

# **GUIDEBOOK FOR NONCANDIDATE COMMITTEES**



*State of Hawaii  
Campaign Spending Commission  
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# NONCANDIDATE COMMITTEE GUIDEBOOK

## Introduction

The Hawaii Campaign Spending Commission (“Commission”) has prepared this Guidebook to assist noncandidate committees in complying with the requirements of the campaign finance laws. Also available is the “Treasurer’s Guidebook for Candidate and Noncandidate Committees” to assist campaign treasurers with developing and maintaining an organized recordkeeping system for contributions and expenditures as well as the “Noncandidate Committee Filing System Manual” to assist committees in using the Commission’s electronic filing system to properly file periodic disclosure reports. This Guidebook and other publications are intended to provide general guidance only. All chairpersons, treasurers, and other persons assisting the noncandidate committees should review the campaign finance laws and rules<sup>1</sup>. All of the Commission’s resources including a link to login to the noncandidate committee electronic filing system to file your reports are available on our website at [www.hawaii.gov/campaign](http://www.hawaii.gov/campaign).

## For Assistance

### Oahu Noncandidate Committees:

The Commission’s office is open from 7:45 a.m. to 4:30 p.m. Monday through Friday. The office is closed on regular State holidays.

If there are any questions regarding the law or the Noncandidate Committee Filing System (“NCFS”), please visit our website or contact our office:

Website: [www.hawaii.gov/campaign](http://www.hawaii.gov/campaign)

Campaign Spending Commission  
Leiopapa A Kamehameha Building  
235 South Beretania Street, Room 300  
Honolulu, Hawaii 96813  
Telephone: (808) 586-0285  
Fax: (808) 586-0288

### Neighbor Island Noncandidate Committees:

Call the applicable number below and enter extension 60285:

Hawaii	974-4000
Kauai	274-3141
Lanai	1-800-468-4644
Maui	984-2400
Molokai	1-800-468-4644

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<sup>1</sup> The laws and rules take precedence over any provisions in this Guidebook. Moreover, each campaign is different; the noncandidate committee may be faced with issues and factual circumstances that differ from or are not addressed in this Guidebook.

## I. NONCANDIDATE COMMITTEES

### Noncandidate Committees Defined

A noncandidate committee means:

- An organization, association, party, or individual
- That has the purpose of making or receiving contributions, making expenditures, or incurring financial obligations
- To influence the nomination for election, or the election, of any candidate to office, or for or against any questions or issues on the ballot.

A noncandidate committee does not include:

- A candidate committee;
- Any individual making a contribution or an expenditure of the individual's own funds or anything of value that the individual acquired for the individual's own use and not for the purpose of evading the law; or
- Any organization that raises or expends funds for the sole purpose of producing and disseminating informational or educational communications that are not made to influence the outcome of an election, question, or issue on the ballot.

### Other Types of Noncandidate Committees

Upon registering with the Commission, you must disclose whether your noncandidate committee will operate as a standard noncandidate committee or a variation of the noncandidate committee. The three (3) other types of noncandidate committees include a political party, a ballot issue committee, and an Independent Expenditure Committee.

- 1 - Political Party – Means any political party that satisfies the requirements of Hawaii Revised Statutes (“HRS”) §11-61 (e.g., Democratic Party of Hawaii, Hawaii Republican Party, Hawaii Independent Party, Libertarian Party of Hawaii, and Green Party of Hawaii).
- 2 - Ballot Issue Committee – Means a noncandidate committee that has the exclusive purpose of making or receiving contributions, making expenditures, or incurring financial obligations for or against any question or issue appearing on the ballot at the next applicable election.
- 3 - Independent Expenditure Committee - Means a noncandidate committee that has registered and certified to the Commission that it will only be making independent expenditures. “Independent expenditures” means an expenditure expressly advocating the election or defeat of a clearly identified candidate that is not made in concert or cooperation with or at the suggestion of the candidate, the candidate committee, a party, or their agents.

These other types of noncandidate committees are further described in this Guidebook with notable differences in purpose and legal applications.

There is only one NCFS or rather one electronic filing system for all noncandidate committees.

## II. REGISTRATION

Registration with the Commission as a noncandidate committee is required:

- Within **ten (10) days** of receiving contributions or making or incurring expenditures of more than \$1,000, in the aggregate, in a two-year election period; or
- Within **two (2) days** of receiving contributions or making expenditures of more than \$1,000, in the aggregate, in a two-year election period if it is within thirty (30) days prior to an election.

Registering with the Commission means electronically filing an Organizational Report in the NCFS. In order to access or login to the NCFS, the noncandidate committee must complete and submit an Electronic Filing Form to obtain a username and password.

### Electronic Filing Form

The registration process begins by completing the “Noncandidate Committee Electronic Filing Form” and mailing or delivering the form to the Commission’s office at 235 South Beretania Street, Room 300, Honolulu, Hawaii 96813. The form is available on the Commission’s website under “Noncandidate Committees,” click on “Forms.” The chairperson and treasurer must sign the form as well as disclose whether or not the noncandidate committee is:

- A political party per the requirements of HRS §11-61;
- A ballot issue committee per HRS §11-327; or
- An independent expenditure committee per HRS §11-302.

The Commission will email a username and password to the email address provided on the form. By signing this form, the chairperson and treasurer acknowledges and certifies that the information on all reports electronically filed online are true, complete, and accurate.

### Organizational Report

Noncandidate committees may access the NCFS from the Commission’s website under “Noncandidate Committees,” click on “Noncandidate Committee Filing System,” then click on “Noncandidate Committee Filing System (“NCFS”) Login.” Login by entering the Administrator username and password that you were emailed.

The Organizational Report requires the following information:

- Name and Mailing Address of the Noncandidate Committee  
The noncandidate committee’s name, mailing address, and business phone number is required. The Commission will use the address of the Chair and

Treasurer when it sends out correspondence or notices. It is therefore very important that this information is kept current because by law all Commission correspondence will go to the address listed via first class mail. The Commission may also try to call the noncandidate committee so it is important that the phone numbers listed are current.

