

# **MAINE STATE LEGISLATURE**

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COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
AUGUSTA, MAINE 04333

November 2019

# 2020 Candidate Guidebook

*Running for Office in Maine*

Maine Clean Election Act  
Legislative Candidates





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## **IMPORTANT NOTICE**

Information concerning the petitioning process and qualifications for office is provided by the Secretary of State in a separate publication.

The Commission has taken care to make this guide concise and accurate; however, you should not substitute the information presented here for the applicable provisions of Maine Election Law and the Commission's Rules. The statutes and rules are available on the Commission's website. The statutory and regulatory requirements are controlling in the event of any omission or error in this publication. This guide's contents are subject to statutory changes enacted by the Legislature and rule changes adopted under the Administrative Procedure Act.

Please contact the Commission staff at (207) 287-4179 if you have any questions.

## **NOTE FROM THE COMMISSION STAFF**

Congratulations on your decision to run for office in the State of Maine! We, the staff at the Ethics Commission, would like all candidates, treasurers, and members of campaign staffs to know that our main priority is helping you. While we have put a lot of time and information into this guidebook, it simply cannot contain everything. We encourage your calls, emails, and visits to our office for any questions or concerns you may have. At the beginning of your campaign, you will be assigned a Candidate Registrar who will continue to work with you throughout the entirety of your campaign. Your Candidate Registrar will handle all of your calls, emails, questions, and concerns, as well as the reviews of your reports and any compliance matters. To make sure you receive the best guidance and assistance, please make your Candidate Registrar your main point of contact with the Commission and for any questions or concerns you have regarding campaign finance. Please reach out to our office to get to know your assigned Candidate Registrar, and learn what next steps you need to take. We look forward to working with you!



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## CHAPTER 1

# Getting Started as a Candidate as a Maine Clean Election Act Candidate

### BECOMING A CANDIDATE

Generally, there are four ways a person becomes a candidate:

- when they file nomination papers and get on the ballot;
- when they start raising and/or spending money on their candidacy;
- when they register with the Commission; or
- when a party committee nominates them to fill a vacancy.

#### Definition of a “Candidate”

‘Candidate’ means any person who has filed a [primary or nomination petition] and has qualified as a candidate by either procedure, or any person who has received contributions or made expenditures or has given his or her consent for any other person to receive contributions or make expenditures with the intent of qualifying as a candidate. (21-A M.R.S.A. § 1(5))

### REGISTERING AS A CANDIDATE

Within 10 days of appointing a treasurer, a candidate must file the Candidate Registration form with the Commission. The timely appointment of a treasurer and registration as a candidate are statutory requirements under 21-A M.R.S.A. § 1013-A(A). The registration form provides basic contact information about the candidate, their treasurer, deputy treasurer (if appointed), and campaign committee (if any).

When registering, a candidate should remember while they can register online, they must print, sign, and return the signed versions of the Registration and Declaration of Intent forms to the Commission. Also, if the information for the candidate, treasurer, deputy treasurer, or campaign committee changes (including after the election), the candidate must file an amended Candidate Registration form with the Commission, or submit the changes in writing or by email to the Commission within 10 days of the change. These updates are required by law and allow the Commission to contact the candidate with reminders, notices, and telephone calls.

### SELECTING A CAMPAIGN TREASURER

Every candidate is required to appoint a campaign treasurer before accepting any cash or in-kind contributions, making any expenditures, or incurring any debts or obligations. MCEA candidates may not serve as their own treasurer longer than 14 days after registering with the Commission. After 14 days, the candidate must appoint a treasurer other than themselves. A deputy treasurer may also be appointed, but one is not required.

The treasurer has specific duties under the Election Law:

- keeping detailed records of all campaign contributions and expenditures,



- completing campaign finance reports, and
- filing campaign finance reports on time.

Every candidate should select a capable and reliable treasurer. This is a particularly important choice for an MCEA candidate's campaign. An MCEA candidate uses public funds to run for office, and therefore has a high but reasonable standard of accountability for the use of those funds. It is important for a candidate to appoint a reliable treasurer who will actively keep track of campaign finances, save records of campaign contributions and expenditures, and file complete and accurate reports. MCEA candidates are not allowed to file their own reports, placing the responsibility of filing campaign finance reports solely on the campaign treasurers.

Candidates sometimes wish to select someone who has name recognition to be the campaign's treasurer. While this may be politically helpful, it may not be the best way to manage a campaign's finances. One way to have a recognized name associated with a campaign is to appoint that person as the chair of the campaign committee and not as the treasurer. A treasurer should be actively involved with the

campaign, as both the candidate and treasurer are legally responsible for accurate reporting and record-keeping.

### FORMING A CAMPAIGN COMMITTEE

A candidate may choose to organize a campaign committee to promote their election, such as "Friends of John Smith" or "Committee to Elect Jane Smith." If a candidate chooses to form a committee, it must be identified on the Candidate Registration form. Candidate committees are not political action committees (PACs).

### DECLARATION OF INTENT TO RUN AS A MAINE CLEAN ELECTION ACT CANDIDATE

The Election Law requires candidates to file the Declaration of Intent (DOI) form within 5 business days after beginning to collect qualifying contributions (QCs). QCs received more than 5 business days before the filing of the DOI will not count towards the eligibility requirements. It is the date on which the DOI is filed with the Commission — not the date on which the form is signed — that determines whether QCs will count.

WHEN TO REGISTER AS A CANDIDATE		
Campaign activity:	What to do:	How to register:
A candidate accepts cash or in-kind contributions, makes expenditures, or incurs debts or obligations for their campaign;	Candidates must appoint a treasurer <u>before accepting any contributions, making expenditures, or incurring debts or obligations</u> , and then register as a candidate within 10 days of appointing a treasurer.	Candidates should complete the Candidate Registration and Declaration of Intent forms and submit them to the Commission
A candidate gives consent for any other person to receive contributions or make expenditures with the intent of qualifying as a candidate;	Candidates should appoint a treasurer within 10 days of qualifying as a candidate, and register as a candidate within 10 days of appointing a treasurer.	
A candidate files a primary or nomination petition and qualifies as a candidate under either procedure;		



The DOI signed by the candidate is the only acceptable form of the declaration.

#### CODE OF FAIR CAMPAIGN PRACTICES

The Maine Code of Fair Campaign Practices was adopted by the Maine Legislature in 1989 and is a voluntary pledge for candidates running for Governor, the State Senate, and the State House of Representatives. The Commission does not investigate alleged violations of the Code.

The Code lists standards of conduct “consistent with the best Maine and American traditions, [of] discussing the issues and presenting [the] record and policies with sincerity and candor.” If a candidate wishes to subscribe to the Code, they should sign the Maine Code of Fair Campaign Practices form, which is part of the registration packet.

#### OPEN A SEPARATE BANK ACCOUNT

A candidate must have a separate bank account that is used only for their campaign and must deposit all seed money contributions into that account. A candidate may never commingle campaign funds with any other funds. There is a limited exception to this restriction: a candidate may use personal funds to avoid minimum balance and maintenance fees. Personal funds deposited into the account to open it that are greater than the required minimum balance must be considered and reported as seed money. Personal funds must never be used for campaign purposes.

If a candidate has used personal funds to keep a bank account from a previous election open, they must remove those personal funds, except for the minimum amount necessary to avoid bank fees.

Candidates are allowed to spend any interest earned on campaign accounts, but interest must be reported as unitemized contributions in campaign finance reports.

The Commission staff recommends using a campaign account's debit card as much as possible when making campaign expenditures. This will help the candidate and treasurer keep track of the dates, amounts, and payees of the campaign's expenditures for reporting purposes. Making payments of greater than \$50 in cash with MCEA funds is prohibited.

#### GETTING ESTABLISHED IN THE STATE'S ACCOUNTING SYSTEM

**Becoming a Vendor.** In order for a candidate to receive public funds, the State government must establish them as a vendor in its accounting system. The Commission recommends they file a Vendor form at the same time they file their registration. This avoids any delays in the first payment of MCEA funds, as the State's accounting office takes several weeks to set up a new vendor.

