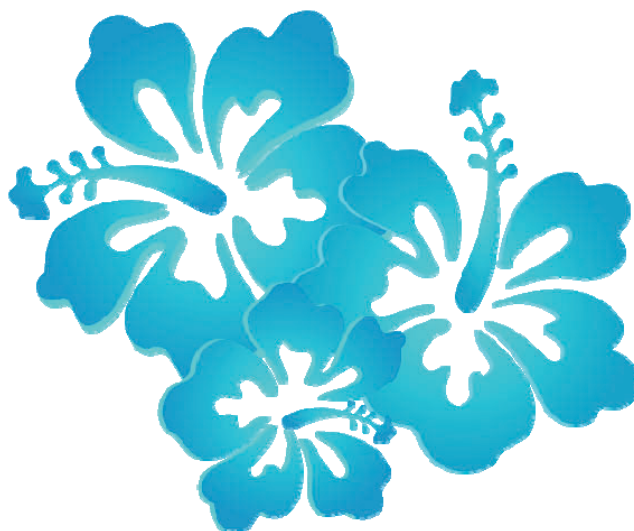


GUIDEBOOK FOR NONCANDIDATE COMMITTEES



*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 law. 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 noncandidate 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 law and rules¹. 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 <http://www.hawaii.gov/campaign>.

For Assistance

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

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.

¹ The law 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.

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.

- **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, and Libertarian Party of Hawaii).
- **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.
- **Independent Expenditure Committee** - Means a noncandidate committee that has registered and certified to the Commission that it will only make 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 discussed 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 \$500, in the aggregate, in a two-year election period;
or

- Within **two (2) days** of receiving contributions or making expenditures of more than \$500, 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. Failure to do so will result in your committee being subject to an administrative fine as well as publishing your committee's name on the Commission's website if the report is not filed or corrected within two (2) weeks after the Commission provides a notice to correct.

Electronic Filing Form

The registration process begins by completing the "Noncandidate Committee Electronic Filing Form" which is available on the Commission's website under "Noncandidate Committees" and under "Forms" or go to <http://ags.hawaii.gov/campaign/nc/nc-forms-2/>. The form can then be submitted by eSign or by completing, printing, and signing a Writable/Printable PDF.

- An eSign form is submitted by email. The chairperson and treasurer will complete their individual eSign form if one person is not serving as both. Each user will confirm their identity through an email authentication process which will send the completed eSign form to the Commission.
- For Writable/Printable PDFs, the chairperson and treasurer must complete, print, sign, and fax, mail or deliver the form to the Commission's office.

The chairperson and treasurer must disclose whether or not the noncandidate committee is:

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

By signing this form, the chairperson and treasurer acknowledge and certify that the information on all reports electronically filed are true, complete, and accurate. This form also represents written acceptance of appointment for the chairperson and treasurer. The Commission will email a username and password to access the NCFS to the email address provided on the completed form.

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." Log in by entering the Administrator username and password that were emailed to you.

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 are 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 officers of 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 eSign or 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.

- Treasurer and Deputy Treasurer
The noncandidate committee must appoint at least one (1) 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 eSign or 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 treasurer and deputy treasurer are authorized to receive contributions and make expenditures on behalf of the noncandidate committee. Typically, these are the authorized people on the campaign bank's signature card. 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. Once a successor

is appointed, an amended “Noncandidate Committee Electronic Filing Form” must be submitted to the Commission 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 successor treasurer.

- 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 opened at a financial institution, 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 in the name of the noncandidate committee.

Failure to comply with Organizational Report requirements will result in your committee being subject to a minimum administrative fine of \$1,000 per violation.

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) or the eSign 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 NCFS. 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 (10th) calendar day** after the change is brought to the attention of the committee chairperson or treasurer. Failure to do so will result in your committee being subject to an administrative fine as well as publishing your committee’s name on the Commission’s website if the report is not filed or corrected within two (2) weeks after the Commission provides a notice to correct.

III. KEEPING RECORDS

Complete records of contributions and expenditures must be maintained for at least **five (5) years** after the filing of a report 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. The Commission recommends the establishment and maintenance of itemized records of all contributions 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 \$100:²

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

All contributions must be deposited into the committee’s designated depository institution within seven (7) days after it is received. The date a contribution is deposited is deemed to be the date the contribution is received for purposes of reporting. A non-monetary contribution shall be reported at the contribution’s reasonable market value on the date received.