A committee's name must incorporate the name of the sponsoring entity. It may not include the name of a candidate. An acronym or abbreviation may be used in other communications if the acronym or abbreviation is commonly known or clearly recognized by the general public. The noncandidate committee must also disclose the area, scope, or jurisdiction of the committee.

- Chairperson and Deputy Chairperson

The noncandidate committee must appoint at least one (1) chairperson. The chairperson's name, mailing address, business and residence phone numbers, occupation, and principal place of business must be provided. The chairperson must also sign the "Noncandidate Committee Electronic Filing Form" to certify acceptance of the appointment and that the information on all electronically filed reports are true, complete, and accurate.

A deputy chairperson may be appointed, but is not required. If a deputy chairperson is appointed, the noncandidate committee must provide the name, mailing address, business and residence phone numbers, occupation, and principal place of business of the deputy chairperson.

- Campaign Treasurer and Deputy Campaign Treasurer

The noncandidate committee must appoint at least one (1) campaign treasurer. The chairperson may also serve as the treasurer. The treasurer's name, mailing address, business and residence phone numbers, occupation, and principal place of business must be provided. The treasurer must also sign the "Noncandidate Committee Electronic Filing Form" to certify acceptance of the appointment and that the information on all electronically filed reports are true, complete, and accurate.

A deputy treasurer may be appointed, but is not required. Up to five (5) deputy treasurers may be appointed. If a deputy treasurer is appointed, the noncandidate committee must provide the name, mailing address, business and residence phone numbers, occupation, and principal place of business of the deputy treasurer.

Only an appointed campaign treasurer or deputy campaign treasurer is authorized to receive contributions and make expenditures on behalf of the noncandidate committee. In case of death, resignation, or removal of the treasurer, the noncandidate committee shall promptly appoint a successor. During the period the office of treasurer is vacant, the chairperson shall serve as treasurer unless the chairperson is the same person as the treasurer then the appointment of a successor is necessary. Once a successor is appointed, an amended "Noncandidate Committee Electronic Filing Form" must be submitted to the Commission first and then an amended Organizational Report must be electronically filed with the Commission within **ten (10) days** of the appointment to disclose the name of the successor with the updated mailing address,



business and residence phone numbers, occupation, and principal place of business of the new person.

- Custodian of Books and Accounts  
The noncandidate committee must appoint at least one (1) custodian of books and accounts, and provide the same information that is required of the treasurer. The treasurer may also serve as the custodian of books and accounts.
- Committee Depository (Bank)  
The noncandidate committee must provide the name and address of the depository institution in which the committee will maintain its campaign account and each applicable account number. The depository must be at a financial institution duly authorized to do business in the state, such as a bank, savings bank, savings and loan association, depository financial services loan company, credit union, intra-Pacific bank, or similar financial institution, the deposits or accounts of which are insured by the Federal Deposit Insurance Corporation, or the national credit union administration.

### **Amended Organizational Report**

It is very important that the information listed on a noncandidate committee's Organizational Report is kept current. Whenever there is a change in a chairperson or treasurer ("officer"), a new "Noncandidate Committee Electronic Filing Form" must be submitted to the Commission with the signature(s) of the new officer(s). The Commission will input the name(s) of the new officer(s). The committee must then update the contact information for the new officer(s) within the NCFIS. Under "Administration," click on "Edit Organizational Report" and enter the required information.

Amended Organizational Reports must be electronically filed no later than **11:59 p.m. Hawaiian standard time** on the **tenth (10<sup>th</sup>) calendar day** after the change is brought to the attention of the committee chairperson or treasurer.

### **III. KEEPING RECORDS**

Complete records of contributions and expenditures must be maintained for at least **five (5) years** and the records shall include "bank records, with respect to the matters required to be reported, vouchers, worksheets, receipts, bills, and accounts, which shall provide in sufficient detail the necessary information and data with which the filed reports and statements may be verified, explained, clarified, and checked for accuracy and completeness." The chairperson, treasurer, and custodian of books and accounts should refer to the "Treasurer's Guidebook for Candidate and Noncandidate Committees" for assistance with developing and maintaining an organized recordkeeping system for contributions and expenditures.

#### **Recording Contributions (Monetary and Non-Monetary)**

A noncandidate committee must establish and maintain an itemized record showing the name, address, and amount of each monetary contribution and the description and fair market value of each non-monetary contribution of more than \$25. The Commission recommends the establishment and maintenance of itemized records of all contributions

including those that are \$25 or less, to ensure compliance with the requirement that a noncandidate committee report all contributions aggregating more than \$100 during the election period.

The law requires that contribution records be kept as follows:

For contributions that are more than \$25, but less than \$100:

- Date of receipt and deposit;
- Contributor's full name and address; and
- Contribution amount.

For contributions of more than \$100:<sup>2</sup>

- Date of receipt and deposit;
- Contributor's full name and address;
- Contribution amount; and
- Contributor's employer and occupation.

### **Recording Contributions to Candidates**<sup>3</sup>

Noncandidate committees must keep records that identify contributions to candidates as follows:

- Date of the contribution;
- Candidate's or Candidate Committee's full name and address; and
- Contribution amount (be careful not to exceed the candidate's contribution limit).

### **Recording Expenditures**

Noncandidate committees must itemize all expenditures to consultants, advertising agencies and similar firms, credit card payments, salaries, and noncandidate committee reimbursements to permit a reasonable person to determine the ultimate intended recipient of the expenditures and their purpose.

The law requires that expenditure records be kept as follows:

- Date of the expenditure;
- Vendor's full name and address;
- Purpose of the expenditure (a brief description of why the expenditure was made); and
- Amount of the expenditure.

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<sup>2</sup> If the information required for the contributions of more than \$100 is not on file, the contribution shall be returned to the contributor within **thirty (30) days** of deposit.

<sup>3</sup> This section does not apply to ballot issue committees or Independent Expenditure Committees because by their nature and purpose, they are prohibited by law to make contributions to candidates or candidate committees.