Even if a candidate was an MCEA candidate in a prior election, they will need to complete a new Vendor form at the beginning of their 2020 campaign. Completing the form for each election cycle ensures the State's accounting office has the most up-to-date information, which results in the issuance of timely payments.

**Electronic Funds Transfer/Direct Deposit.** A candidate may choose to receive payments by check or by direct deposit into their campaign bank account. To set up direct deposit, they will need to fill out the Request for Direct Deposit (EFT) form.

Even if a candidate was an MCEA candidate in a prior



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election, they will need to complete the direct deposit form at the beginning of their 2020 campaign.

### CANDIDATES WITH LEADERSHIP PACs

MCEA candidates are not allowed to maintain a PAC which was intended to promote their election for a legislative leadership position (a “leadership PAC”), to raise money for legislative expenses, or for most other purposes. (P.L. 2015, ch. 116) However, MCEA candidates may continue to be involved in other PACs, such as those organized by legislative caucuses or formed to influence a ballot question election.

If an MCEA candidate has a leadership PAC, they must terminate the PAC or their involvement with the PAC no later than April 1, 2020. Candidates with specific questions about how this requirement applies to them should contact the Commission staff.

### LEGAL REFERENCES

Selecting a Treasurer	21-A M.R.S.A. § 1013-A(1)
Removal of Treasurer	21-A M.R.S.A. § 1013-B
Duties of Treasurer	21-A M.R.S.A. §§ 1013-A(1)(A) and (4); 1016; 1016-A; 1017(2), (3-A) and (10); 1125(12-A)
Authorizing One Campaign Committee	21-A M.R.S.A. § 1013-A(1)(B)
Registration	21-A M.R.S.A. § 1013-A(1)
Reporting Changes in Registration Information	21-A M.R.S.A. § 1013-A(5)
Commingling of Campaign and Personal Funds	21-A M.R.S.A. §§ 1016(1), 1125(7-A); Rules, Chapter 3, Section 8(1)(A)
Code of Fair Campaign Practices	21-A M.R.S.A. § 1101 <i>et seq.</i>
Declaring Intent as an MCEA Candidate	21-A M.R.S.A. § 1125(1); Rules, Chapter 3, Section 2(1) and (2)
Filing Declaration of Intent Before Collecting Qualifying Contributions	21-A M.R.S.A. § 1125(1); Rules, Chapter 3, Section 2(4)(A)
Leadership PACs	21-A M.R.S.A. § 1125(6-F)



## CHAPTER 2

# Seed Money

### SEED MONEY

**Seed Money Contributions.** Before becoming a certified MCEA candidate, participating candidates finance their campaigns through limited contributions of \$100 or less from individuals, which are called seed money contributions.

Candidates for State Representative in the 2020 elections may collect up to \$1,000 in seed money, and candidates for State Senator may collect up to \$3,000. Seed money contributions must be from individuals who are U.S citizens or who have been granted permanent residency status. Prior to MCEA certification, the campaign may not accept any contributions other than seed money contributions. Loans may not be accepted.

**Seed Money Restrictions.** The acceptance and use of seed money must comply with the following restrictions:

- only individuals may make seed money contributions, up to \$100 per contributor;
- all seed money contributions must be from the personal funds of the individual;
- candidates and their family members may each give up to \$100 in seed money, provided the money comes from the personal funds of the contributor and not from another member of the family;
- no contribution may be accepted from

businesses, groups, or associations, such as PACs, party committees, labor unions, or trade associations; and

- during a legislative session, lobbyists, lobbyist associates, and their clients may not make seed money contributions to the Governor, Legislators, constitutional officers, or their staff and agents (even with their personal funds).

In addition to these restrictions, a candidate may not accept a loan from any source. A candidate may not advance personal funds to their campaign or accept an advance of funds from another with the expectation that seed money will be raised to pay back the advance.

All expenditures made prior to MCEA certification must be made with seed money, and not from any other source of funds, including the personal funds of the candidate. Seed money may not be collected or spent once a candidate has been certified.

**In-Kind Seed Money Contributions.** Goods and services that are provided to a campaign at no cost or at a discounted cost are in-kind contributions. In-kind contributions must be reported in the Seed Money Report and must comply with the seed money restrictions. If goods or services are provided at a cost that is less than fair market value, the amount of the discount is an in-kind contribution.

Certain types of goods and services are excluded from



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the legal definition of “contribution.” The donation of these “exempt” goods and services to a campaign is not considered a contribution. Treasurers are not required to report these exempt goods and services, and they are not subject to the seed money restrictions. See the Appendix *ii* for more information.

## **CONSIDERATIONS WHEN COLLECTING SEED MONEY**

### ***Occupation and Employer Information Required.***

Candidates are required to request and report the occupation and employer of contributors who give more than \$50 in seed money. Under the Commission’s Rules, a campaign must make a reasonable effort to obtain this information from contributors.

The Commission staff recommends campaigns ask contributors for their information at the time seed money is solicited. If the candidate uses a form for contributions or an online fundraising service, the form or webpage should have a place for the contributor’s employment and occupation information. If a contributor is unwilling to provide the information upon request, the treasurer should report “information requested” in the occupation and employer fields for that contributor in the campaign finance report.

### ***Obtain and Keep Records of Contributions.***

Treasurers and candidates are also required to keep a detailed and exact account of the full name and address of every person making a contribution of more than \$10, and the date and amount of the contribution. See Chapter 9 for more on seed money record-keeping.

***Contributions from Minors.*** Candidates for Maine State and county offices may accept contributions from

minors. If a campaign receives a seed money contribution from a minor and the campaign has doubts as to the source of the funds, the Commission staff recommends the campaign confirm and document that the minor, not the parents, gave the contribution. The Election Law prohibits contributions made to a candidate in the name of another. A penalty of up to \$5,000 may be assessed on the contributor and the campaign for such a violation.

In documenting the source of funds, the campaign may want to confirm the decision to contribute was made knowingly and voluntarily by the minor, and the funds were not given to the minor for the purpose of making the contribution.

## **DEPOSITING & SPENDING SEED MONEY**

***Depositing Seed Money.*** All seed money contributions received by a campaign must be deposited in the campaign bank account. Seed money contributions received by check may not be cashed to create cash reserves for a campaign. If a campaign receives any seed money contributions in the form of cash, these contributions must also be deposited in the campaign bank account. Campaign funds received by an MCEA candidate cannot be commingled with any other funds.

By depositing all seed money contributions into the campaign bank account, and by paying vendors directly from the account, a campaign creates an audit trail that satisfies the documentation requirements of the MCEA and assures the Commission the campaign has complied with the seed money restrictions.



**Spending Seed Money.** When making purchases prior to MCEA certification, there are two important requirements candidates must bear in mind:

- candidates may only use seed money to pay for goods and services; and
- candidates may not receive any goods or services if they do not have enough seed money to pay for the goods or services received.

Candidates must raise a sufficient amount of seed money to cover their campaign's expenses prior to MCEA certification and budget accordingly.

It is a serious violation for a candidate to receive goods or services if the campaign does not have enough seed money to make the purchase. If a candidate or supporter is using personal funds or a credit card to make a campaign purchase, the campaign must have enough seed money in the campaign account to immediately reimburse the candidate or supporter.

Sometimes a candidate wishes to place an order with a vendor prior to MCEA certification, but the order costs more than the amount of seed money raised. It is permissible for the candidate to place the order, make a partial payment to the vendor, and receive some goods or services from the vendor as long as the value of the goods or services received prior to MCEA certification does not exceed the amount paid to the vendor. For example, a candidate may place an order for 500 palmpcards which costs \$500. If the candidate only has \$250 in seed money to pay the vendor, the candidate can still place the order, but can only take delivery of 250 palmpcards.

Purchases made with the candidate's personal funds for campaign goods and services that are not fully

reimbursed by the campaign are in-kind contributions. A candidate may contribute up to \$100 in seed money, in the aggregate (cash contributions and in-kind contributions), to their campaign prior to certification.