Recording Contributions to Candidates³

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).⁴

² 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.

³ 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.

Recording Expenditures

Noncandidate committees must itemize all expenditures to consultants, advertising agencies and similar firms, credit card payments, and salaries to permit a reasonable person to determine the ultimate intended recipient of the expenditures and their purpose. The use of debit cards must be strictly monitored to prevent the misuse of campaign funds and to ensure that all purchases made via the committee's debit card are timely and accurately reported on the committee's disclosure reports as expenditures. Only treasurers and deputy treasurers can make expenditures of committee's funds.

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.

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 law. 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 rendered to the noncandidate committee. Financial institutions, 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 law.

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 to report money raised or spent to influence an election. The U.S. Supreme Court has stated that voters should know who elected officials' and candidates' contributors are in order to understand who may have an influence on their decisions and which special interests they may support.⁵ Transparency and disclosure of contributions and expenditures are therefore critical to informed voting, the integrity of the electoral process, and to deter actual corruption or the appearance of corruption.

⁴ See "Section V. Reporting Contributions – Schedule A & B1" and refer to "Contributions from a Noncandidate Committee to a Candidate Committee" in this Guidebook.

⁵ See, Buckley v. Valeo, 429 U.S. 1, 67, 96 S.Ct. 612, 658 (1976).

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 enforcement in court.

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, donations received,⁶ contributions made to candidates, expenditures made, other receipts, unpaid expenditures made, and durable assets acquired for the applicable reporting period. Each of these areas has its own schedule and must be electronically filed for each report.

- Schedule A Contributions Received;
- Schedule A2 Donations 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 what period it covers (e.g., Supplemental Report, Preliminary Primary Report, Final Primary Report, 1st Preliminary General Report, 2nd Preliminary General Report, Final Election Period Report), they all require you to complete the schedules mentioned above for any 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 that reporting period.

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

⁶ If the noncandidate committee is an IRS 501(c)(4) tax-exempt organization.

Non-Election Year Reporting

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

Two (2) Supplemental Reports must be filed in nonelection years. 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.

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

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,” then select “Reporting Deadlines” or go to <http://ags.hawaii.gov/campaign/nc-reporting-schedules/>. 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.

Reporting for Noncandidate Committees with Aggregate Contributions and Expenditures of \$1,000 or Less.

By the fifth calendar day before the due date of the preliminary primary report (i.e., July 26, 2024 for the 2024 election), a noncandidate committee that does not plan to receive aggregate contributions and make aggregate expenditures of more than \$1,000 for the election period must notify the Commission by checking the appropriate box in the noncandidate committee’s Organizational Report. A noncandidate committee whose aggregate contributions and expenditures for the election period total \$1,000 or less, need only electronically file the Final Election Period Report which is due thirty (30) days after a general election.

Notably, if the noncandidate committee exceeds the \$1,000 threshold at any time during the election period, the noncandidate committee must file the next required report (i.e., preliminary, final, or special election report) and disclose all activity from the beginning of the election year through the reporting period in which the threshold was exceeded. All subsequent reports must be filed thereafter until the noncandidate committee terminates their committee’s registration with the Commission or enters a subsequent election year in which the noncandidate committee does not plan to receive contributions or make expenditures of more than \$1,000 for that election period.

Late Contributions Report – This report is listed in the NCFS as a Late Contributions/Expenditures 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, who is on the ballot, that aggregate 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 receive or make any late contributions, you do not have to file this report.

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 contributions 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 subsequent final disclosure reports.

Independent Expenditure Committees to Disclose Additional Information on Late Contributions Reports

In addition to the information required above, Independent Expenditure Committees that receive a late contribution greater than \$5,000 in the aggregate from an entity other than an individual, for-profit business entity, or labor union, shall 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 - This report is listed in the NCFS as a Late Contributions/Expenditures Report

The Late Expenditures Report is a special report which must be electronically filed by noncandidate 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 file this report.

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 subsequent final 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 clicking on the "Noncandidate Committee Filing System Public Site, click "View Reports," then 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 law and rules.

