



PUBLIC DISCLOSURE COMMISSION

711 Capitol Way Rm. 206, PO Box 40908 • Olympia, Washington 98504-0908 • (360) 753-1111 • FAX (360) 753-1112
Toll Free 1-877-601-2828 • E-mail: pdcc@pdcc.wa.gov • Website: www.pdcc.wa.gov

To: Members, Washington State Public Disclosure Commission
From: Lori Anderson, Communications & Training Officer
Date: September 18, 2014
Re: Possible Interpretation Regarding Loans - Revision

During the July 2014 meeting, the Commission considered, for possible adoption, draft Interpretation 14-01, Campaign Loans. Part of the discussion focused on whether a campaign would be able to amend reports when loans were mistakenly reported as contributions for which repayment was not expected. The Commission decided that amendments could be made at any time, provided a written loan agreement had been executed when the loan was made. Draft Interpretation 14-01 has been revised accordingly and is attached for the Commission's further consideration. Revisions to the draft are highlighted in yellow.

REQUESTED ACTION

Staff requests that the Commission adopt new Interpretation 14-01, Campaign Loans, as revised.

Attachment: Draft Interpretation 14-01, Campaign Loans

REVISED DRAFT
NEW PDC Interpretation
For Discussion – September 2014

APPROVAL DATE:	XXXX	NUMBER:	14-01
STATUS:	New	SUPERSEDES:	None
		APPROVED BY:	The Commission
REFERENCES:	RCW 42.17A.005	WAC 390-05-400	
	RCW 42.17A.240	WAC 390-16-039	
	RCW 42.17A.405	WAC 390-16-226	
	RCW 42.17A.445	WAC 390-17-305	
	RCW 42.17A.465	PDC Interpretation 12-01	

CAMPAIGN LOANS

The Public Disclosure Commission enforces the campaign disclosure provisions and contribution limits found in [RCW 42.17A](#) and [Title 390 WAC](#), including certain laws and rules concerning campaign-related loans made to candidates and political committees under its jurisdiction: The interpretation is intended to provide guidance by informing the public, candidates, and political committees of the Commission's interpretation of the record-keeping and reporting requirements for the receipt, repayment, and forgiveness of campaign-related loans, and the relationship between loans and applicable contribution limits.

I. INTERPRETATION

Receipt of a Loan –

1. A loan is a contribution and thus subject to applicable contribution limits.
2. A loan made by a person other than a commercial lender is considered to be a contribution from the lender.
3. A commercial loan to a candidate's authorized committee or a committee controlled by a candidate is presumed to be guaranteed by the candidate, absent clear, cogent and convincing evidence proving otherwise. A commercial loan guaranteed by the candidate is a loan of the candidate's personal funds

4. To be eligible for repayment, monetary and in-kind loans must be:
 - a. recorded in a written loan agreement executed when the loan is made and
 - b. timely and accurately reported as a loan by the recipient.

In the event a loan is mistakenly reported as a contribution for which repayment is not expected, the recipient may amend the report to disclose the loan provided a written loan agreement was executed when the loan was made.

Terms –

5. The lender and recipient are responsible for negotiating mutually agreeable, lawful loan terms. The terms may be renegotiated during the life of the loan upon the mutual consent of the parties.
6. The due date may be a date certain or a flexible date, such as “when funds are available.”
7. All terms agreed to, including changes negotiated during the life of the loan, must be set out in the written loan agreement or a written amendment to the agreement.

Loan Agreement –

8. In-kind loans: A receipt for out-of-pocket expenditures may be used for the loan agreement, provided it contains the date the expenditure was made, the amount to be repaid, and is signed by the campaign treasurer and person expecting repayment.
9. Monetary loans: A written loan agreement is required for all monetary loans. The loan agreement must be executed by the lender and the treasurer of record. The Commission recommends the following format:

LOAN AGREEMENT

I, *[name of lender]*, hereby loan the sum of \$_____ to *[name of campaign]*.

[Name of campaign] agrees to repay *[name of lender]* the principal amount of \$_____ together with *[simple or compound]* interest at the rate of ____%.

[Describe payment intervals, if part of the repayment terms.] Payments in the amount of \$_____ are due *[describe payment intervals (example: on the 15th day of each month beginning on June 15, 2XXX and continuing thereafter on the 15th day of each month until paid in full.)]*

OR

[Describe repayment due date when payment intervals are not part of the terms.] *[Name of campaign]* agrees to repay the principal amount and interest, in full, on or before *[due date]*.

Signature of Lender
Date signed: _____

Signature of Campaign Treasurer
Date signed: _____

10. The committee must keep executed loan agreements with its financial records and provide them with the books of account when responding to a inspection request during the periods of public inspection.