All goods and services received prior to MCEA certification must be paid for with seed money. Candidates may never use MCEA funds to pay for goods and services received prior to certification. This includes mileage and other travel-related expenses incurred by the candidate, the candidate's spouse or domestic partner, and campaign staff and supporters. Seed money must be used for reimbursements for travel done prior to MCEA certification. Using MCEA funds to pay for goods and services received prior to certification is a very serious violation of the Act and could potentially result in the revocation of a candidate's certification.

**Purchasing Equipment with Seed Money.** Campaign property or equipment purchased with seed money — unlike equipment purchased with MCEA funds (see Chapter 6) — does not have to be sold at fair market value at the end of the campaign. Therefore, campaigns may wish to consider purchasing campaign equipment (phones, printers, computers, tablets, cameras, etc.) with seed money.

**Using Seed Money for Payments to Family or Household Members.** The restrictions on using MCEA funds to compensate family or household members (see Chapter 6) do not apply to expenditures of seed money.

Candidates may use seed money to pay members of a candidate's family or household, but the campaign must report the family or other relationship (e.g.,



"brother" or "roommate") in the Explanation of Purpose section in the campaign finance report.

**Reporting Seed Money Contributions and Expenditures.** Contributions and expenditures of seed money must be reported to the Commission by filing a Seed Money Report. Most treasurers file a Seed Money Report when the candidates submit their Request for Certification forms along with their QCs. However, the Seed Money Report may be submitted up to one week after the certification deadline, provided the candidate has requested an extension of time.

**Unspent Seed Money.** Any unspent seed money funds shown on the Seed Money Report are at that point considered to be MCEA funds, and will be deducted from the first MCEA payment. A Seed Money Report must accurately disclose the amounts that were spent (expenditures), and amounts that were obligated but not paid (debts). If a debt is reported as an expenditure, the Commission staff may view the inaccurate reporting as a violation of the MCEA, because it had the effect of increasing the amount of the first MCEA payment.

### COMMISSION REVIEW OF SEED MONEY REPORTS

The Commission staff reviews all Seed Money Reports to verify compliance with reporting requirements and seed money restrictions. Misrepresentations of the

identity of seed money contributors or the actual source of funds for a contribution will be viewed as a serious violation of the Election Law. If a candidate has any questions about whether a contribution or expenditure will comply with the seed money restrictions, they are encouraged to ask the Commission staff before accepting the contribution or making the expenditure. Seed Money Reports are also reviewed as part of the Commission's audit of MCEA candidates.

### WAIVERS OF SEED MONEY VIOLATIONS

All cash and in-kind contributions received by a participating candidate must strictly comply with the seed money restrictions. The MCEA does not permit a candidate who has violated the seed money restrictions to participate in the MCEA, unless the Commission grants a waiver.

If a candidate has unintentionally violated the seed money restrictions, a waiver may be granted in limited circumstances. Candidates are advised that not all requests for waivers will be granted, and that only those requests that strictly meet the standards in the Commission's Rule will be granted. If a candidate believes they may have violated the seed money restrictions, they should contact the Commission staff right away.

#### LEGAL REFERENCES

Seed Money Contributions and Expenditures

21-A M.R.S.A. §§ 1122(9); 1125(2) and (2-A);  
Rules, Chapter 3, Section 2(3)

Occupation and Employer of Seed Money Contributors

21-A M.R.S.A. §§ 1016(3)(B); 1017(5)

Restrictions on Lobbyist Contributions

1 M.R.S.A. § 1015(3)

Contributions in the Name of Another

21-A M.R.S.A. § 1004(1); 1004-A(3)

Waiver of Seed Money Requirements

21-A M.R.S.A. § 1125(2-A)(B);  
Rules, Chapter 3, Section 2(3)(E)



# CHAPTER 3

## Qualifying Contributions

### QUALIFYING CONTRIBUTIONS

**Definition.** A qualifying contribution (QC) is a donation of \$5 or more to the Maine Clean Election Fund from a registered voter in the State of Maine. A QC is how registered voters show support for a candidate's participation in the MCEA program with a relatively small financial contribution.

**Required Number of QCs.** In order to be certified as an MCEA candidate, a participating candidate must collect a minimum number of QCs. Candidates for State Representative must collect at least 60 QCs; candidates for State Senator must collect at least 175 QCs. For certification, the QCs must be collected and submitted to the Commission no later than the certification deadline of 5:00 p.m. on April 21, 2020.

The Commission staff reviews all QCs thoroughly, and will invalidate a QC if it does not meet all the collection and submission requirements. Therefore, candidates are encouraged to collect at least 10% more than the minimum number of QCs.

**From Registered Voters Only.** Only QCs from registered voters in the candidate's legislative district in which they are running are valid. The contributors do not need to be enrolled in the same political party as the candidate.

**From Personal Funds of the Registered Voter.** QCs must be made with the personal funds of the registered voter.

**Acceptable Forms of Contributions: Online, Check, Cash, or Money Order.** QCs must be in the amount of \$5 or more and be made in the form of:

- a credit or debit card payment using the Commission's online QC service (see next page);
- a personal check payable to the Maine Clean Election Fund;
- cash, provided the contributor signs the Cash QC Affirmation form;
- money order payable to the Maine Clean Election Fund and signed by the contributor; or
- a business check payable to the Maine Clean Election Fund, as long as: (1) the contributor uses the business account for personal expenses, and (2) the contributor's name is imprinted on the check, or the campaign submits a written note from the contributor stating that the contributor uses the account for personal purposes (the note may be in the memo section of the check or on a separate paper).

Family members, domestic partners, and live-in caregivers who reside in the same household may combine QCs in the form of a single check, provided that each individual uses their own personal funds,



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signs the Receipt and Acknowledgement (R&A) Form, and is registered to vote at the address of the household.

**Online QCs: Making, Receiving, and Verifying.** The Commission offers an online service to allow Maine voters to make QCs online using a debit or credit card. The QC website will begin to accept QCs on January 1, 2020. The address for the website is [www.maine.gov/cleanelections](http://www.maine.gov/cleanelections). Candidates may place a link to the site on their campaign websites, and may also distribute it by email or other means.

To make an online QC, a Maine voter enters their address, chooses the participating candidate(s) they wish to support, and enters their name and credit or debit card information. The contributor electronically signs a form to acknowledge the contribution was made from their personal funds and that they did not receive anything in exchange for the contribution. Candidates and treasurers can access the QC website to monitor their online QCs by entering their eFiling usernames and passwords.

The QC website attempts to verify contributors' voter registrations automatically. If the system can verify a contributor's voter registration, the candidate will not be required to obtain verification by the municipal clerk for that contributor. If a contributor cannot be verified as a registered voter by the QC website candidates may bring system-generated forms listing unverified contributors to the appropriate municipal clerks.

The Commission staff does not verify the voter registration of individual contributors. If a contributor's registration status has not been verified through the QC website or by the municipal clerk, the QC will not be valid.

## RECEIVING QCS IN CASH & USING MONEY ORDERS

A campaign is allowed to receive a QC in cash only if the cash is converted to a money order and certain other legal requirements are met. This allows campaigns to collect QCs in person from Maine voters who do not have a checkbook with them at the time the campaign solicits the contribution.

**Bulk Money Orders.** Candidates may accept cash from QC contributors, and aggregate multiple cash QCs into a single bulk money order, provided the contributors sign the Cash QC Affirmation Form and the R&A Form. The cash received from contributors during the collection process must be used to directly purchase a single money order that will be submitted to the Commission. The bulk money order must be in the correct amount to represent all cash contributors in a submission; if there is a discrepancy between the amount of the money order and the number of cash contributors, some QCs will be considered invalid. The campaign must actually receive money from the personal funds of the contributor, and not from any other source; misrepresenting the source of cash for a QC is a violation of the MCEA that could be cause for disqualification or revocation from the program.

