion about their proposed activity.

<sup>3</sup> Individuals and committees should consider requesting an advisory opinion before engaging in other types of political activity involving foreign nationals.

## Assisting Foreign National Contributions or Donations

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. 11 CFR 110.20(h). “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. 67 FR 69945-6 (November 19, 2002).

## Soliciting, Accepting, or Receiving Contributions and Donations from Foreign Nationals

As noted earlier, 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;
- 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.

11 CFR 110.20 (a)(4) (i), (ii) and (iii).

Pertinent facts that may lead to inquiry by the recipient 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. 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.

11 CFR 110.20(a)(7).



## 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.

11 CFR 103.3 (b)(1).

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.<sup>4</sup> 11 CFR 103.3 (b)(4) and (5). The legality of the contribution must be confirmed within 30 days of the treasurer's receipt, or the committee must issue a refund.<sup>5</sup>

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. 11 CFR 103.3 (b) (1) and (2).

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<sup>4</sup> This information must be included when the receipt of the contribution is reported.

<sup>5</sup> For example, evidence of legality includes a written statement from the contributor explaining why the contribution is legal (e.g. donor has a green card), or an oral explanation that is recorded in memorandum.