Loan Repayment –

11. A committee must timely and accurately report loan payments it makes to the lender.
12. In the event a lender forgives any portion of a loan, the committee must timely and accurately report the forgiveness on the C-4, Schedule L.
13. In the event a third person makes a payment to the lender for the purpose of repaying any portion of a campaign loan, the payment is an in-kind contribution to the committee, and subject to applicable contribution limits. The committee must timely and accurately report the loan payment/in-kind contribution.
14. A candidate or single-year campaign may carry unpaid loans forward to the next campaign. When an unpaid loan is carried forward, the committee ending its campaign must disclose the ending loan balance on its final C-4 report. The new campaign committee must disclose the forwarded loan balance on the initial C-4 report filed by new campaign. Subsequent transactions affecting the loan are reported by the new campaign.

Limits –

15. A candidate may not be repaid more than is allowed by [RCW 42.17A.445\(3\)](#) as adjusted by [WAC 390-05-400](#).
16. When a loan is repaid to a lender other than a candidate, the lender's contribution limit is restored by the amount repaid.
17. A political committee, other than a candidate's authorized committee, may make loans to other political committees, subject to applicable contribution limits. [RCW 42.17A.430](#) prohibits a candidate from lending active or surplus campaign funds to another candidate or political committee.

Mini Reporting Committees –

18. Candidates and political committees who select the mini reporting option are subject to loan-related laws and rules, as well as these guidelines, except that they are not required to file reports disclosing loan activity. The self-imposed limits of the mini reporting option apply to loans.

II. Authority

Definitions –

(13)(a) "Contribution" includes:

(i) A loan, gift, deposit, subscription, forgiveness of indebtedness, donation, advance, pledge, payment, transfer of funds between political committees, or anything of value, including personal and professional services for less than full consideration; . . .

(20)"Expenditure" includes a payment, contribution, subscription, distribution, loan, advance, deposit, or gift of money or anything of value, and includes a contract, promise, or agreement, whether or not legally enforceable, to make an expenditure. "Expenditure" also includes a promise to pay, a payment, or a transfer of anything of value in exchange for goods, services, property, facilities, or anything of value for the purpose of assisting, benefiting, or honoring any public official or candidate, or assisting in furthering or opposing any election campaign. For the purposes of this chapter, agreements to make expenditures, contracts, and promises to pay may be reported as estimated obligations until actual payment is made. "Expenditure" shall not include the partial or complete repayment by a candidate or political committee of the principal of a loan, the receipt of which loan has been properly reported.

[RCW 42.17A.005.](#)

Disclosure –

Each report required under RCW [42.17A.235](#) (1) and (2) must be certified as correct by the treasurer and the candidate and shall disclose the following

(3) Each loan, promissory note, or security instrument to be used by or for the benefit of the candidate or political committee made by any person, including the names and addresses of the lender and each person liable directly, indirectly or contingently and the date and amount of each such loan, promissory note, or security instrument; . . .

(8) The name and address of any person and the amount owed for any debt, obligation, note, unpaid loan, or other liability in the amount of more than two hundred fifty dollars or in the amount of more than fifty dollars that has been outstanding for over thirty days;

[RCW 42.17A.240.](#)

(1) A continuing political committee which is not organized to support or oppose a particular candidate or ballot proposition shall report total contributions and expenditures based on a calendar year, or upon the basis of a fiscal year if the commission expressly authorizes this method. The report filed by such a continuing political committee covering January (or the first

month thereafter for which a report would be required by RCW [42.17A.225](#) and [42.17A.235](#)) shall contain in summary the following items remaining at the end of the year: . . .

(c) Unpaid loans and outstanding obligations;

(2) Each candidate, each political committee and each continuing political committee organized to support or oppose a particular candidate or ballot proposition shall report total contributions and expenditures for the period beginning at the time the person becomes a candidate or when the committee is organized, whichever is earlier, and ending when the candidacy or committee is terminated.

[WAC 390-16-039](#).

Application of Limits –

(7) Notwithstanding subsections (2) through (5) of this section, no person other than an individual, bona fide political party, or caucus political committee may make contributions reportable under this chapter to a caucus political committee that in the aggregate exceed eight hundred dollars in a calendar year or to a bona fide political party that in the aggregate exceed four thousand dollars in a calendar year. *This subsection does not apply to loans made in the ordinary course of business.*

(12) Notwithstanding the other subsections of this section, no corporation or business entity not doing business in Washington state, no labor union with fewer than ten members who reside in Washington state, and no political committee that has not received contributions of ten dollars or more from at least ten persons registered to vote in Washington state during the preceding one hundred eighty days may make contributions reportable under this chapter to a state office candidate, to a state official against whom recall charges have been filed, or to a political committee having the expectation of making expenditures in support of the recall of the official. *This subsection does not apply to loans made in the ordinary course of business.*

[RCW 42.17A.405](#) (emphasis added).