Expenditures reported under vague purposes or consolidated into categories such as petty cash, VISA, Master Card, reimbursement to employee, or ad agency, will not meet the requirements of the campaign finance laws. All expenditures made, incurred, or authorized by or for the noncandidate committee must be reported, including the name and address of each vendor and the amount, date, and purpose of the expenditure. Expenditures are reported based on the date that the goods are delivered or the service is provided to the noncandidate committee. Financial institutions, individuals reimbursed for expenses, lump sum cash payments, and advertising or employment agencies are viewed as intermediaries of expenditures. Any use of intermediaries that would have the result of concealing the true and complete nature of the expenditure will not meet the requirements of the campaign finance laws.

Reports that describe the purpose in vague terms or fail to include the name of the vendor for the expenditure are defective and subject to a fine and/or additional remedies including a court order.

#### **IV. REPORTING ON THE NCFS**

By law, noncandidate committees are required to electronically file reports even if no money was raised or zero dollars were spent. Transparency and disclosure are critical to informed voting, the integrity of the electoral process, and to deter actual corruption or avoid the appearance of corruption. As such, a noncandidate committee is required to electronically file a series of disclosure reports on the NCFS in accordance with a reporting schedule which has been set by law. The reporting schedule is available on the Commission's website.

All noncandidate committee disclosure reports shall be filed electronically on the NCFS. There are no exceptions or waivers.

To be timely filed, the reports must be electronically filed on or before **11:59 p.m. Hawaiian standard time** on the filing deadline. Failure to file the required report by the applicable deadline will result in monetary fines and/or additional remedies including a court order.

The Commission's staff is available during office hours (7:45 a.m. – 4:30 p.m. Monday through Friday) to provide assistance. Office hours do not extend until 11:59 p.m. on filing dates.

#### **Disclosure Reports**

The disclosure report is a summary of contributions received, contributions made to candidates, expenditures made, other receipts, unpaid expenditures, and durable assets for the applicable reporting period. Each of these areas has its own schedule and must be filed for each report.

- Schedule A Contributions Received;
- Schedule B1 Contributions to Candidates;
- Schedule B2 Expenditures Made;
- Schedule C Other Receipts;

- Schedule D Unpaid Expenditures; and
- Schedule E Durable Assets.

Although each disclosure report has a different name depending on when it is due and what period it covers (e.g., Supplemental Report, Preliminary Primary Report, Final Primary Report, 1<sup>st</sup> Preliminary General Report, 2<sup>nd</sup> Preliminary General Report<sup>4</sup>, Final Election Period Report), they all require you to complete the schedules mentioned above for the activity pertaining to that schedule. As you file each report, the closing cash on hand for the current reporting period will “carry over” as the beginning cash on hand for the next reporting period. Until you terminate your registration with the Commission (see Part XI), a disclosure report must be timely filed even if you have no contributions and no expenditures.

For detailed instructions on electronically filing these schedules with your disclosure report, please refer to the “Noncandidate Committee Filing System Manual.”

### **Non-Election Year Reporting**

Non-election years are odd-numbered years in which there are no regularly scheduled state and local elections.

Two Supplemental Reports must be filed in nonelection years:

- The 1<sup>st</sup> Supplemental Report, covering campaign financial activity from January 1<sup>st</sup> through June 30<sup>th</sup> of a nonelection year, must be filed no later than **11:59 p.m. Hawaiian standard time on July 31<sup>st</sup>**.
- The 2<sup>nd</sup> Supplemental Report, covering campaign financial activity from July 1<sup>st</sup> through December 31<sup>st</sup> of a nonelection year, must be filed no later than **11:59 p.m. Hawaiian standard time on January 31<sup>st</sup>**.

Supplemental Reports must be filed until a noncandidate committee terminates its registration with the Commission.

### **Election Year Reporting**

Please refer to the Reporting Schedule located on our website under “Noncandidate Committees,” click on “Reporting Schedule.” When a reporting deadline falls on a holiday or weekend, the deadline shall be the first working weekday after the date the report is due. This applies to non-election and election year reporting deadlines.

### **Late Contributions Report**

The Late Contributions Report is a special report which must be electronically filed by noncandidate committees that receive contributions aggregating more than \$500 from any person, and for reporting contributions made to a candidate that aggregate more than \$500 within the period of fourteen (14) calendar days through four (4) calendar

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<sup>4</sup> Effective July 1, 2015, Act 79, Session Laws of Hawaii 2015, requires noncandidate committees’ preliminary reports to be filed on October 1 of a general election year and ten (10) days prior to a primary, special, nonpartisan, and general election.

days prior to a primary, special primary, general, or special general election. The report is required to be electronically filed no later than **three (3) calendar days** prior to the applicable election. If your committee did not receive or make any late contributions, you do not have to submit these reports.

The report requires the following information:

- Name, address, occupation, and employer of the contributor;
- Name of the candidate, candidate committee, or noncandidate committee making or receiving the contribution;
- Amount of the contribution received;
- Amount of the contribution made;
- The contributor's aggregate contribution to the candidate, candidate committee, or noncandidate committee; and
- The purpose (if any) to which the contribution will be applied, including for contributions to a noncandidate committee, the name of any candidate supported, opposed, or clearly identified.

Late contributions will also be automatically reported on the applicable disclosure reports.

### **Independent Expenditure Committees to Disclose Additional Information on Late Contributions Reports**

Independent Expenditure Committees that receive more than \$5,000 in the aggregate from a single entity other than an individual, for-profit business entity, or labor union, shall in addition to the information required above, include on their Late Contributions Report:

- The internet address where the contributing entity's disclosure report can be publicly accessed, if the source of the contributing entity's funds is subject to any state or federal disclosure reporting requirements;
- The name, address, occupation, and employer of each funding source who contributed an aggregate amount of more than \$100 to the contributing entity; or
- An acknowledgment that the contributing entity is not subject to any state or federal disclosure reporting requirements regarding the source of its funds.

### **Late Expenditures Report**

The Late Expenditures Report is a special report which must be electronically filed by noncandidate committees registered as Independent Expenditure Committees or for committees making independent expenditures aggregating more than \$500 within the period of fourteen (14) calendar days through four (4) calendar days prior to a primary, special primary, general, or special general election. The report is required to be electronically filed no later than **three (3) calendar days** prior to the applicable election. If your committee did not make any late expenditures, you do not have to submit these reports.