**Individual Contributor Money Orders.** The campaign may purchase individual \$5 money orders to have on hand while soliciting QCs. The contributor must give \$5 in cash to the candidate/circulator, sign the money order, and sign the R&A Form. The cash must be used to directly reimburse the source of funds that purchased the money orders. The campaign must actually receive money from the personal funds of the contributor, and not from any other source; misrepresenting the source of cash for a QC is a violation of the MCEA that could be cause for



disqualification or revocation from the program. If these requirements are not met, the QC will not be valid.

Using Money Orders for QCs		
	Bulk Money Orders	Individual Contributor Money Orders
<b>When are money orders purchased?</b>	The money order is purchased after the campaign collects cash from QC contributors	\$5 money orders are purchased before soliciting QCs from contributors
<b>Where does the \$5 go?</b>	The cash collected from QC contributors must be used to directly purchase a bulk money order to be used as payment for all of the applicable QCs	The cash collected from QC contributors must be used to directly reimburse the source of the funds that originally purchased the money orders
<b>What does the contributor sign?</b>	The contributor must sign the R&A Form and the Cash QC Affirmation Form	The contributor must sign the R&A Form as well as the money order

**Purchasing Money Orders.** The face value of money orders is paid for by the \$5 in cash given by the QC contributor. With the bulk money orders, that face value is paid with the cash the campaign has collected from its QC contributors. With individual contributor money orders, the campaign must front the face value of the money orders either from personal funds or from the campaign account. The purchasing source must be paid back with the cash collected from contributors. Even if the money orders are purchased with campaign funds, they do not constitute a campaign expense and are not reported in finance reports.

Money order fees, however, are a campaign expense and should be paid from campaign funds directly or reimbursed with campaign funds to the purchaser.

These fees must be reported as expenditures on campaign finance reports. If a reimbursement is not made, the purchaser has made an in-kind contribution, which is only allowable in the seed money period. There is an exception: the candidate themselves may spend personal funds on money order fees without being reimbursed by the campaign, and the fees are not reported, nor are they an in-kind contribution.

### PERIOD FOR COLLECTING QCs

For the 2020 elections, QCs for legislative candidates may be collected from January 1, 2020 until 5:00 p.m. on October 13, 2020. Any QCs collected outside this period will not be valid. In addition, QCs collected more than 5 business days before a candidate files a signed Declaration of Intent form with the Commission will not be valid.

While QCs may be collected until October 13, 2020, a candidate must submit the required number of valid QCs to the Commission no later than 5:00 p.m. on April 21, 2020 to be certified as an MCEA candidate. QCs collected after April 21 can be used to request payments of supplemental funds only. (See Chapter 5.)

### RECEIPT AND ACKNOWLEDGEMENT (R&A) FORMS

In order for a QC to be valid, the contributor must acknowledge the contribution was made from their personal funds and in support of the candidate, and that they did not receive anything of value in exchange for the contribution. A QC contributor does this by signing the R&A Form.

All contributors making a QC by check or cash must complete the name and address lines and personally sign the R&A Form. A family member or friend may not sign the form on behalf of a contributor. However, a contributor's family member, domestic partner, or



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caregiver may sign for the contributor if they are unable to do so due to a physical impairment or disability.

If the QC is made using the Commission's QC website, the contributor must make the required acknowledgement online using the prompted screen, and the website will create an R&A Form automatically for campaign and Commission use. Online QC contributors are not required to physically sign anything.

***Using Circulators.*** When anyone, including a candidate, collects QCs, that person must complete the statement in the "Circulator's" section in the top right corner of the R&A Form. QCs will not be accepted unless the circulator section is completed on the corresponding R&A Form. Circulators should sign this affirmation after finishing collecting all of the signatures on the form. If a campaign mails the R&A Form to contributors, the circulators section is not required to be completed, unless the contributor circulates the form outside of his or her household.

Both participating and certified MCEA candidates may use campaign funds to pay circulators for collecting QCs, but there are restrictions on doing so. Namely, circulators cannot be paid per QC they collect, nor can any type of quota system be used, such as bonuses or extra pay. Instead, circulators should be paid by an hourly or daily rate. Paying circulators per QC is a serious violation of the MCEA.

***Verification of Voter Registration Status.*** For a QC to be valid, the contributor must be a registered voter in the candidate's district. Only QCs from individuals whose voter registration has been verified by the QC website or a municipal clerk can be valid.

For QCs made by check or cash/money order, the campaign will enter each individual contributor's name and address into the new portal available in the Commission's online QC service. This will both create the list of contributors required in the Request for Certification; and it will allow the online QC service to attempt to verify each contributor.

The online QC service has a better than 90% success rate in verifying the voter registration status of contributors. If the online QC service cannot verify that online or physical contributors are registered voters at the address provided by the contributors, it is the candidate's responsibility to print out the R&A Forms of unverified contributors from the website and take those forms to the municipal clerks to verify the contributors' voter registrations.

To become a certified MCEA candidate, a candidate must submit the required number of valid QCs (original checks, money orders, and Cash QC Affirmation slips) and corresponding original R&A Forms to the Commission no later than 5:00 p.m. on April 21, 2020. Commission staff recommends that candidates submit R&A Forms to the municipal clerks sufficiently in advance of the April 21st deadline to allow the clerks time to verify the contributors' voter registrations, if they wish those rejected by the online QC service to be considered.

For statutory references related to this chapter, see the legal references section at the end of Chapter 4.



## CHAPTER 4

# Requesting MCEA Certification & Initial Payment of Public Campaign Funds

### REQUESTING CERTIFICATION AS AN MCEA CANDIDATE

**Certification Request and Deadline.** After a candidate has collected the required number of valid QCs, the next step is to request certification by submitting the QCs along with the R&A Forms and the other required documents (see chart on the next page) to the Commission. The Commission staff carefully reviews all requests and determines if all requirements have been met. A request for certification must be submitted to the Commission no later than 5:00 p.m. on April 21, 2020.

To qualify for MCEA funding, the treasurer must file a Seed Money Report, and the campaign must submit the list of QC contributors and a Request for Certification Form. The Commission's Rules permit Commission staff to grant a one week extension for submitting the Seed Money Report; the extension request is at the bottom of the Request for Certification Form. The Commission has no authority to grant a candidate an extension to submit R&A Forms and QCs. Late submissions will not be accepted for review.

Requesting Certification		
	QCs (Required)	Seed Money Max (Optional)
House	60	\$1,000
Senate	175	\$3,000

**Submit Checks/Money Orders and R&A Forms.** No later than 5:00 p.m. on April 21, 2020, a candidate must submit at least the minimum number of valid QCs, the original R&A Forms, and computer-generated R&A Forms signed by municipal clerks. Checks, Cash QC Affirmation slips, both bulk and individual-contributor money orders, and computer-generated R&A Forms signed by municipal clerks, must be attached (not stapled) to their corresponding R&A Forms. Commission staff recommends submitting at least 10% more than the required number of QCs in the event some are invalid.

**Submit List of Contributors.** A candidate must submit to the Commission, via the Commission's online QC service, a list of individuals who gave QCs to the campaign. The list must include all of the QC contributors the candidate wishes to submit for certification. Lists must be submitted by using the online QC service. The service uses the information on the R&A Form (name, address, and municipality) to determine voter registration status and add all valid QCs to a master submission list with any online QCs received in that period of time. The generated list can be downloaded and printed, but Commission staff will also be able to access the list through their own administrative portal. The list must be officially submitted to the Commission via the online QC service by 5:00 p.m. on April 21st for the QCs to be counted as valid.