(1) The personal funds of a candidate include:

- (a) Assets which the candidate has legal access to or control over, and which he or she has legal title to or an equitable interest in, at the time of candidacy;
- (b) Income from employment;
- (c) Dividends and proceeds from stocks and other investments;
- (d) Income from trusts, if established before candidacy;
- (e) Income from trusts established from bequests, even if established after candidacy;
- (f) Personal gifts, if customarily received; and
- (g) Proceeds from lotteries and similar games of chance.

(2) A candidate may also use, as personal funds, his or her portion of assets owned jointly with a spouse or domestic partner. If the candidate's financial interest is not specified, then the candidate's share is deemed to be half the value of the asset.

(3) If any person gives or loans the candidate funds in connection with his or her campaign, the funds are not considered personal funds of the candidate. Such funds are considered a contribution under chapter [42.17A RCW](#) unless the loan meets the exemption provided in RCW [42.17A.465\(3\)](#).

[WAC 390-17-305](#).

See, also, [PDC Interpretation 12-01 In-Kind Loans, Pledges, and Disclosure of Contributions on 21- and 7-Day Pre-election Reports](#) for an explanation of the difference between “in-kind loan” and a “debt.”

Repayment –

Contributions received and reported in accordance with RCW [42.17A.220](#) through [42.17A.240](#) and [42.17A.425](#) may only be paid to a candidate, or a treasurer or other individual or expended for such individual's personal use under the following circumstances: . . .

(3) Repayment of loans made by the individual to political committees shall be reported pursuant to RCW [42.17A.240](#). However, contributions may not be used to reimburse a candidate for loans totaling more than \$5,500 made by the candidate to the candidate's own authorized committee.

[RCW 42.17A.445](#) and [WAC 390-05-400](#).¹

Restrictions –

(1) A loan is considered to be a contribution from the lender and any guarantor of the loan and is subject to the contribution limitations of this chapter. The full amount of the loan shall be attributed to the lender and to each guarantor.

(2) A loan to a candidate for public office or the candidate's authorized committee must be by written agreement.

(3) The proceeds of a loan made to a candidate for public office:

(a) By a commercial lending institution;

(b) Made in the regular course of business; and

¹ At the beginning of even-numbered years, the Commission adjusts the candidate loan repayment limit in accordance with [RCW 42.17A.125](#). See WAC 390-05-400 for the current repayment limit.

(c) On the same terms ordinarily available to members of the public, are not subject to the contribution limits of this chapter.

RCW 42.17A.465.

(1) Only loans which are recorded in a written loan agreement executed at the time of the loan and properly reported may be repaid by a candidate or political committee. Surplus campaign funds under RCW 42.17A.005 and 42.17A.430 may only be used to return a contribution to the candidate if the contribution was properly reported as a loan from the candidate, as described in subsections (2) and (3).

(2) If any person gives or loans the candidate funds in connection with his or her campaign, the funds are not considered personal funds of the candidate. See WAC 390-17-305. Such funds are considered a contribution from the original source of the contribution under chapter 42.17A RCW *and*, unless the loan meets the exemption provided in RCW 42.17A.465(3) and this subsection, the contribution is subject to the contribution limits provided in chapter 42.17A RCW.

(a) If a candidate or candidate's own political committee or campaign or authorized committee receives a loan from a commercial lending institution, the loan is exempt from the contribution limits of RCW 42.17A.405 and WAC 390-16-310 only if all the following criteria are met:

- (i) The loan is not guaranteed by any other person;
- (ii) The loan is made in the regular course of business; and,
- (iii) The loan is made on the same terms ordinarily available to the public.

(b) A commercial loan to a candidate's own committee or campaign or authorized committee is presumed to be guaranteed by the candidate. The presumption is rebuttable by clear, cogent and convincing evidence.

(3) The amount of campaign contributions which may be used to repay a loan made by the candidate to the candidate's own political committee or campaign, or to repay a commercial loan to a candidate's own political committee or campaign where the candidate is the borrower or guarantor, is limited to the loan repayment limit in RCW 42.17A.445(3) as adjusted by WAC 390-05-400. For purposes of the loan repayment limit, these loans are aggregated for each primary, general, special or recall election and must be designated accordingly by the candidate at the time the loan is made.

(4) If a candidate makes documented out-of-pocket campaign expenditures on behalf of his or her campaign expecting repayment (not intending to make an in-kind contribution), the campaign committee must repay the candidate within 21 days of the expenditure or the candidate will be deemed to have made a loan to his or her campaign committee which must qualify for repayment under subsections (1) and (2) in order for the candidate to be repaid.

Undocumented out-of-pocket campaign expenditures by the candidate are in-kind contributions not eligible for repayment.

[WAC 390-16-226.](#)