



ADOPTION OF PROPOSED AMENDMENTS TO REGULATION 18531 – RETURN OR ATTRIBUTION OF EXCESSIVE CONTRIBUTIONS

June 15, 2023



RECAP

- Amend Reg. 18531 to conform with new Section 85319.5 (effective January 1, 2023).
- Presented for prenotice at March Commission Meeting.
- Revised amendments remove definition of “actual knowledge” and clarify how to report a returned or attributed excess contribution.

Existing Regulation 18531

Allows a committee to return a contribution, or a portion thereof, that exceeds an applicable contribution limit to the contributor if done within 14 days of receipt, as long as the committee does not:

1. Deposit or allow deposit of the contribution with actual knowledge that the contribution exceeds the applicable limit.
2. Make use of the contribution prior to returning it. (e.g. making expenditures exceeding available cash on hand)

(Reg. 18531(a).)



New Section 85319.5 (SB 794)

Allows a committee to return an over-the-limit contribution (monetary or nonmonetary), or a portion thereof, or attribute it to another election, as long as:

1. The amount in excess of the contribution is returned or attributed within 14 days of receiving the contribution.
2. The committee does not deposit or allow deposit of the contribution with actual knowledge that the contribution exceeds the applicable limit.
3. The committee does not make use of the contribution prior to returning or attributing it.

Section 85319.5(a)



New Section 85319.5 (SB 794)

Allows a committee to return or attribute the over-the-limit monetary contribution, or a portion thereof, to another election, even with actual knowledge that it was over the limit, as long as:

1. The amount in excess of the contribution limit is returned or attributed within 72 hours of receipt, or is returned or attributed on or before the date of the election, whichever is sooner.
2. The committee does not make use of the contribution prior to returning or attributing it.
3. The committee does not deposit or allow deposit of the contribution with actual knowledge that the contribution is more than two times the applicable limit.

Section 85319.5(b)



Proposed Amendments to Regulation 18531

Delete current subdivisions (a) and (b) of existing Regulation 18531, since now codified in statute.

1 Amend 2 Cal. Code Regs. Section 18531 to read:

2 **§ 18531. Return or Attribution of Excessive Contributions.**

3 ~~(a) A committee may return a contribution, or a portion thereof, that exceeds an~~
4 ~~applicable contribution limit to the contributor within 14 days of receiving the contribution~~
5 ~~without violating the contribution limits set forth in Sections 85301, 85302, and 85303, so long~~
6 ~~as the committee does not:~~

7 ~~(1) Deposit or allow deposit of the contribution with actual knowledge that the~~
8 ~~contribution exceeds the applicable limit.~~

9 ~~(2) Make use of the contribution prior to returning it.~~

10 ~~(b) For purposes of subdivision (a), a committee makes use of a monetary contribution if,~~
11 ~~after receiving the contribution, it makes expenditures exceeding what the committee's available~~
12 ~~cash balance would be had it not received the contribution that exceeds the applicable~~
13 ~~contribution limit.~~

Proposed Amendments to Regulation 18531: Attribution

Add new subdivisions (a) to Regulation 18531, allowing attribution of over-the-limit contributions as now permitted by statute:

(a) Attribution. A committee that elects to attribute a contribution, or a portion thereof, that exceeds the applicable contribution limit set forth in Section 85301, 85302, 85303, or 85316 to another election pursuant to Section 85319.5(a) or (b) must obtain written confirmation from the contributor that the contribution may be attributed to a different election except the committee may attribute a contribution, or a portion thereof, between a primary and general election for the same term of office without obtaining prior permission from the contributor.

Proposed Amendments to Regulation 18531: Non-monetary Contributions

Proposed new subdivision (b) of Regulation 18531: Return or Attribution

(b) Non-monetary contributions. A committee that receives a non-monetary contribution whose fair market value, or a portion thereof, exceeds a contribution limit set forth in Section 85301, 85302, 85303, or 85316, may return the non-monetary contribution, or a portion thereof, either in its original form or in a monetary equivalent, or attribute the portion of the non-monetary contribution whose fair market value exceeds the limit to another election by attributing the excess amount to another election or attributing the monetary equivalent of the contribution to another committee established for another election. The return or attribution of a non-monetary contribution pursuant to Section 85319.5 must occur within 14 days of receiving a contribution and the committee may not make use of the non-monetary contribution prior to its return or attribution.

Proposed Amendments to Regulation 18531: Contributions not for candidates

Amend existing subdivision (e) (new subdivision (d)) to clarify how much time a committee has to deposit a contribution that is earmarked for purposes other than making contributions directly to candidates into a separate account. Proposed text:

(d) Contributions not for Candidates. Notwithstanding subdivisions (a) through (c), contributions Contributions to a committee, other than a candidate-controlled committee, which are earmarked for purposes other than making contributions directly to candidates for elective office, shall not be deemed in excess of limits and need not be returned, provided the contributions are deposited to a separate account within the deadline prescribed in subdivision (a). the applicable time period as prescribed by either Section 85319.5(a) or (b), depending on whether the committee has actual knowledge that the contribution exceeds the applicable limit.

Proposed Amendments to Regulation 18531: Reporting

Proposed new subdivision (e) of Regulation 18531: Apply reporting requirements for returned contributions to attributed contributions

(e) Reporting. A contribution returned or attributed, in whole or in part, under ~~this regulation~~ Section 89519.5, must be reported as a contribution in its entirety pursuant to Chapters 4 and 5 of the Act if ~~the contribution is deposited in the committee's bank account.~~ the committee deposits the contribution in its bank account. The amount returned or attributed must also be reported.

(1) A committee that elects to automatically attribute a contribution, or a portion thereof, that is in excess of the applicable limit between the primary and general elections as prescribed by Section 85319.5(d)(2) must disclose the cumulative totals of contributions received for both the primary and the general elections, respectively, in accordance with Regulation 18421.4.

(2) An amount attributed to another committee must be reported by the attributing committee as an expenditure.

(3) An amount attributed to another committee must be reported by the receiving committee as a contribution from the original contributor and identify the attributing committee as an intermediary pursuant to Section 84302.

Proposed Amendments to Regulation 18531: Notification

- Add new subdivision (f) clarifying the when a committee that receives a contribution that exceeds a contribution limit must notify the contributor.
- If the contribution was automatically attributed, the committee must also inform the contributor and the contributor may request a refund.
- Staff recommends this notice be in writing and that both notices are sent on the same timeline.



Proposed Amendments to Regulation 18531: Notification

Proposed new subdivision (f) of Regulation 18531:

(f) Notification. For purposes of Section 85319.5(c), a committee shall be deemed to have “informed” a contributor that their contribution was in excess of the applicable contribution limit if the committee sends written notification to the contributor noting that their contribution exceeded the applicable limit by the applicable deadline for returning or attributing the contribution or excess portion thereof. A committee required to send notification to a contributor that their contribution, or a portion thereof, was automatically attributed under Section 85319.5(d)(2) and that they may request a refund as required by Section 85319(c) must send such notification in writing and at the same time as informing the contributor that their contribution exceeded the applicable limit.