## 2020 REQUEST FOR CERTIFICATION AS AN MCEA CANDIDATE – REQUIRED DOCUMENTATION

Submit the following documents on or before April 21, 2020 no later than 5:00 p.m.:

Request for Certification Form	Completed and signed form.	
QCs and R&A Forms	<p>For QCs received <u>by check or cash</u>, submit:</p> <ul style="list-style-type: none"><li>• <u>Original</u>, signed R&amp;A Forms</li><li>• Checks/money orders attached to <u>original corresponding</u> R&amp;A Forms</li><li>• Cash QC Affirmation Forms attached to <u>original corresponding</u> R&amp;A Forms</li><li>• <u>System generated R&amp;A Forms</u> verified by the municipal clerks (if necessary) attached to <u>original corresponding</u> R&amp;A Forms</li></ul> <p>For QCs collected <u>online</u>, submit:</p> <ul style="list-style-type: none"><li>• <u>System generated R&amp;A Forms</u> verified by the municipal clerks (if necessary)</li></ul>	<p><b>No time extensions permitted.</b></p> <p><b>QCs and R&amp;A Forms submitted late will not be accepted for certification purposes.</b></p>
List of QC Contributors	Submitted electronically after entering all QC contributors' information into the online QC service; must contain all contributors the candidate wishes to be considered toward certification.	<b>No time extensions permitted. Lists submitted late will not be accepted for certification purposes</b>
Seed Money Report	Completed and filed report.	One week extension permitted

Lists not in the Commission's format will not be accepted.

**File Seed Money Report.** The Seed Money Report discloses all seed money contributions received and expenditures made by a campaign. Candidates and treasurers should carefully review seed money contributions and expenditures to make sure they are reported accurately, and there was no overspending. The Seed Money Report, like all other campaign finance reports, is filed electronically on the Commission's website. See Chapter 10 for more information on filing reports.

**Request for Certification Form.** This form is a candidate's signed agreement to comply with the

requirements of the MCEA and the Commission's Rules. It is also a checklist for the materials they must submit for certification. A candidate may also use this form to request an extension of time to file the Seed Money Report.

### COMMISSION STAFF REVIEW OF CERTIFICATION REQUEST

The Commission staff is required to determine whether a candidate has met the requirements for certification within three business days of the candidate's final submission of QCs and other required documents, unless additional time is necessary for further investigation to verify compliance with the MCEA. If further investigation is necessary, the Commission



staff is required to provide the candidate with an anticipated schedule for the investigation. The Commission staff gives priority to those candidates in contested primary elections, and will make every effort to certify all candidates within three business days.

The Commission staff notifies candidates and their opponents in writing of the staff determination regarding a candidate's request for certification. The State's accounting office makes the direct deposit (or mails the check) soon after the Commission staff authorizes the payment.

### **APPEALING THE COMMISSION STAFF'S CERTIFICATION DETERMINATION**

If a candidate, their opponent, or other interested person believes the Commission staff has made an error in granting or denying a request for certification, they may submit an appeal to the Commission within seven days of the certification decision.

The members of the Commission will hold a hearing within five days of the submission of the appeal. The Commission will issue its decision within five business days after the hearing is completed. The Commission's decision may be appealed by commencing an action in Superior Court. Frivolous appeals, or those intended to cause delay or hardship for a campaign, may result in the party who appealed the determination being required to pay the costs of the appeal.

### **VIOLATIONS**

It is a serious violation of the MCEA to misreport or falsify the actual source of funds for a QC. If the Commission determines that a candidate, or an agent of the candidate, submitted fraudulent QCs, the

Commission could deny the candidate's certification request and impose substantial penalties.

When a candidate or their campaign workers solicit individuals for QCs, the purpose for asking a Maine voter to sign the R&A Form must be clearly stated. Misrepresenting the reason for the signature is a serious violation of the MCEA.

These violations could result in the denial or revocation of certification, as well as being barred from participating in the program in future elections.

It is also a violation of the MCEA for a candidate or their agent to assist another person to become an opponent, in order for the candidate to receive the higher amount of MCEA funds for a contested election.

### **REVOCATION OF CERTIFICATION**

If the Commission finds that a certified candidate has engaged in serious misconduct, the candidate's certification may be revoked by the Commission after the candidate has had an opportunity for a hearing. Grounds for revocation involve serious violations of the MCEA, such as submitting fraudulent QCs, making false statements or material misrepresentations in reports to the Commission, and misrepresenting to a Maine voter the purpose of the voter's signature on the R&A Form.

If a certification is revoked, the candidate must return all unspent MCEA funds to the Commission. Depending on the circumstances, the candidate may be required to return all MCEA funds paid to the candidate and be assessed a civil penalty. The candidate may appeal the Commission's decision to Superior Court.



## AMOUNTS AND TIMING OF INITIAL PAYMENTS FOR THE PRIMARY AND GENERAL ELECTIONS

The table below shows the base amount of the initial payments of MCEA funds for the primary and general elections.

AMOUNTS OF INITIAL MCEA PAYMENTS IN 2020		
REPRESENTATIVE:	UNCONTESTED	CONTESTED
PRIMARY ELECTION	\$525	\$2,650
GENERAL ELECTION	\$1,600	\$5,300
SENATE:	UNCONTESTED	CONTESTED
PRIMARY ELECTION	\$2,125	\$10,575
GENERAL ELECTION	\$6,350	\$21,175

**Payment for the Primary Election.** The payment for the primary election will be reduced if a candidate has any unspent seed money. While MCEA candidates are not required to spend all of their seed money, if a candidate has not spent all of their seed money by the time they request certification, the Commission considers that remaining balance to be MCEA funds and must deduct the amount of unspent seed money from the first payment of MCEA funds made to the candidate.

An MCEA candidate running as a member of one of Maine's established political parties will participate in their party's primary election in June. MCEA candidates in contested primaries receive a larger payment of MCEA funds. If a candidate's Request for Certification is filed prior to the deadline for filing nominating petitions with the Secretary of State, it may be unsettled as to whether the candidate is in a contested primary election. In this situation, the amount of the payment to the candidate will be the amount for an uncontested primary election. An additional amount

will be distributed within three days after the deadline if the candidate is determined to be in a contested primary election.

A candidate will usually receive the payment for the primary election within ten days after certification.

### ***Primary Payments to Unenrolled Candidates.***

Candidates who are not enrolled in a political party receive the primary election payment for an uncontested party candidate.

***Unspent Primary Election Funds.*** If an MCEA candidate does not spend all of their primary election funds, the Commission does not deduct the unspent funds from the initial payment to the candidate for the general election.

***Initial Payment for the General Election.*** The MCEA requires the Commission to make initial payments for the general election no later than three days after the Secretary of State certifies the results of the primary election. In practice, the Commission staff will make initial payments for the general election as soon as the results of the primary elections are certain – which in most races is likely to be before certification by the Secretary of State.

The initial payment for the general election to an MCEA candidate who is involved in a recount in a primary election will be made when the election results are certain.

**LEGAL REFERENCES**

Qualifying Contributions	21-A M.R.S.A. §§ 1122(7) and 1125(3); Rules, Chapter 3, Section 2(4)
Qualifying Period	21-A M.R.S.A. § 1122(8)
Required Number of Qualifying Contributions	21-A M.R.S.A. § 1125(3)
Receipt and Acknowledgement Form	21-A M.R.S.A. § 1122(7)(D); Rules, Chapter 3, Section 2(4)
Verification by Municipal Clerks	21-A M.R.S.A. § 1122(7)(B); Rules, Chapter 3, Sections 2(4)(F), (G)
Misrepresentation of Purpose	21-A M.R.S.A. § 1125(3)
Prohibition against Assisting an Opponent	21-A M.R.S.A. § 1125(6-A)
Requesting Certification	21-A M.R.S.A. § 1125(4) and (5); Rules, Chapter 3, Sections 3(1) - (3)
Certification by Commission	21-A M.R.S.A. § 1125(5); Rules, Chapter 3, Section 3(4)
Revocation of Certification	21-A M.R.S.A. § 1125(5-A)
Appeals	21-A M.R.S.A. § 1125(14); Rules, Chapter 3, Section 3(5)
Timing of Initial Payments	21-A M.R.S.A. § 1125(7)
Unenrolled Candidates	21-A M.R.S.A. § 1125(10)
Amounts of Initial Payments	21-A M.R.S.A. § 1125(8-C) and (8-D)
Forms of Payment	Rules, Chapter 3, Section 5(1)



## CHAPTER 5

# Collecting Additional Qualifying Contributions & Requesting Supplemental Campaign Funds

### OVERVIEW

Certified MCEA candidates in contested general elections may continue to collect QCs after certification and request supplemental payments of MCEA funds. These payments are intended to ensure that MCEA candidates will have access to sufficient campaign funds for their elections. Whether a candidate seeks supplemental funding is entirely up to them; they should make a realistic assessment of the resources they need to run a successful campaign.