Filing Amendments

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

- Is instructed or ordered by the Commission to amend the report; or
- Discovers that an earlier report contains erroneous information
 - Which does not conflict with the chairperson's and treasurer's certification that the original report filing was true, complete, and accurate at the time of filing (e.g., correcting typos or errors in names/addresses of contributors or vendors); or

- Conflicts with the chairperson's and treasurer's certification that the original report filing was true, complete, and accurate; if so, this will likely be fined by the Commission (e.g., failing to report contributions or expenditures).

If discovered by the Commission, the Commission will inform you if your disclosure report is substantially defective or deficient. By law, the corrections must be electronically filed on or before the **14th day** after the notice of deficiency has been mailed to the noncandidate committee. A fine of \$50 for the first seven (7) days begins on the 15th day after the notice was mailed, and \$200 per day thereafter; 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 not filing a corrected report more than eighteen (18) days after the notice, if assessed, shall be \$200.

The names of noncandidate committees that fail to timely correct a report are published on the Commission's website.

Fines for Failing to Timely File a Report

Noncandidate committees that fail to file a report 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 2nd 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 2nd 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.

The names of noncandidate committees that fail to timely file a report are published on the Commission's website.

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 "Browse Data," then "Reports & Fundraiser Notices," and then click on "Noncandidate Committee Contribution and Expenditure Reports and Organizational Reports" and "View Reports." 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, mail, or in person. All noncandidate committees were required to file electronically 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;
- Services rendered to the noncandidate committee without charge or at less than the usual or market 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 by check, debit card, credit card, or cash. Cash contributions are limited to \$100 from a single person during each election period and shall not be accepted without issuing a receipt to the contributor as well as keeping a record of the contribution.

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 is on Schedule A then it aggregates more than \$100);
- Contribution amount for the reporting period; and
- Aggregate contribution amount from the contributor for the election period.

For contributions made to candidates or candidate committees, the noncandidate committee must report the following on Schedule B1:

- Name and address of the candidate committee;
- Date of contribution; and
- Amount of contribution.

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 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., reported on 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 noncandidate committee makes a \$500 expenditure for an item and reports it under the name of the vendor on "Schedule B2 – Expenditures Made," then donates the item as a \$500 non-monetary contribution to a candidate and reports it under the name of the candidate on "Schedule B1 – Contributions to Candidates," then an off-setting \$500 entry must be made on "Schedule C – Other Receipts" under the noncandidate committee's name to increase the cash-on-hand balance affected by the double outgoing entries on Schedules B1 and B2.

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.

Limits on Contributions Received

How much a noncandidate committee may receive in contributions depends on whether you registered your noncandidate committee as a standard noncandidate committee, a political party, a ballot issue committee, or an independent expenditure committee.

- **Contributions to a Standard 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 standard noncandidate committee. The primary period for the 2024 election runs from November 9, 2022 through August 10, 2024, and the general period runs from August 11, 2024 through November 5, 2024. A \$1,000 contribution can be made to a Standard Noncandidate Committee in each of these periods.
- **Contributions to a Political Party → \$25,000 or \$50,000**
A person may contribute an aggregate amount of \$25,000 in any two-year election period. A political committee established and maintained by a national political party (i.e., the National Party Committees, the Congressional Party Committees, and the Senatorial Party Committees) may contribute an aggregate amount of \$50,000 in any two-year election period. The two-year election period for the 2024 election runs from November 9, 2022 through November 5, 2024.
- **Contributions to a Ballot Issue Committee → Unlimited amount**
There is no limit on contributions to ballot issue committees.
- **Contributions to an Independent Expenditure Committee → Unlimited amount**
There is no limit on contributions to noncandidate committees making solely independent expenditures.⁷

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.

⁷ 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 (on the Home page, under "Legal Resources," click on "Court Decisions"), the Commission is enjoined from enforcing the \$1,000 contribution limit as discussed above and provided in HRS §11-358 against these Independent Expenditure Committees.

Limits on Contributions Made

How much a noncandidate committee may contribute depends on who the committee is making a contribution to.

