

AFTER THE ELECTION

After the election, a candidate's future filing obligations are determined by whether or not the candidate was elected to office. The Political Reform Act ("Act") requires a state candidate controlled election committee that has no "net debts outstanding" after the election to terminate within 24 months after the earliest of the date the candidate is defeated, leaves office, or the term of office for which the committee was formed ends or, for withdrawn candidates, no later than 24 months after the election from which the candidate withdrew. The Act does not require a state candidate controlled election committee with "net debts outstanding" or a committee primarily formed to support or oppose a candidate to terminate within a specific timeframe. However, a committee that remains open must continue to file semi-annual statements and pay the \$50 annual committee fee until it terminates.

This chapter addresses the reporting requirements for successful candidates, defeated candidates, primarily formed committees, and the guidelines for terminating a campaign committee.

For information about officeholder expense accounts, legal defense funds, and recall elections, see Chapter 1. For information about ballot measure committees controlled by a state candidate or officeholder, see Campaign Disclosure Manual 3.

A. Defeated Candidates

Form 470 Filers

Following the election, a defeated candidate who filed the Form 470 (Officeholder and Candidate Campaign Statement – Short Form) has no further reporting obligations as long as less than \$2,000 was raised or spent during the calendar year.

Form 460 Filers

Following the election, a defeated candidate must continue to file the Form 460 (Recipient Committee Campaign Statement) on a semi-annual basis and pay the \$50 annual committee fee as long as the committee remains open. In addition, other special reports may be required depending on the committee's activity. As discussed below, a state candidate controlled committee that has **no "net debt outstanding" must terminate no later than 24 months** after the election in which the candidate was defeated.

A candidate who is defeated in the primary or special primary election, or who withdraws from the general or special general election, must return contributions received for the general or special general election to contributors on a pro rata basis, less the cost of raising and administering the funds and general election expenses paid prior to the primary election. See Chapter 1 for additional information.

If there are leftover funds and the candidate wants to use the funds for a future election, the funds must be transferred before they become surplus as discussed later in this chapter.

Quick Tip

A candidate who is defeated in the primary or special primary election must return contributions received for the general or special general election. See Chapter 1.

B. Successful Candidates

The requirements discussed below apply to candidates/officeholders immediately following the election and for subsequent non-election years. An officeholder retains his or her status as a "candidate" under the Act and must continue to file campaign reports – either the Form 470 (Officeholder and Candidate Campaign Statement – Short Form) or the Form 460 (Recipient Committee Campaign Statement) – until the officeholder has left elective office and terminated his or her committee. See "Future Election: Transfers" below for the requirements that must be met in order for a candidate/officeholder to use leftover campaign funds to run for reelection or to run for election to a different office.

Officeholders Who Filed Form 470 During Campaign

After the election, a candidate who filed the Form 470 (short form) in connection with the election has no additional filing obligations that calendar year as long as less than \$2,000 was raised or spent. So long as a candidate/officeholder does not have an open committee, a Form 470 must be filed by July 31 of each subsequent non-election year. This may apply to CalPERS and CalSTRS elected officers.

Officeholders Who Filed Form 460 During Campaign

After the election, a successful candidate with a controlled committee must continue to file the Form 460 on a semi-annual basis and pay the \$50 annual committee fee until the committee terminates. In addition, the committee must file the Form 497 for contributions received of \$5,000 or more. If the committee makes contributions and independent expenditures, other reports may be required.

Once an officeholder terminates the committee, the officeholder will be required to file the Form 470 the following year. However, if a candidate/officeholder has an open committee at any time during a calendar year, the Form 460 must be filed.

An election committee controlled by a state candidate may receive contributions after an election only to pay “net debts outstanding” from the election. An elected state officer may open an officeholder account for the purpose of paying expenses associated with holding the office to which the officer was elected. See Chapter 1 for additional information about net debts outstanding and officeholder accounts.

\$5,000 Electronic Reports

A state officeholder committee that files campaign reports electronically must continue to file the \$5,000 reports (Form 497) discussed in Chapter 2 until the 90-day election cycle before the candidate’s next election.

Quick Tip

Candidates/officeholders should consult the applicable filing schedule on the FPPC’s website.

Behested Payment Reports (Form 803)

A state elected officer who fundraises for worthy causes in his or her community (such as for a local school, to build a new community center or restore a historic building), may have to file a “behested payment” report. Behested payments are donations made to a charity or a government agency at the request of an elected official for a legislative, governmental or charitable purpose. These payments are not made for personal purposes (i.e., gifts) or campaign purposes (i.e., contributions).

A common example is when an elected officer co-sponsors a charitable, governmental, or legislative event, such as a job fair or a conference on public policy issues, with outside sources. Payments made by outside sources in connection with these events generally are considered behested payments.