### ADDITIONAL QCs

An additional QC collected for the purpose of requesting supplemental funds must meet all the requirements explained in Chapter 3. Additional QCs may be collected from January 1 to October 13, 2020, and cannot be from contributors who gave QCs used for certification or for other supplemental payment requests.

If a candidate submits more than the minimum number of valid QCs for certification, the excess QCs will be reviewed by the Commission staff. Those which are

Levels of Supplemental Payments

House Candidates		Senate Candidates	
QCs	Payment	QCs	Payment
15 QCs	\$1,325	45 QCs	\$5,300
30 QCs	\$2,650	90 QCs	\$10,600
45 QCs	\$3,975	135 QCs	\$15,900
60 QCs	\$5,300	180 QCs	\$21,200
75 QCs	\$6,625	225 QCs	\$26,500
90 QCs	\$7,950	270 QCs	\$31,800
105 QCs	\$9,275	315 QCs	\$37,100
120 QCs	\$10,600	360 QCs	\$42,400
<b>180 QCs for maximum</b>	<b>\$15,900 maximum</b>	<b>535 QCs for maximum</b>	<b>\$63,575 maximum</b>



valid can be used to obtain supplemental payments of MCEA funds.

#### LEVELS OF SUPPLEMENTAL PAYMENTS

The table on the previous page shows the levels of supplemental payments and the number of valid additional QCs that must be submitted to receive each supplemental payment. The additional QCs for supplemental payments are over and above the number of QCs needed for certification.

**Contested General Election Supplemental Funds.** MCEA candidates participating in a contested general election are eligible to receive supplemental payments of MCEA funds by submitting valid additional QCs. For every 15 valid additional QCs submitted by a House candidate, the candidate will receive a supplemental payment of \$1,325. A Senate candidate will receive a supplemental payment of \$5,300 for every 45 valid additional QCs submitted.

#### VERIFYING VOTER REGISTRATION STATUS

To be valid, additional QCs must be from registered voters in the candidate's district. For QCs made by check, cash, or money order, candidates will enter the name and address of the contributor into the online QC service to create their list of QCs to be submitted. At the time of submission, the voter registration status of contributors will be checked. Any contributors whose registration status cannot be verified by the service can be downloaded as a printable R&A Form and brought to the municipal clerks for the contributors' towns in order to have the contributors' voter registrations verified. While the last day for submitting additional QCs is October 13, 2020 by 5:00 p.m.,

candidates should be sure to bring the R&A Forms to the municipal clerks before that date.

October is a busy month for clerks as they prepare for the election and process absentee ballots in addition to performing their regular duties. The Commission staff recommends bringing the R&A Forms to the clerks by the end of September to have greater assurance they will get the verified forms back from the clerks before the October 13<sup>th</sup> deadline. Commission Rules give municipal clerks ten business days to verify the voter registrations of contributors. Though many clerks will review and return the R&A Forms sooner, they are not under any legal obligation to do so.

#### SUBMITTING ADDITIONAL QCS & REQUESTING SUPPLEMENTAL FUNDS

Candidates do not have to wait until they have collected a level's exact amount of QCs before submitting them. Instead, candidates can submit additional QCs in a way that best works for their campaigns. The Commission staff will review and validate QCs after each submission, and authorize MCEA payments when the minimum number for each payment level is reached. The last day for submissions and requests for supplemental funds is October 13, 2020 by 5:00 p.m. A submission of additional QCs will not be considered complete and will not be reviewed by the Commission staff unless the submission includes all the following required documents.

**Checks/Money Orders and R&A Forms.** The original checks, Cash QC Affirmation slips, money orders, R&A Forms, and verification of voter registrations of contributors, must be submitted to the Commission no later than 5:00 p.m. on October 13, 2020. Checks,



Cash QC Affirmation slips, money orders, and verification of voter registrations must be attached (not stapled) to their corresponding R&A Forms. QCs and R&A Forms submitted after 5:00 p.m. on October 13, 2020 will not be accepted.

***Electronic List of Contributors.*** Candidates must also submit a new list of the contributors included in the batch. See Chapter 4 for information about the online QC service through which the list must be submitted to the Commission.

#### LEGAL REFERENCES

Time Period for Collecting and Submitting	21-A M.R.S.A. § 1125(8-E)(B)
Additional Qualifying Contributions	
Amounts of Supplemental Payments	21-A M.R.S.A. §§ 1125(8-C) & (8-D)
Verification by Municipal Clerks	21-A M.R.S.A. § 1122(7)(B); Rules, Chapter 3, Sections 2(4)(F), (G)
Required Documentation for Submission	Rules, Chapter 3, Section 6



## CHAPTER 6

# Expenditures, Unpaid Debts & Reimbursements with MCEA Funds

### **DEFINITION OF EXPENDITURE**

The term expenditure means:

*"A purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value made for the purpose of influencing the nomination or election of any person to political office, except that a loan of money to a candidate by a financial institution made in accordance with applicable banking laws and regulations and in the ordinary course of business is not included."*

(21-A M.R.S.A. § 1012(3)(A)(1))

Certain items, activities, and communications are exempt from the definition of expenditure. These exempted items are listed in 21-A M.R.S.A. § 1012(3)(B). See the Appendix *iv* for the full definition of expenditure and the exemptions to the definition.

### **UNPAID DEBTS AND OBLIGATIONS**

The legal definition of expenditure includes making a promise of agreement to pay a vendor for goods or services ordered. Chapter 1, Section 7(3) of the Commission's Rules specifies certain actions which constitute making an expenditure, regardless of whether a payment has been made for the good or service (see the chart on this page). If a debt or obligation remains unpaid at the end of a reporting

period, the treasurer must disclose the debt or obligation in a campaign finance report. Chapter 10 contains more information on campaign finance reporting.

UNPAID DEBTS AND OBLIGATIONS WHICH CONSTITUTE AN EXPENDITURE
The placement of an order for goods or services
A promise or agreement (even an implied one) that payment will be made
The signing of a contract for a good or service
The delivery of a good or service even if payment has not been made

### **BEST PRACTICES FOR SPENDING MCEA FUNDS**

***Make All Expenditures from the Campaign Bank Account.*** Candidates should pay vendors directly from the campaign bank account, preferably with a campaign debit card, as it will assist the campaign meet its legal obligations for reporting and record-keeping in three ways:

- the statements for the campaign's bank account include the dates and amounts of campaign purchases, which will be helpful at the time of preparing campaign finance reports;
- the campaign will have easy access to proof that the vendor received payment (e.g., a canceled check or a bank account statement that lists the vendor as the payee for a debit card transaction); and



- using a debit card will help the campaign avoid the need to make reimbursements for purchases that cannot be paid for with a check.

MCEA candidates are also prohibited from making expenditures of greater than \$50 with cash; they must use a credit or debit card or check.

#### ***Obtain and Keep Records of Expenditures.***

Candidates and treasurers are required to obtain and keep receipts or invoices for every expenditure of more than \$50. However, the Commission staff recommends campaigns keep records of all purchases, even if they cost \$50 or less. These records must be kept for three years following the filing of the final report for the campaign. See Chapter 9 for more information on campaign records and record-keeping.

***Making Reimbursements.*** The Commission staff recommends paying for all campaign purchases directly from a campaign bank account, preferably with a campaign debit card. However, candidates, campaign staff, and supporters may purchase campaign goods or services with personal funds if it is necessary to do so. If campaign goods and services are purchased with the personal funds or credit card of an individual, the campaign must reimburse the purchaser with campaign funds as soon as possible.