- **Contributions from a Noncandidate Committee to a Noncandidate Committee**
It will depend on whether the contribution is to a standard noncandidate committee, a political party, a ballot issue committee, or an independent expenditure committee.
 - To a standard noncandidate committee → \$1,000 in an election (i.e., \$1,000 for the primary and \$1,000 for the general)
 - To a political party → \$25,000 in any two-year election period
 - To a ballot issue committee → Unlimited amount
 - To an Independent Expenditure Committee → Unlimited amount
- **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, a candidate running for a two-year office in the 2024 election, the election period is November 9, 2022 (i.e., the day after the general election day in the preceding election) through the day of the next general election which is November 5, 2024. A candidate running for a four-year office in the 2024 election, the election period is November 4, 2020 (i.e., the day after the general election day in a preceding election) through November 5, 2024. Candidates running for a 4-year office in 2024 who ran for a state or county office in 2022 will have a two-year election period from November 9, 2022 through November 5, 2024.

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

Married couples 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 NCFS if a contribution is received by a dependent minor.

Contributions to be Promptly Deposited; Acknowledgment

The date a contribution is deposited into the committee's financial institution is the date used for reporting that contribution. A contribution must be deposited no later than **seven (7) days** after 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 the committee's financial institution.

Noncandidate committees using online payment processors for receiving contributions must ensure that contributions are deposited or transferred into the committee's depository account within seven (7) days of receipt.

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.

Itemized 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 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 appear 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 to 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 the earmarked 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 any price is charged or any contribution is suggested for attending the function.

A "Notice of Intent to Hold a Fundraiser" must be filed with the Commission **prior to** the date and time of the fundraiser. This form is available on our website under "Noncandidate Committees," click on "Forms." The "Notice of Intent to Hold a Fundraiser" form can be submitted by eSign or the Writable/Printable PDF can be completed, printed, signed and mailed, faxed, or delivered to the Commission office.

If this form is submitted 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. Notices for fundraisers held on Saturday, Sunday, or State Holiday must be submitted 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 ticket to a noncandidate committee's fundraiser, the contributor has made a \$100 contribution to the noncandidate committee even though the fundraising expenses 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.

Donations Received by a 501(c)(4) Nonprofit Organization Operating as a Noncandidate Committee

If you are a noncandidate committee that is a 501(c)(4) nonprofit organization, you must report on Schedule A2 the amount and date of each donation received and the name and address of each donor making a donation individually or aggregating more than \$10,000 during an election period if the donor provides you with written consent to use their donation for electioneering communications, independent expenditures, or contributions.

Written consent means that the donor has authorized that their name and address will be reported in the noncandidate committee's campaign finance report and made public.

If the donor fails to provide written consent that the donation may be used for electioneering communications, independent expenditures, or contributions, the nonprofit organization shall, within thirty (30) days of receipt of the donation, transmit to the donor a written confirmation by the nonprofit organization's highest ranking official that the donation will not be used for electioneering communications, independent expenditures, or contributions; and the name and address of the donor will not be reported by the nonprofit organization's noncandidate committee.

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 not deposited and returned within seven (7) days of receipt, the excess contribution is not required to be reported. If an excess contribution is returned to the contributor within thirty (30) days of receipt, the excess contribution must be reported to the Commission. The excess contributor may be subject to an administrative fine. Lastly, if the excess contribution is not returned to the contributor within 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.

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 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. Any person who violates the section of law that prohibits false name contributions shall be guilty of a class C felony.

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, the contribution shall escheat to the Hawaii Election Campaign Fund. Any person who violates the section of law that prohibits anonymous contributions shall be guilty of a class C felony.

Noncandidate committees may retain anonymous contributions that aggregate less than \$100 (i.e., \$99.99 or less) 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 (treasurer or deputy treasurer) should be there to keep a record on the number of people contributing to the bowl. 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 to a noncandidate committee if the individual has a “green card” indicating that he or she has been lawfully admitted for permanent residence in the U.S.

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

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 legislative body 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 contributions from sub-contractors who do not have their own government contract or from personal funds of employees, partners, shareholders, or officers of the business with the government contract. Notably, sole proprietors who are state or county contractors may not make contributions.

Lobbyist Contributions Prohibited Period

Lobbyists who are actively registered with the State or county ethics boards or commissions are prohibited from contributing to an elected official, candidate, candidate committee, or any other individual required to file an Organizational Report with the Commission, or making an expenditure on behalf of these persons, during any regular or special session of the legislature, and for five (5) calendar days before and after a session. Any prohibited contribution shall escheat to the Hawaii Election Campaign Fund and may subject the lobbyist and individual required to file an Organizational Report to an administrative fine by the Commission.