The report requires the following information:

- The amount of the expenditure;
- The date of the expenditure;
- The vendor's name, address, and contact information; and
- The purpose, including the name of any candidate supported, opposed, or clearly identified by the expenditure.

Late expenditures will also be automatically reported on the applicable disclosure reports.

### **Filing Confirmation**

When a disclosure report is filed on the NCFS, a "Filing Confirmation" page will appear on your screen. You may print this page as a receipt. This page confirms that the report has been filed. It is strongly advised that you double-check that your report is properly filed by going to the Commission's website and under "Noncandidate Committees," click on "View Reports & Fundraiser Notices," then click on "Noncandidate Committee Contribution and Expenditure Reports and Organizational Reports," then "Standard Report," and type in the committee's name and click "Search." When the noncandidate committee's name comes up, click on the name of the noncandidate committee to confirm that the report is there. Neither the acknowledgment nor the receipt of the report constitutes expressed or implied approval, or in any manner indicates that the contents of the report fulfill the requirements of the campaign finance laws and rules.

### **Filing Amendments**

The noncandidate committee must electronically file an amended report if the noncandidate committee:

- Discovers that an earlier report inadvertently contains inaccurate information which does not conflict with the chairperson's and treasurer's certification that the original report filing was true, complete, and accurate; or
- Is ordered to amend the report by the Commission.

### **Fines for Failing to Timely File a Report**

Noncandidate committees that fail to file by a reporting deadline are assessed a \$50 fine per day for the first seven (7) days, then \$200 per day thereafter, except for the Preliminary Primary Report and the 2<sup>nd</sup> Preliminary General Report, for which the fines are \$300 per day; provided that the fine shall not exceed 25% of the total amount of contributions or expenditures, whichever is greater, for the period covered by the report. The minimum fine for a report filed more than four (4) days after the due date, if assessed, shall be \$200. The minimum fine for the Preliminary Primary Report and the 2<sup>nd</sup> Preliminary General Report, if assessed, shall be \$300. To be timely filed, reports must be electronically filed on or before **11:59 p.m. Hawaiian standard time** on the day the report is due.

## **Public Inspection and Copies of Reports**

All reports filed with the Commission are available for public inspection on the NCFS public website at <https://csc.hawaii.gov/NCFSpublic> or the Commission's website under "Noncandidate Committees," click on "View Reports & Fundraiser Notices" and then click on "Noncandidate Committee Contribution and Expenditure Reports and Organizational Reports" and "Standard Report." Enter the noncandidate committee's name in the Search Box. When the noncandidate committee's name comes up, click on the noncandidate committee's name for a list of reports filed. Copies of reports may be downloaded from the NCFS public website at no charge. Alternatively, copies may be purchased for a fee by visiting the Commission's office or making a request via telephone, fax, or mail. For inquiries regarding manually filed reports for the 2006 elections, please call the Commission at (808) 586-0285. All noncandidate committees were required to electronically file reports starting with the 2008 election.

## **Restrictions**

The law prohibits anyone from selling or using information in reports for the purpose of soliciting contributions or for any commercial purpose.

## **V. REPORTING CONTRIBUTIONS – SCHEDULES A & B1**

There are two (2) Schedules in this category: (1) Schedule A – Contributions Received; and (2) Schedule B1 – Contributions to Candidates. Schedule B1 is not applicable to ballot issue committees and independent expenditure committees because these committees are prohibited from contributing to candidates and candidate committees.

## **Contributions Defined**

A contribution is anything of value given to influence the nomination for election, or election of any candidate to office, or for or against any issue on the ballot and includes the following:

- A gift;
- Subscription;
- Deposit of money or anything of value including personal services;
- Cancellation of a debt or legal obligation;
- Purchase of tickets to fundraisers;
- Payment of services rendered to the noncandidate committee without charge (i.e., in-kind contributions) or at an unreasonably low charge; and
- A contract, promise, or agreement to make a contribution.

All contributions received should be entered on "Schedule A – Contributions Received" except for contributions made to candidates which should be entered on "Schedule B1 – Contributions to Candidates." The NCFS will aggregate all contributions for you.

A contribution does not include:

- Volunteer services; and
- Unpaid internet activities for the purpose of influencing an election.

### **Monetary Contributions**

A monetary contribution may be made to a noncandidate committee or to a candidate committee (unless you are a ballot issue committee or an Independent Expenditure Committee) by check, debit card, credit card, or cash. Cash contributions of more than \$100 shall not be accepted by the noncandidate committee without issuing a receipt to the contributor.

For each contribution, the noncandidate committee must report the following on Schedule A:

- Date of deposit (the date a monetary contribution is deposited is deemed to be the date the contribution is received);
- Contributor's full name and address;
- Contributor's employer and occupation (if the contribution aggregates more than \$100 during the election period);
- Contribution amount for the reporting period; and
- Aggregate contribution amount for the election period.

### **Non-Monetary Contributions**

Non-monetary contributions are donations of goods and services offered without charge or at a charge that is less than the usual and normal charge for the goods and services.

If the goods and services are provided at less than the usual and normal charge, the amount of the non-monetary contribution which must be reported on the disclosure report is the difference between the usual and normal charge for the goods or services at the time of the contribution and the amount paid by the committee. Moreover, non-monetary contributions are aggregated with monetary contributions for contribution limit purposes.

All non-monetary contributions valued at more than \$100 shall be reported in the same manner as monetary contributions on "Schedule A – Contributions Received" and "Schedule B1 – Contributions to Candidates" (only if it is a non-monetary contribution to a candidate).

- If a non-monetary contribution is received (i.e., Schedule A), an identical off-setting expenditure on "Schedule B2 – Expenditures Made" must be entered into the NCFs to avoid inflating the amount of the cash on hand.
- If a non-monetary contribution is made to a candidate (i.e., Schedule B1) and was purchased by the noncandidate committee, an off-setting expenditure on "Schedule B2 – Expenditures Made" must be entered under the vendor's name. Additionally, the noncandidate committee must enter an identical off-setting entry



in “Schedule C – Other Receipts” under the noncandidate committee’s name so that the cash-on-hand balance does not have a double deficit entry.