A reimbursement requires an additional piece of documentation — copies of the purchaser's check and personal bank or credit card statement. When a reimbursement is made, the campaign should institute a procedure which requires the purchaser to provide a copy of the receipt or invoice as part of the reimbursement request. This ensures the campaign is in compliance with record-keeping requirements.

If a campaign makes a reimbursement for a purchase, it must be reported correctly. (See Chapter 10.)

***Obligating MCEA Funds Prior to Receipt of Supplemental Payments.*** The Commission staff strongly advises that MCEA candidates do not obligate payments to vendors for goods or services with public funds they have not yet qualified for. Goods or services received or ordered by MCEA campaigns that cannot be paid for with MCEA funds must be returned or canceled. If a good or service that cannot be paid for with MCEA funds cannot be returned (e.g., a direct mail piece that has already been delivered), the campaign has incurred a significant violation. Therefore, until a candidate has received written confirmation from the Commission staff that they have qualified for a payment of supplemental funds, they should not place any orders for goods or services that would be paid for with those funds.

#### ***REQUIREMENT TO SPEND MCEA FUNDS FOR CAMPAIGN-RELATED PURPOSES***

MCEA candidates may choose to spend their public funds in a variety of ways to promote their campaigns, but the Commission has established official guidelines on certain categories of expenditures. Those guidelines can be found on the next two pages.

A candidate may not spend MCEA funds for any purpose other than to promote their own campaign. Candidates may only pay MCEA funds to another candidate, a political party, or a charity or non-profit in exchange for campaign goods and services. A candidate may pay an entry fee to an event hosted by a political party or a charity (or to place an ad in an event publication) as long as the expenditure promotes the candidate's political campaign.



## 2020 EXPENDITURE GUIDELINES For Maine Clean Election Act Candidates

Candidates must spend Maine Clean Election Act (MCEA) funds for campaign-related purposes and not for other purposes such as the candidate's personal benefit, party-building, or to promote another candidate's campaign. Candidates are required to comply with these guidelines for all expenditures of MCEA funds.

### PERMISSIBLE EXPENDITURES

Expenditures for "campaign-related purposes" are those which are traditionally accepted as necessary to promote the election of a candidate to political office. Candidates using MCEA funds must also take into account the public nature of the funds, the underlying objectives of the MCEA, and the reasonableness of the expenditures under the circumstances. In Maine, traditional campaign expenses have included:

- Political advertising expenses
- Campaign communications such as signs, bumper stickers, T-shirts, or caps with campaign slogans, etc.
- Campaign events (e.g., invitations, food, tent or hall rental, etc.)
- Printing and mailing costs
- Campaign website
- Office supplies
- Campaign staff expenses
- An entry fee for an event organized by a party committee, charity, or community organization or an ad in an event publication, as long as the expenditure benefits the candidate's campaign
- Campaign travel expenses, such as fuel and tolls.

### **Ballot Questions**

Candidates may state their position with respect to a ballot question in a communication financed with MCEA funds. Candidates may not use MCEA funds for a paid communication that primarily supports or opposes a referendum or citizen initiative.

### **Campaign Training**

Candidates may use MCEA funds for tuition or registration costs for campaign or policy issues training.

If you have questions about these Guidelines or a specific expenditure, contact your Candidate Registrar at 287-4179.

### PROHIBITED EXPENDITURES

**Candidates may not use MCEA funds for personal expenses.** This means candidates may not borrow from or use MCEA funds for personal or other non-campaign expenses, even if temporarily and with the intention of repaying the funds. Personal expenses are for goods and services that the candidate would otherwise purchase independently of the campaign, such as:

- Day-to-day household expenses and supplies
- Mortgage, rent, or utility payments for the candidate's personal residence, even if part of the residence is being used by the campaign
- Vehicle repair and maintenance
- Non-campaign transportation expenses
- Professional clothing, (including attire for political functions), business suits, shoes, dress shirts, or pants

#### **MCEA funds may not be spent to:**

- pay a consultant, vendor, or campaign staff for anything other than campaign goods or services
- compensate the candidate or their spouse or domestic partner for services provided
- make independent expenditures supporting or opposing any candidate, ballot question, or political committee
- assist in any way the campaign of any candidate other than the candidate for whom the funds were originally designated
- contribute to another candidate, a political committee, or a party committee other than in exchange for goods and services
- make a donation to a charity or a community organization, other than in exchange for campaign goods or services
- promote political or social positions or causes other than the candidate's campaign
- make a thank-you gift (including a gift card) to a volunteer or supporter, or hold an election night or post-election party
- pay civil penalties, fines, or forfeitures to the Commission, or defend the candidate in enforcement proceedings brought by the Commission
- assist the candidate in an election recount.



## Car Travel

MCEA campaigns may reimburse the candidate or campaign workers for their car travel, as long as the person reimbursed has kept a *contemporaneous* travel log. The campaign may make a travel reimbursement up to the number of miles traveled as reported in the log multiplied by \$0.45. Campaigns must keep the travel logs for three years, and provide them to the Commission if requested. Candidates and their spouses/domestic partners may spend any amount of their personal funds for campaign travel without seeking reimbursement. Other individuals may spend up to \$350 of their personal funds to pay for travel without making a contribution to the campaign. Any mileage incurred during the pre-certification Seed Money period must be reimbursed with Seed Money if reimbursed.

## Food

Candidates may spend a reasonable amount of MCEA funds on food for campaign events or to feed volunteers while they are working, but must take into account the public nature of MCEA funding. Legislative candidates may not use MCEA funds to purchase food that is consumed *only* by the candidate and/or members of the candidate's immediate family. Generally, reasonable amounts for food should not exceed \$5 per person for breakfast, \$10 per person for lunch, and \$20 per person for dinner. If candidates wish to spend greater amounts per person for food, the Commission recommends that the candidate contact Commission staff for guidance.

## Lodging

Candidates may use MCEA funds to pay for lodging if necessary for campaign purposes, but must keep lodging expenses reasonable and may not exceed the lodging rates approved by the Office of State Controller for state employees conducting travel for state business. MCEA candidates may use personal funds for lodging, provided that they are not reimbursed by others.

## Office Supplies

Candidates may spend MCEA funds for office supplies that they reasonably anticipate will be used for campaign purposes only. MCEA funds may not be spent for office supplies to be used for constituent communications or for other expenses associated with service as a public official. The Commission may require candidates to repay their campaign for any office supplies with a value of \$50 or more that were not used for campaign purposes or were used minimally for campaign purposes.

## Post-Election Activities

Candidates may spend up to the following maximum amounts of MCEA funds on post-election thank you notes or advertising to thank supporters or voters: \$250 for State Representative candidates, \$750 for State Senate candidates, and \$2,500 for candidates for Governor. Candidates may also use personal funds for these purposes. Candidates may not spend any amount of MCEA funds on post-election events or parties.

## Promotional Items

Candidates may spend MCEA funds on inexpensive items to promote their candidacies or to gain visibility at public events. Purchases of apparel generally should not cost more than \$10 per item. Candidates may purchase other types of promotional items, but the cost should not exceed \$5 per item. Candidates may purchase up to two pieces of outerwear (e.g., fleeces or sweatshirts) to promote their election. Professional clothing is not considered a promotional item.

## Property & Equipment

Goods purchased with MCEA funds for \$50 or more that could be converted to personal use after the campaign (e.g., computers, fax machines, and cell phones) must be sold at fair market value and the proceeds returned to the Maine Clean Election Fund no later than 42 days after the final report for the campaign. If the campaign sells the property or equipment to the candidate or a member of the candidate's immediate family or campaign staff, the campaign must receive at least 75% of the original purchase price paid by the campaign. Candidates are welcome to lease electronic and other equipment.

## Salary & Compensation

Candidates may use MCEA funds to pay for campaign-related services by staff or consultants, provided that compensation is made at or below fair market value and sufficient records are maintained to show what services were received. Documentation must include a description of the labor performed by the staff member or consultant, and an itemization of any goods or services purchased from other vendors including date, vendor, and amount.