Form 803 Filing Procedures:

- File the Form 803 when a person donates \$5,000 or more in a calendar year to charitable organizations or events at the request of an elected officer.
- Once a source has made a behested payment(s) of \$5,000 or more during the calendar year, subsequent payments of any amount from that source during the calendar year must be reported.
- File the Form 803 with the elected officer’s agency (e.g., Statewide office, Legislature) within 30 days following the date of the payment.
- The agency must send a copy of the Form 803 to the FPPC. The FPPC posts the reports on its website.
- State candidates now have the option to file Form 803 electronically.

Form 803 Exceptions:

- A Form 803 is not required of a non-elected officer.
- A payment is not subject to behested payment reporting if the payment is made in response to a fundraising solicitation from a charitable organization requesting a payment where the solicitation does not “feature an elected officer,” even if the solicitation includes an elected officer’s name. A solicitation “features an elected officer” when it includes the officer’s photograph or signature, or singles out the elected officer. An elected officer is also “featured” in a solicitation if the roster or letterhead listing the governing body contains a majority of elected officers. See Regulation 18215.3 for additional information.
- A payment is not subject to behested payment reporting if the elected officer makes a request for a payment from a local, state, or federal government agency.

Behested Payment Report

A Public Document

Behested Payment Report

1. Elected Officer or CPUC Member <i>(Last name, First name)</i> Kim Greer		Date Stamp	California Form 803 For Official Use Only
Agency Name California State Senate			
Agency Street Address State Capitol, Room 2055			
Designated Contact Person <i>(Name and title, if different)</i> Austin Florez, Chief of Staff		<input type="checkbox"/> Amendment <i>(See Part 5)</i>	
Area Code/Phone Number 916-555-3434	E-mail <i>(Optional)</i> aflorez@casenatemail.com	Date of Original Filing: _____ <i>(month, day, year)</i>	

2. Payor Information

(For additional payors, include an attachment with the names and addresses.)

ABC Insurance Company			
Name			
456-250 Stockton Street	Rancho Cordova	CA	95670
Address	City	State	Zip Code

3. Payee Information

(For additional payees, include an attachment with the names and addresses.)

Boys and Girls Club of California			
Name			
555 10th Street	Sacramento	CA	95814
Address	City	State	Zip Code

4. Payment Information

(Complete all information.)

Date of Payment: 08/15/XX **Amount of Payment:** *(In-Kind FMV)* \$ 5,000
(month, day, year) *(Round to whole dollars.)*

Payment Type: Monetary Donation or In-Kind Goods or Services *(Provide description below.)*

Brief Description of In-Kind Payment: _____

Purpose: *(Check one and provide description below.)* Legislative Governmental Charitable

Describe the legislative, governmental, charitable purpose, or event: Charitable fundraiser to support the Boys and Girls Club.

5. Amendment Description and/or Comments

6. Verification

I certify, under penalty of perjury under the laws of the State of California, that to the best of my knowledge, the information contained herein is true and complete.

Executed on 8/31/XX By [Signature Required]
DATE SIGNATURE OF ELECTED OFFICER OR CPUC MEMBER

C. Future Election: Transfers

A candidate or officeholder may transfer leftover campaign funds to another committee for a future election to the same office or to a different office so long as the funds are not considered “surplus funds” and the committee does not have “net debts outstanding.”

Campaign funds become surplus on the 90th day after the closing date for the postelection reporting period or upon the 90th day after the date of leaving office, whichever occurs last.

Surplus campaign funds are subject to restrictions, as described in Chapter 6, and may not be used for a future election.

In order for a candidate to use leftover (non-surplus) campaign funds for a future election, the candidate must:

- File a new **Form 501** (Candidate Intention Statement) for the specific future election;
- File an initial **Form 410** (Statement of Organization) to obtain a new committee identification number; and,
- Open a **new bank account**. Transfers to a committee for a different state office must be attributed to specific contributors as described in Chapter 1.

D. Primarily Formed Committees

Generally, a committee established primarily to support or oppose a particular candidate(s) will terminate after the election, but the committee may remain open to:

- Raise funds to pay debts.
- Support or oppose other candidates or measures. The committee will need to amend its Statement of Organization (Form 410) to reflect the change.

A primarily formed committee must continue to file semi-annual campaign statements (i.e., Form 460 or Form 450) and pay the \$50 annual fee as long as the committee remains open.

Ex 11.1 - After the election, the committee primarily formed to support candidate Jones decides to support candidate Lopez in the next election. In order to do so, the committee must file an amended Form 410 (Statement of Organization) and will continue to file campaign statements.