### **Volunteers**

When services are volunteered (i.e., the volunteer is not paid for by any person), this is not a non-monetary contribution.

However, if a person other than the noncandidate committee pays volunteers for their services, the activity is no longer considered voluntary and the payments are non-monetary contributions to the noncandidate committee from the person paying the volunteers.

### **Contribution Limits (i.e., how much a noncandidate committee can receive)**

#### **Contributions to a Noncandidate Committee → \$1,000**

A person may contribute an aggregate amount of \$1,000 per election (i.e., \$1,000 for the primary and \$1,000 for the general) to a noncandidate committee.

#### **Contributions to an Independent Expenditure Committee → Unlimited amount**

These are noncandidate committees that have registered and certified with the Commission that they will only be making independent expenditures. “Independent expenditures” means an expenditure expressly advocating the election or defeat of a clearly identified candidate that is not made in concert or cooperation with or at the suggestion of the candidate, the candidate committee, a party, or their agents.

As a result of a federal lawsuit entitled Yamada, et al v. Shoda, et al., which is accessible on our website at [www.hawaii.gov/campaign](http://www.hawaii.gov/campaign) (on the Home page, under “Legal Resources,” click on “Court Decisions”), the Commission is enjoined from enforcing the \$1,000 contribution limit as provided above and in HRS §11-358 against these Independent Expenditure Committees. Therefore, there is no limit on contributions to noncandidate committees making solely independent expenditures.

Notably, if an Independent Expenditure Committee receives a contribution of more than \$10,000 in the aggregate within an election period from an entity other than an individual, for-profit business entity, or labor union, the committee must disclose on their report:

- The internet address where the contributing entity’s disclosure report can be publicly accessed, if the source of the contributor’s funds is subject to any state or federal disclosure reporting requirements;
- The name, address, occupation, and employer of each funding source who contributed an aggregate amount of more than \$100 to the contributing entity; or
- An acknowledgment that the contributing entity is not subject to any state or federal disclosure reporting requirements regarding the source of its funds.

### Contributions to a Ballot Issue Committee → Unlimited amount

A ballot issue committee is a type of noncandidate committee that has the exclusive purpose of making or receiving contributions, making expenditures, or incurring financial obligations for or against any question or issue appearing on the ballot at the next applicable election. Ballot issue committees cannot make contributions to candidates and candidate committees. There is no limit on contributions to ballot issue committees.

### Contributions to a Political Party → \$25,000

No person or entity shall make contributions to a political party in an aggregate amount greater than \$25,000 in any two-year election period. No political committee established and maintained by a national political party (i.e., the National Committee, the House Campaign Committee, and the Senate Committee) shall make contributions to a political party in an aggregate amount greater than \$50,000 in any two-year election period.

### **Contribution Limits (i.e., how much a noncandidate committee can contribute)**

#### Contributions from a Noncandidate Committee to a Noncandidate Committee

It will depend on whether the contribution is to a standard noncandidate committee or one of three other types of noncandidate committees:

- To a standard noncandidate committee → \$1,000 in an election (i.e., \$1,000 for the primary and \$1,000 for the general)
- To an Independent Expenditure Committee → Unlimited amount
- To a ballot issue committee → Unlimited amount
- To a political party → \$25,000 in any two-year election period

#### Contributions from a Noncandidate Committee to a Candidate Committee

It will depend on what office the candidate is seeking. The following is a list of offices and their respective contribution limits during an election period:

- 2-year office (i.e., State House of Representatives, County Council (Hawaii, Maui, Kauai)) → \$2,000
- 4-year non-statewide office (i.e., State Senate, Mayor, Prosecuting Attorney, Honolulu City Council) → \$4,000
- 4-year statewide office (i.e., Governor, Lt. Governor, Office of Hawaiian Affairs) → \$6,000

Noncandidate committees shall not make contributions to candidates in excess of these limits. Of course, contributions to candidate committees are prohibited by Independent Expenditure Committees and ballot issue committees.

“Election period” means the two-year period between general election days if a candidate is seeking nomination or election to a two-year office and the four-year period between general election days if a candidate is seeking nomination or election to a four-year office. For example, for a two-year office in the 2016 election, the election period is November 5, 2014 (i.e., the day after the general election day in a preceding election) through the day of the next general election which is November 8, 2016. For a four-year office in the 2016 election, the election period is November 7, 2012 (i.e., the day after the general election day in a preceding election) through November 8, 2016.

### **Spouse and Dependent Minor Contributions (Non-Immediate Family Contributions)**

A husband and wife are treated as separate persons for contribution limit purposes. A person may not make a contribution on behalf of a spouse or any other individual. Any contribution by check will be attributed to the spouse that signs the check.

A contribution by a dependent minor must be reported in the name of the minor but is counted against the contribution limit of the minor’s parent or guardian. Therefore, you must obtain the parent’s name and enter it into the NCFCS if a contribution is received by a dependent minor.

### **Contributions to be Promptly Deposited; Acknowledgment**

The date a contribution is deposited into a financial institution is the date used for reporting that contribution. A contribution must be deposited no later than **seven (7) days** after a noncandidate committee or any individual authorized to receive contributions on behalf of the noncandidate committee has received the contribution.

Contributions may not be spent without first being deposited into a financial institution.

Failure to timely deposit a contribution is a violation of the campaign finance laws and may result in an administrative fine. Therefore, the Commission recommends that the noncandidate committee devise a workable method to ensure that contributions are deposited in a timely manner.

### **Itemize Contributions**

Monetary and non-monetary contributions of \$100 or less are not itemized on Schedule A. Only an aggregate total for the reporting period is reported on the disclosure report. However, once a contributor contributes an aggregate of more than \$100 for the election period, the contribution will be itemized on Schedule A.