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 deposits a contribution check and the check is returned 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 refilled 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 other noncandidate committees (including political parties, ballot issue committees, and independent expenditure committees);
- Advertisements;
- Office supplies;
- Postage and mailing;
- Printing;
- Surveys, polls, and voter lists;
- Food and entertainment at a fundraiser;
- Employee services; and
- Durable assets (e.g., cell phone, computer, printer, camera).

For reporting purposes, 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 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.

Independent Expenditure Committees also 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.

Noncandidate committees must itemize all expenditures to consultants, advertising agencies and similar firms, credit card payments, and salaries 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, or ad agency, will not meet the requirements of the campaign finance law.

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 items⁸ such as clothing, bumper stickers, pins, buttons, and similar small items, that:

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

⁸ Effective December 9, 2016, sundry items no longer include banners and signs. See, HAR §3-160-2.

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

The penalty for not complying with the requirements above is an administrative fine of no less than \$150 for each advertisement.

Advertisement Disclosure for Independent Expenditure Committees

Independent Expenditure Committees must disclose their top three (3) contributors in campaign advertisements defined as 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.

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 (3) contributors to the noncandidate committee for the purpose of funding the advertisement.

The notice shall start with the following language: “The top three contributors for this advertisement are . . .” followed by the names of the three (3) top contributors;

However, if only two (2) top contributors can be identified, the notice shall start with the following language: “The top two contributors for this advertisement are . . .” followed by the names of the two (2) top contributors;

But, if only one (1) top contributor can be identified, the notice shall start with the following language: “The top contributor for this advertisement is . . .” followed by the name of the contributor.

If a noncandidate committee is unable to identify any contributor(s) who funded the advertisement, the notice shall start with the following language: “The top three contributors for this noncandidate committee are . . .” followed by the names of the three (3) 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 identification of the top contributors shall not apply if it would constitute a “hardship” as defined by the Commission’s administrative rules (see Hawaii Administrative Rules, §3-160-49(b)).

The penalty for not complying with the requirements above is a minimum administrative fine of \$1,000 per violation.

Electioneering Communications – Statement of Information Form

An electioneering communication is any advertisement that is broadcast from a cable, satellite, television, or radio broadcast station; published in any periodical or newspaper or by electronic means; or sent by mail and that: (1) Refers to a clearly identifiable candidate; (2) Is made, or scheduled to be made, either within **thirty (30) days prior to a primary or initial special election (i.e., July 11, 2024 to August 10, 2024)** or within **sixty (60) days prior to a general or special election (i.e., September 6, 2024 to November 5, 2024)**; and (3) Is not susceptible to any reasonable interpretation other than as an appeal to vote for or against a specific candidate.

Persons, which include an individual, a partnership, noncandidate committee, a party, an association, a corporation, a business entity, an organization, or a labor union and its auxiliary committees, who make electioneering communications in an aggregate amount of **more than \$2,000** during any calendar year, are statutorily required to file a Statement of Information within **24 hours** of public distribution. For mailers, this means the date the mailers are first mailed. Once the \$2,000 threshold is reached, noncandidate committees must continue to file all subsequent electioneering communication forms regardless of the amount.

The “Statement of Information for Electioneering Communications” form is available on the Commission’s website. Go to <http://ags.hawaii.gov/campaign/electioneering-communications/>. Persons who fail to submit this form will be subject to a \$500 fine or a \$250 fine for filing it late. Notably, this form must be filed in addition to the filing of any other required report for noncandidate committees. The “Statement of Information for Electioneering Communications” form can be submitted by eSign or the Writable/Printable PDF can be completed, printed, signed and emailed, faxed, or delivered to the Commission office.

For Independent Expenditure Committees, if there are any top contributors in your campaign advertisements that are electioneering communications, you must also report and disclose these top contributors on the “Statement of Information for Electioneering Communications” form.

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 but are not limited to:

- Interest earned on the committee’s bank account;
- Returns (by vendors), refunds, rebates;⁹ and
- Sales of Durable Assets.

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

⁹ 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.

- Date of deposit;
- Source's full name and address;
- 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 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 off-setting contribution for the same amount on "Schedule A – Contributions Received" under the vendor's name.