E. When to Terminate the Committee

Certain committees (e.g., state candidate controlled committees with no “net debts outstanding”) have specific deadlines, discussed below, for terminating the committee. Other committees (e.g., state candidate controlled committees **with** “net debts outstanding” and primarily formed candidate committees) are not required to terminate within a specific timeframe. All committees must meet the criteria specified in the “Requirements to Terminate a Committee” section below.

State Candidate Controlled Election Committees with No Net Debts Outstanding

A state candidate controlled election committee that has **no** “net debts outstanding” must be terminated **no later than 24 months** after the earliest of the date the candidate is defeated, leaves office or the term of office for which the committee was formed ends or, for withdrawn candidates, no later than 24 months after the election from which the candidate withdrew.

State Officeholder with a Local Committee

A candidate who is elected to state office must terminate any controlled committees that were formed for local elections held concurrent with or prior to their election to state office. The local committee(s) must be terminated **within 24 months** of the candidate’s election to state office.

Requests for Extension

A committee may, for good cause, seek an extension of time to comply with the termination requirements. Such a request must be submitted to the FPPC’s Executive Director prior to the original due date for the committee’s termination, and must include evidence of good cause for the request.

Ex 11.2 - Paulina Kinder was elected to the State Assembly on November 8, 2018. She must terminate her local committee formed for the county board of supervisors by November 8, 2020.

State Candidate Controlled Election Committees with Net Debts Outstanding

A state candidate controlled election committee that has “net debts outstanding” after the election does not have a deadline to terminate. The committee must continue to file semi-annual campaign statements (Form 460) and pay the \$50 annual committee fee until the committee terminates.

Committees Primarily Formed to Support or Oppose a State Candidate

Primarily formed committees do not have a deadline to terminate. However, the committee may need to change its committee status if it remains open after the election. The committee must continue to file semi-annual campaign statements (i.e., Form 460 or Form 450) and pay the \$50 annual committee fee until the committee terminates.

F. Requirements to Terminate a Committee

A committee may terminate only if **all** of the following criteria are met:

- The committee has ceased receiving contributions or making expenditures and does not anticipate receiving contributions or making expenditures in the future;
- The committee has no remaining campaign funds;
- The committee has filed all required campaign statements, disclosing all reportable transactions, including the disposition of leftover funds; **and**
- The committee has eliminated all debts, or has no intention or ability to discharge debts.

A committee must file a Form 410 and a final Form 460 or Form 450. On the Form 410, the “Termination” box must be checked. List the committee’s identification number and the date of termination. The date of termination generally is the date all funds have been expended. Complete Section 1 and the treasurer or assistant treasurer must sign the verification. For candidate controlled committees, the controlling candidate/officeholder also must sign the verification.

Either a Form 450 or a Form 460 also must be filed showing that all funds have been expended and the committee has no cash on hand. Check the “Termination” box on the cover page.

File the original Form 410 with the Secretary of State. File the Form 450 or Form 460 in the committee’s regular filing locations.

Terminating with Debt and Notice to Creditors

A committee may terminate with debt, but must dispose of all cash prior to closing its bank account. The committee must give at least a 60-day notice of its impending termination to all creditors. The notice must include the date the committee expects to file its Form 410 termination statement. No new contributions may be received and no further expenditures may be made once the committee has been terminated.

G. Reopening of Terminated Candidate Controlled Committees

Generally, once a committee has terminated, no transactions may be made by the committee unless a request to reopen the committee is submitted to and approved by the FPPC’s Executive Director.

Exceptions:

- Receipt of a refund from a governmental entity (such as an overpayment of filing fees).
- Receipt of a refund from a vendor or other person if the committee did not know of its entitlement prior to termination and the refund(s) totals no more than \$10,000.

To report the refunds described above, the terminated committee must file a Form 460 for the period in which the refund was received and report the refund as a miscellaneous increase to cash on Schedule I and as an expenditure on Schedule E when the funds are spent. (See Chapter 6 for the permissible uses of campaign funds.) For the rules related to transferring the refund to another committee, see Regulation 18404.1. The refund of a filing fee paid by personal funds does not need to be reported.

Ex 11.3 - At the end of November, after winning her election, Arlene decides to terminate her committee. She files a Form 410 termination statement and a Form 460 termination statement showing that the committee has no remaining cash. On the Form 460 Cover Page, Type of Statement section, she will mark both the termination and semi-annual boxes and enter December 31 as the closing date of the statement. Unless there is additional activity, Arlene is not required to file a semi-annual report on January 31.

Ex 11.4 - A defeated candidate in a November election closed the campaign committee in December. In February of the following year, a \$1,500 refund from the county elections office for an overpayment of filing fees was received. The candidate must disclose receipt of the refund on Schedule I of the Form 460. The refund must be used for a permissible expenditure as described in Chapter 6, such as to pay outstanding debts or to make a donation to a charity, and disclosed on Schedule E. The Form 460 is filed with the SOS. If the candidate paid the filing fee with personal funds, no disclosure is required.