For example, a contributor makes two (2) contributions to a noncandidate committee during the same election period. The contributor contributes \$50 during the first month of the election period. Because the contribution does not exceed \$100, the contribution will not be itemized. Instead, the \$50 is reported in the aggregate total of contributions of \$100 or less. Subsequently, the same contributor makes an additional contribution of \$100 during the same election period. This contribution will be itemized, since the aggregate total of \$150 for the election period now exceeds the \$100 threshold.

Therefore, we strongly recommend that all contributions be entered on Schedule A, regardless of whether the amounts are \$100 or less, because the NCFS will aggregate all contributions for you. Additionally, even though you enter all contributions into Schedule A, only those contributions that aggregate more than \$100 will show on the public site.

### **Earmarked Contributions**

An earmarked contribution is a contribution received by a committee or party on the condition that the funds be contributed or expended on certain candidates. When a party collects and transmits earmarked contributions to a candidate, the amount of the earmarked contribution is counted toward the contribution limit of the party and the person contributing such funds.

### **Fundraisers**

A noncandidate committee may have any number of fundraisers. A fundraiser “means any function held for the benefit of a noncandidate committee that is intended or designed, directly or indirectly, to raise contributions for which the price or suggested contribution for attending the function is more than \$25 per person.”

A “Notice of Intent to Hold a Fundraiser” must be filed with the Commission **prior to** the date of the fundraiser if the cost of the ticket is more than \$25 per person (i.e., \$26 or more). This form is available on our website under “Noncandidate Committees,” click on “Forms.”

**If this form is faxed to our office on the same day the event is scheduled, we must receive it prior to the time the fundraiser begins and before our office closes for the day. Failure to comply with this statutory requirement will result in a fine. Fundraisers held on Saturday, Sunday, or State Holiday must be faxed to our office before 4:30 p.m. on the last business day prior to the Saturday, Sunday, or State Holiday.**

The entire amount paid to attend a political fundraiser or to purchase a fundraiser ticket is a contribution. For example, if a contributor pays \$100 to buy a fundraiser ticket to a noncandidate committee’s golf tournament, the contributor has made a \$100 contribution to the noncandidate committee, even though the golf fees may have cost the noncandidate committee \$35.

Fundraising in government facilities is prohibited unless you pay a fee or have a reservation and the facility has no rules prohibiting it. Violation of the prohibition of fundraising on state or county property is a misdemeanor offense.

### **Prohibited Contributions**

There are five (5) categories of prohibited contributions which are considered violations of the campaign finance laws. They are:

**1 – Excess Contributions** – An excess contribution is a contribution that exceeds the contribution limit (i.e., how much a noncandidate committee can receive) (see Part V). If an excess contribution is returned within seven (7) days of receipt, the excess

contribution is not required to be reported. If an excess contribution is returned within thirty (30) days of receipt, the excess contribution must be reported to the Commission, but will not escheat to the Hawaii Election Campaign Fund. The excess contributor may be subject to an administrative fine. Lastly, if the excess contribution is not returned after thirty (30) days of receipt, the excess contribution must be reported to the Commission and will escheat to the Hawaii Election Campaign Fund. The excess contributor may be subject to an administrative fine.

Of course, this prohibition does not apply to Independent Expenditure Committees and ballot issue committees because there are no contribution limits to these committees.

2 – False Name Contributions – A false name contribution is a contribution made in the name of another person. Contributions to noncandidate committees must be from a person’s own money and reported in the name of the same person. A contribution by a person that is reimbursed or in any way compensated by another person (e.g., given a bonus) for that contribution is prohibited. All contributions made in the name of a person other than the owner of the funds shall escheat to the Hawaii Election Campaign Fund.

3 – Anonymous Contributions – No noncandidate committee shall knowingly receive, accept, or retain an anonymous contribution of any amount, or enter or cause such contribution to be entered in the noncandidate committee’s account as an anonymous contribution. If a noncandidate committee receives an anonymous contribution and the contributor cannot be identified, the contribution shall escheat to the Hawaii Election Campaign Fund.

Noncandidate committees may retain anonymous contributions that aggregate less than \$100<sup>5</sup> when obtained through multiple contributions made by ten (10) or more persons at the same political function (e.g., calabash bowls). Detailed records must be retained of the political function. It is strongly advised that someone should be there to keep a record on how many people contributed. Report the contributions as one lump sum using the deposit date for the contributions, the name of the function, and the address of where the function was held.

4 – Foreign National Contributions – No contributions or expenditures shall be made to or on behalf of a noncandidate committee by a foreign national or foreign corporation. A domestic subsidiary of a foreign corporation, a domestic corporation that is owned by a foreign national, or a local subsidiary where financial control is retained by the foreign corporation, may not make contributions or expenditures.

An individual is eligible to make a contribution if the individual has a “green card” indicating that he or she has been lawfully admitted for permanent residence and the source of the funds are generated locally.

A foreign-owned domestic corporation may make contributions if the funds for the contributions are domestically-derived and foreign national individuals do not participate in the decisions concerning the contributions.

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<sup>5</sup> Effective January 1, 2016, Act 78, Session Laws of Hawaii 2015, amended HRS §11-353(d) relating to anonymous calabash bowl contributions by lowering the aggregate amount received from ten (10) or more persons at the same political function from less than \$500 to less than \$100.

5 – State and County Contractor Contributions – Persons with certain contracts with the state, any of its counties, or any department or agency thereof, are prohibited from making contributions between execution and completion of the contract. These are contracts where funds are appropriated by the legislature for the purchase or sale of state or county property; the rendition of personal services in the fields of health, law, engineering, architecture, construction, accounting, actuarial science, performing arts, or consulting; and the furnishing of materials, supplies, or equipment. The prohibition is against the person whose name is on the government contract and does not apply to personal contributions from personal assets by employees, partners, shareholders, or officers of the business with the government contract. Individuals and sole proprietors who are state or county contractors may make contributions.

### **Refunds and Returned Contribution Checks**

Contribution Refunds – When a noncandidate committee refunds a contribution, the noncandidate committee must report the refund on Schedule B2 as an expenditure.