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 initially reported on Schedule E for the report covering the period that it was acquired in and automatically reported on Schedule E for all subsequent reports until the assets are disposed, sold or donated. The disposition of a durable asset 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 after an election may return the contributions to contributors during the next election period.

Noncandidate committees with a deficit/debt must continue filing reports with the Commission until the deficit/debt 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 noncandidate committee's fund is zero (no surplus); and
- There are no unpaid expenditures to be paid (no deficit).

The termination process begins by filing the "Noncandidate Committee Request for Termination of Registration" form with the Commission. 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. Any proceeds from the sale of a durable asset must also be reported on "Schedule C – Other Receipts" and be disbursed as permitted by law.

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 are filed. Once the Commission approves a request for termination, the noncandidate committee will no longer be required to file disclosure reports. The "Noncandidate Committee Request for Termination of Registration" form can be submitted by eSign or the

Writable/Printable PDF by completing, signing, and mailing, faxing, or delivering the form to the Commission.

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.

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 within ninety (90) days after the election for which the question or issue appeared on the ballot shall escheat to the Hawaii Election Campaign Fund.

XII. AUDIT AND ENFORCEMENT

The law authorizes the Commission to do random audits and investigations of committees.

The Commission also has enforcement authority. The Commission may issue an order affecting any person violating any provision contained 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. The Commission may also assess an administrative fine in an amount not to exceed three times the amount of an unlawful contribution or expenditures. In addition, more specific fines for the late filing of disclosure reports, and the failure to include the proper disclaimers in advertisements are provided by law. The Commission's authority to assess administrative fines is set forth in HRS §§11-314, 11-340, 11-391, 11-409, and 11-410. Pursuant to Hawaii Administrative Rules §3-160-73(a), the Commission has adopted a Schedule of Fines for violations of the campaign finance law. This fine schedule is available for viewing on the Commission's website at <http://ags.hawaii.gov/campaign/legal-resources/schedule-of-fines/>.

Notably, the fine for noncandidate committees making only independent expenditures (Super PACs) that have received at least one contribution of more than \$10,000, or spent more than \$10,000 in the aggregate in an election period, is increased to an amount not to exceed \$5,000 for each occurrence or an amount not to exceed three times the amount of the unlawful contribution or expenditure for a campaign finance violation. Further, if the noncandidate committee (Super PAC) cannot pay the fine, the Commission may order that the fine be paid from the personal funds of the officers of the noncandidate committee (i.e., chairperson and/or treasurer).

If you are in violation of the campaign finance law, the Commission will provide you with written notice of the violation via first class mail. For certain violations (i.e., late reports, excess contributions, advertisement disclaimers, electioneering communications, and excess non-resident contributions), if the fine exceeds \$25 and if it is your first or second violation for that category, you are eligible for a conciliation agreement which would reduce your fine by two-thirds for the first violation and one-half for the second violation. These agreements must be approved by the Commission at a duly noticed public Sunshine meeting. If, however, you believe that you would like to challenge the violation and the fine, you may opt for the matter to be handled via a complaint. If you elect this

process, the Commission will generate a complaint and set the matter to be heard at a duly noticed public Sunshine meeting for the Commissioners to hear your position and decide how to proceed which may include ordering the full amount of the fine even if you are eligible for a conciliation agreement. You are encouraged to contact the Commission if you have any questions concerning these procedures.

It is noteworthy that rather than handling a violation in a civil or administrative manner, the Commission may recommend that a violation be referred for criminal prosecution. The campaign finance law provide that any person who recklessly, knowingly, or intentionally violates any provision of the campaign finance law shall be guilty of a misdemeanor.

Any person who knowingly or intentionally falsifies any report required by the campaign finance law 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 noncandidate committees to become familiar with the campaign finance law and rules, file all reports on time, be aware of all areas in this Guidebook and laws 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 having enforcement actions taken against you.

XIII. TRAINING

The Commission offers on-line training available twenty-four (24) hours as well as guidebooks and manuals to assist committees on its website.

The Commission also offers in-person training. Training classes are generally scheduled in late May through early June in an election year. Please check our website for class announcements and registrations.

Notably, 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 – two (2) hour class for two (2) credits;
- Public Financing for Candidates – one (1) hour class for one (1) credit; and
- Noncandidate Committees – one (1) hour class for one (1) credit.