A state candidate controlled committee may submit a request to the FPPC's Executive Director to reopen a terminated committee for any of the following reasons:

- To pay a fine as permitted under Government Code Section 89513(c);
- To pay expenses incurred in connection with an audit or investigation of the committee;
- To pay litigation expenses as permitted under Government Code Sections 89513 and 89514, other than expenses subject to the legal defense fund provisions;
- For any other good cause shown that would further the disclosure requirements or contribution limits of the Act; or
- To receive a refund or similar payment received after termination of the committee (other than a refund described above that the committee is allowed to accept without reopening).

H. Administrative Termination by the FPPC's Enforcement Division

The FPPC's Enforcement Division may terminate a committee if the committee failed to:

- File a campaign statement in the previous 12 months, and the committee had an ending cash balance of \$3,000 or less on its last campaign statement;
- File a campaign statement in the previous 12 months, and had an ending cash balance of \$5,000 or less on its last campaign statement, and owes \$2,000 or more to the controlling candidate;
- File a campaign statement in the previous 48 months; or
- Respond to the Enforcement Division's reasonable efforts to contact the committee regarding the committee's failure to file campaign statements or failure to pay annual fees.

The Enforcement Division must provide the committee with written notice of a proposed termination 45 days prior to terminating the committee. The Enforcement Division will not terminate a committee if the committee files a written objection to the termination. If no written objection is received within 45 days, the committee automatically terminates without further notice. See Regulation 18404.2 for information about reinstating an administratively terminated committee and prohibited activity after termination.

Answering Your Questions

A. I lost in the June primary election so I need to refund the general election contributions, less administrative and fundraising expenses. Must I refund the general election contributions to all donors who contributed to the general election, or may I choose to return the contributions of some donors while allocating general election expenses to others, thereby reducing or eliminating the refunds payable to particular donors?

You must refund the general election funds on a pro rata basis, less any expenses associated with the raising and administration of general election contributions. You may not allocate expenses to particular donors – the expenses must be distributed proportionally among all donors. See Government Code Section 85318.

B. I lost in the June primary election. I am in the process of refunding the general election contributions, less administrative and fundraising expenses. If I am unable to locate some of the donors, may the refunds be donated to a 501(c)(3) nonprofit organization?

No. If you are unable to locate a donor or a donor fails to accept his or her refund, the committee must pay the funds to the State General Fund.

C. May I terminate my committee even if I have outstanding debt owing to creditors?

Yes. When you file your termination Form 460 showing outstanding debt, you are declaring that you do not have the ability to discharge debts, loans, or other obligations. However, if you plan to raise additional funds, or pay the outstanding debt with personal funds, you may not terminate.

D. After terminating my committee, I received an invoice for legal services that needs to be paid. Is it permissible to pay the invoice with my personal funds without reopening the committee?

No. You must reopen the committee and deposit personal funds into the committee's bank account before paying the invoice. A request to reopen your committee must be submitted to the FPPC's Executive Director. The only transactions that may occur without reopening a committee are receipt of a refund from a governmental entity, or receipt of a refund from a vendor or other person if the committee did not know of its entitlement prior to termination and the refund is no more than \$10,000. (See Regulation 18404.1.)

Authority

The following Government Code sections and Title 2 regulations provide authority for the information in this chapter:

Government Code Sections

- 82004.5 Behested Payment.
- 82015 Contribution.
- 82041.3 Made at the Behest of.
- 84103 Statement of Organization; Amendment.
- 84200 Semi-Annual Statements.
- 84206 Candidates Who Receive or Spend Less than \$2,000.
- 84214 Termination.
- 84224 Behested Payment Disclosure.
- 85200 Statement of Intention to be a Candidate.
- 85201 Campaign Bank Account.
- 85318 Contributions Received for Primary and General Elections.
- 89513 Use of Campaign Funds for Specific Activities.
- 89514 Use of Campaign Funds for Attorney's Fees.
- 89519 Use of Surplus Campaign Funds.

Title 2 Regulations

- 18215 Contribution.
- 18247.5 Primarily Formed Committees.
- 18215.3 Behested Payments Reporting.
- 18404 Termination of Candidate's and Committees' Filing Requirements.
- 18404.1 Termination and Reopening of Committees.
- 18404.2 Administrative Termination.
- 18406 Short Form for Candidates or Officeholders Who Receive and Spend Less than \$2,000 in a Calendar Year.
- 18426 Semi-Annual Statement Early Filing.
- 18951 Surplus Funds.