Contribution Check with Insufficient Funds – If a noncandidate committee receives a contribution check and the check cannot be cashed due to insufficient funds, the contributor's check should be returned with a letter. If the contribution has not yet been reported, an amended disclosure report does not have to be filed. If, however, the contribution has been reported and the report has been electronically filed on the NCFS, the noncandidate committee should file an amended disclosure report for the period that the contribution was originally reported in and subtract the amount of the contribution by entering a negative sign (-\$) in front of the contribution amount and refile the report in amend mode. Any reports that were filed after this amended report will also have to be refiled in amend mode due to the decrease in the committee's cash on hand.

## **VI. REPORTING EXPENDITURES – SCHEDULE B2**

### **Expenditure Guidelines**

The following guidelines are provided here for reference purposes only. Noncandidate committees should consult with the Commission for any expenditure that may be of a questionable nature.

### **Expenditures Defined**

An expenditure, when made or incurred for the purpose of influencing the nomination for election, or election of any candidate to office whether or not the candidate has filed nomination papers or for the purpose of influencing the outcome of any question or issue on the ballot, includes the following:

- Any purchase or transfer of money or anything of value;
- A promise or agreement to purchase or transfer money or anything of value;
- Any payment incurred or made; and
- The use or consumption of a non-monetary contribution.

Examples of appropriate expenditures include:

- Contributions to candidate committees, other noncandidate committees (including ballot issue committees, independent expenditure committees, and political parties)
- Advertisements
- Employee services
- Durable assets (e.g., cell phone, computer, printer, camera)
- Food and entertainment at a fundraiser
- Office supplies
- Postage and mailing
- Printing
- Surveys, polls, and voter lists

An expenditure is made or incurred when the services are rendered or the product is delivered.

All expenditures are reported on Schedule B2 regardless of the amount. For each expenditure, the noncandidate committee must report the following on Schedule B2:

- Date of the expenditure;
- Vendor's full name and address;
- Purpose of the expenditure (a brief description of why the expenditure was made). An Independent Expenditure Committee that makes an independent expenditure must include the name of the candidate who is supported or opposed by the expenditure, and whether the expenditure supports or opposes the candidate; and
- Amount of the expenditure.

Noncandidate committees must itemize all expenditures to consultants, advertising agencies and similar firms, credit card payments, salaries, and noncandidate committee reimbursements to permit a reasonable person to determine the ultimate intended recipient of the expenditures and their purpose. Expenditures reported under vague purposes or consolidated into categories such as petty cash, VISA, Master Card, reimbursement to employee, or ad agency, will not meet the requirements of the campaign finance laws.

**Independent Expenditure Committees or Committees Making Independent Expenditures must also complete the following steps:**

- Check the Independent Expenditure box;
- Provide the name(s) of the candidate(s) supported or opposed by the independent expenditure;
- Choose whether the independent expenditure supports or opposes the candidate(s); and
- Certify that no expenditures have been coordinated with a candidate, candidate committee, or any agent of a candidate or candidate committee.

NOTE: A noncandidate committee that makes a contribution to a political party or to another registered noncandidate committee should report the contribution on Schedule B2.

An expenditure does not include:

- Volunteer services;
- Nonpartisan voter registration efforts; and
- Unpaid internet activities for the purpose of influencing an election.

### **Advertising**

Advertising is a common way campaign funds are expended. An advertisement means any communication, excluding sundry items such as bumper stickers, pins, buttons, and similar small items, that:

- Identifies a candidate directly or by implication;
- Identifies an issue or question that will appear on the ballot at the next applicable election;
- Advocates or supports the nomination, opposition, or election of the candidate; or
- Advocates the passage or defeat of an issue or question on the ballot.

If you place an advertisement for or against a campaign, it must include a disclaimer that states:

- Who paid for the advertisement (i.e., “paid for by”) including the name and address of the noncandidate committee paying for the advertisement; and
- Notice in a prominent location that the advertisement is published, broadcast, televised, or circulated either “with the approval and authority of the candidate,” or “without the approval and authority of the candidate.”

NOTE: Radio advertisements must also provide the above disclaimer in audio.

The penalty for not complying with the requirements above is a fine not to exceed \$25 for each advertisement that lacks the required disclaimer and no more than \$5,000 in the aggregate.

### **Advertisement Disclosure for Independent Expenditure Committees**

Effective November 5, 2014, Independent Expenditure Committees must disclose their top three contributors in campaign advertisements.

Advertisements paid for by Independent Expenditure Committees must include the following disclaimer:

- Who paid for the advertisement (i.e., “paid for by”) including the name and address of the noncandidate committee paying for the advertisement;



- A notice in a prominent location that the advertisement is published, broadcast, televised, or circulated “without the approval and authority of the candidate;” and
- The identification of the top three contributors to the noncandidate committee for the purpose of funding the advertisement.

“Top contributor” means a contributor who has contributed an aggregate amount of \$10,000 or more to a noncandidate committee within a twelve-month period prior to the purchase of an advertisement.

The notice shall start with the following language: “The three top contributors are,” followed by the names of the three top contributors;

However, if only two top contributors can be identified, the notice shall start with the following language: “The two top contributors are,” followed by the names of the two top contributors;

But, if only one top contributor can be identified, the notice shall start with the following language: “The top contributor is,” followed by the name of the contributor.

If unable to identify any contributor(s) who funded the advertisement, the notice shall start with the following language: “The three top contributors for this noncandidate committee are,” followed by the names of the three top contributors who made the highest aggregate contributions to the noncandidate committee.

If there are no top contributors to the noncandidate committee, the noncandidate committee shall not be subject to this notification.

If the advertisement is broadcast by radio or television, the inclusion of listing the top contributors shall not apply if it would constitute a “hardship” as defined by the Commission’s administrative rules (see Hawaii Administrative Rules, Chapter 3-160).

## **VII. REPORTING OTHER RECEIPTS – SCHEDULE C**

Noncandidate committees must report all “Other Receipts” that were received during the applicable reporting period on Schedule C. Example of Other Receipts includes:

- Interest earned on the committee’s bank account; and
- Returns (by vendors), refunds, rebates.<sup>6</sup>

Other Receipts are reported on Schedule C regardless of the amount. Schedule C contains the following information:

- Date of deposit;
- Source’s full name and address;

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<sup>6</sup> Rebates must be offered in the ordinary course of business and on the same terms and conditions as those offered to nonpolitical entities. Otherwise, they must be reported as contributions.

- Description of the other receipt; and
- Amount of the other receipt.

### **VIII. REPORTING UNPAID EXPENDITURES – SCHEDULE D**

Expenditures are made or incurred when services are rendered or the product is delivered. Expenditures, which are made or incurred, but not paid, are considered unpaid expenditures.

Schedule D contains the following information:

- Date of the unpaid expenditure;
- Vendor’s full name and address;
- Purpose of the expenditure; and
- Amount of the unpaid expenditure.

Unpaid expenditures are reported regardless of the amount. Unpaid expenditures must be reported until payment is made in full or the debt is forgiven. Forgiven debts are considered non-monetary contributions subject to the noncandidate committee’s contribution limit. For each unpaid expenditure forgiven, you must enter an identical off-setting contribution for the same amount on “Schedule A – Contributions Received” under the vendor’s name.

When the unpaid expenditure is paid, it is noted on Schedule D by checking the box “Expenditure pay off?” **Unpaid expenditures and paid unpaid expenditures are reported on Schedule D and never on Schedule B2.**

### **IX. REPORTING DURABLE ASSETS – SCHEDULE E**

Durable assets are supplies and equipment purchased by the noncandidate committee with a purchase value of at least \$250 and a useful life of twelve (12) months or more. Durable assets include a cell phone, computer equipment, digital camera, printer, automobile, television, refrigerator or other similar goods to be used while the noncandidate committee is registered with the Commission.

The expenditure of funds for durable assets must be reported on both “Schedule B2 – Expenditures Made” and “Schedule E – Durable Assets.” The sale or disposition of durable assets is also reported on Schedule E. If funds were obtained from the sale of a durable asset, the funds must be reported on “Schedule C – Other Receipts.”

Schedule E is used to report and track durable assets. Schedule E contains the following information:

- Date durable asset was acquired;
- Vendor’s/Contributor’s full name and address;
- Description of the durable asset; and
- Cost/value of the durable asset.

Durable assets are automatically reported on Schedule E after the initial filing until the assets are sold or donated. The sale or donation is reported as follows:

- Date the durable asset was disposed;
- Method of disposition;
- Name of the person or entity receiving the durable asset; and
- Disposition amount.

## **X. SURPLUS FUNDS AND DISPOSITION OF FUNDS**

### **Surplus Funds**

Noncandidate committees must continue filing reports with the Commission until all surplus funds have been lawfully disbursed.

### **Disposition of Funds**

Noncandidate committees with a surplus may return the contributions to contributors during the next election period.

**Noncandidate committees with unpaid expenditures must continue filing reports with the Commission until the deficit has been cleared.**

## **XI. TERMINATING REGISTRATION WITH THE COMMISSION**

Termination of a noncandidate committee's registration with the Commission should be considered if:

- The committee will not be making or receiving any contributions or making any expenditures reportable to the Commission;
- The balance of the committee's fund is zero (no surplus); and
- There are no unpaid expenditures to be paid (no deficit).

The termination process begins by completing and mailing the "Noncandidate Committee Request for Termination of Registration" form. The form is available on the Commission's website under "Noncandidate Committees," click on "Forms." A closing bank statement must accompany the termination of registration form to verify that all relevant bank accounts have been closed. If there are durable assets, the noncandidate committee must sell or otherwise dispose of the assets as permitted by law and report that on "Schedule E – Durable Assets" on the NCFs.

The filing of the termination form is only a request to terminate registration with the Commission. Termination of the committee occurs only upon approval by the Commission and after all fines and penalties, if any, are paid, and all reports have been filed. Once the Commission approves a request for termination, the noncandidate committee will no longer be required to file disclosure reports.

## **Ballot Issue Committee Termination**

Within **ninety (90) days** after the election for which the question or issue appeared on the ballot, ballot issue committees must terminate their registration by completing and mailing the termination of registration form and enclosing a closing bank statement.

If the ballot issue committee has surplus funds, it must return the funds to the contributors or donate the funds to a community service, educational, youth, recreational, charitable, scientific, or literary organizations. Surplus funds not returned or donated will escheat to the Hawaii Election Campaign Fund.

## **XII. AUDIT AND ENFORCEMENT**

The law authorizes random audits and investigations of committees.

The Commission also has enforcement authority. The Commission may issue an order affecting any person violating any laws in the Hawaii Revised Statutes, Part XIII, Campaign Finance, and may assess an administrative fine up to \$1,000 for each violation of the campaign finance law, in addition to more specific fines for the late filing of disclosure reports. The Commission's authority to assess administrative fines is set forth in HRS §§11-314, 11-340, 11-409, and 11-410.

Any person who recklessly, knowingly, or intentionally violates any provision of the campaign finance laws shall be guilty of a misdemeanor.

Any person who knowingly or intentionally falsifies any report required by the campaign finance laws with the intent to circumvent the law or deceive the Commission or who violates the anonymous contribution prohibition or false name contribution prohibition shall be guilty of a class C felony and is not eligible for a deferred acceptance of guilty or nolo contendere plea.

The Commission strongly advises committees to become familiar with the campaign finance laws and rules, file all reports, be aware of all areas in this Guidebook that have a time sensitive deadline, respond to requests or communication from the Commission, and contact the Commission if you have any questions to avoid enforcement actions against you.

## **XIII. TRAINING**

The Commission is registered with the Hawaii State Board of Accountancy as a sponsor of continuing professional education.

One (1) credit for each hour of class time is given. The following classes are sponsored and offered by the Commission:

- Candidate and Candidate Committees – 2 hour class for 2 credits;
- Public Financing for Candidates – 1 hour class for 1 credit; and
- Noncandidate Committees – 1 hour class for 1 credit.

Training classes are generally scheduled in November in a non-election year, and February and July in an election year. Please check our website for class announcements and registration.