## Unnecessary Goods

Legislative candidates may not spend MCEA funds for goods not typically necessary for a House or Senate campaign, such as office furniture, a brief case, or large storage items. If you are unsure whether an item you wish to purchase is within this category, please call the Ethics Commission for guidance.



Misspending MCEA funds is a serious violation of law. If a candidate is unsure whether a particular purchase will be viewed as campaign-related, they should contact the Commission staff for advice.

### PAYING INDIVIDUALS TO COLLECT QCs

MCEA candidates are allowed to pay individuals for soliciting and collecting QCs for the campaign, but they cannot be paid per QC they collect, nor can any type of quota system be used, such as bonuses or extra pay. Instead, circulators should be paid by an hourly or daily rate. Paying circulators per QC is a serious violation of the MCEA.

Any MCEA campaign which pays individuals to solicit and collect QCs with MCEA funds must abide by specific record-keeping requirements. See Chapter 9 for information about documenting payments to individuals.

### SHARING EXPENDITURES WITH OTHER CANDIDATES

Candidates may share expenses for goods or services, such as joint campaign literature or advertising. To avoid making or receiving an in-kind contribution, each candidate should pay the portion of the overall cost that is proportionate to the benefit received by them.

The Commission staff recommends that all treasurers whose candidate is involved in a joint expenditure clearly disclose in their campaign finance reports that the goods or services have been purchased jointly with other candidates. Such reporting will reduce concerns that candidates are using their campaign funds to subsidize other candidates' campaigns. If candidates share the cost of a political advertisement or other campaign communication, the Commission staff

recommends the disclosure statement on the communication state that it was paid for and authorized by all of the candidates (e.g., "Paid for and Authorized by the Candidates Above"), even if a single candidate paid the vendor for the ad or literature and was reimbursed by the other candidates. See Chapter 8 for more information on disclosure statements on campaign communications.

Candidates should contact the Commission staff with any questions on reporting shared expenditures.

### PAYMENTS TO A CANDIDATE, MEMBERS OF A CANDIDATE'S IMMEDIATE FAMILY OR HOUSEHOLD, OR AFFILIATED BUSINESS OR NON-PROFIT ENTITIES

***Payments to a Candidate and the Candidate's Spouse/Domestic Partner.*** Campaigns may not use MCEA funds to compensate:

- the candidate or the candidate's spouse/domestic partner or a sole proprietorship owned by the candidate or the candidate's spouse/domestic partner;
- a business entity in which the candidate or candidate's spouse/domestic partner holds a significant proprietary or financial interest; or
- a non-profit entity in which the candidate or the candidate's spouse/domestic partner is a director, officer, executive director, or chief financial officer

for services received by the campaign (e.g., if a candidate has designed their own campaign literature or their spouse has done the campaign's bookkeeping).



### ***Payments to Members of a Candidate's Immediate***

***Family or Household.*** Generally, a campaign may not pay MCEA funds to a member of the candidate's immediate family or household, or to a business entity in which an immediate family or household member holds a significant proprietary or financial interest. Also, a campaign may not pay MCEA funds to a non-profit entity in which a member of the candidate's immediate family or household is a director, officer, executive director, or chief financial officer. Such payments are permitted only if the immediate family or household member, or business or nonprofit entity, provides the goods or services in the normal course of their occupation or business, the expenditure is for a legitimate campaign purpose, and the amount of the expenditure is a reasonable fair market value for the goods or services. This exception does not apply to the candidate or the candidate's spouse/domestic partner.

MCEA candidates cannot receive any in-kind contributions, therefore, the business or non-profit organization cannot contribute goods or services to the campaign. See the next chapter regarding the prohibition on accepting contributions.

### ***BUYING ELECTRONICS AND OTHER PERSONAL PROPERTY OR EQUIPMENT***

When a campaign uses MCEA funds to purchase property or equipment worth \$50 or more that could be converted to personal use after the campaign (e.g., computers, printers, cell phones, tools), special requirements apply to ensure that public funds are not spent to enrich the candidate. Property or equipment must be sold at fair market value after the election. The proceeds should be sent to the Commission by the deadline for the campaign finance report due 42 days after the candidate's final election (primary or general).

Fair market value is determined by what is fair and reasonable under normal market conditions based on the value of items of similar description, age, and condition. If a campaign sells property or equipment through an online auction, the campaign likely will be presumed to have received fair market value for the equipment.

These requirements do not apply to property or equipment purchased with seed money.

Candidates may keep and reuse goods that have value only to the campaign, such as signs and campaign literature.

### ***PAYING FOR CELL PHONES AND SERVICE***

A campaign may use MCEA funds to pay for cell phone use, but MCEA funds cannot be used to pay for any personal use associated with a cell phone. Some campaigns find it convenient to purchase inexpensive pre-paid phones for the campaign and use all of the purchased minutes by the end of the campaign. If a phone was purchased for less than \$50 (without minutes), it is considered to have no fair market value if all of the purchased minutes were used by the end of a campaign.

If a campaign worker uses their personal cell phone for campaign purposes, and the campaign chooses to reimburse the worker for the use of the cell phone, the campaign should keep billing statements for the phone account that lists the campaign-related calls charged to that account. The campaign should be able to identify a sufficient number of calls to support the reimbursement. Otherwise, the Commission may disallow the reimbursement and require the campaign repay the amount to the State.



## PURCHASING TELEVISION ADVERTISING

If a candidate uses MCEA funds to purchase television advertising, the advertisement must be closed-captioned. See Chapter 8 for more information about this requirement.

## RAISING CAMPAIGN FUNDS THROUGH SALES OF GOODS

MCEA candidates may not use public funds to purchase goods to sell at a profit.

## OVERSPENDING

A candidate should be careful to avoid spending more money to promote their campaign than the amount of MCEA funds the candidate was authorized to spend. Spending more than is permitted is a serious violation of the MCEA. In prior elections, the Commission has assessed civil penalties against candidates who spent more than the amount of the MCEA funds they received from the Maine Clean Election Fund.

## COMMISSION'S COMPLIANCE PROCEDURES

The Commission staff conducts compliance reviews of all expenditures disclosed by treasurers in campaign finance reports, and sometimes requests additional information from candidates and treasurers to verify the reporting is complete and accurate. In most cases, the information provided by the campaign resolves the issue at the staff level, and no further action is necessary. Prompt responses are appreciated as the Commission staff is required to verify compliance with reporting and other requirements.

### LEGAL REFERENCES

Campaign-Related Purposes	21-A M.R.S.A. § 1125(6); Rules, Chapter 3, Section 7
Expenditure Guidelines	21-A M.R.S.A. § 1125(6)
Required Records of Expenditures	21-A M.R.S.A. §§ 1016, 1125(12-A); Rules, Chapter 3, Section 8(1)
Required Reporting of Expenditures	21-A M.R.S.A. §§ 1017(5), 1125(12)
Payments to Immediate Family Members	21-A M.R.S.A. § 1125(6-C) and (12)
Payments to Household Members	21-A M.R.S.A. § 1125(6-C) and (12)
Requirement to Sell Campaign Equipment	Rules, Chapter 3, Section 8(2)(C)
Closed-captioning for TV Advertising	21-A M.R.S.A. § 1125(6-E)



## CHAPTER 7

# Contributions: Prohibition & Exemptions

### DEFINITION OF CONTRIBUTION

The term “contribution” is defined in the Election Law to include:

*“A gift, subscription, loan, advance or deposit of money or anything of value made for the purpose of influencing the nomination or election of any person to state, county or municipal office or for the purpose of liquidating any campaign deficit of a candidate . . . ”* (21-A M.R.S.A. § 1012(2))

For further explanation of what is a contribution, refer to 21-A M.R.S.A. § 1012(2) (see the Appendix *ii*) and Chapter 1, Section 6 of the Commission’s Rules.

### PROHIBITION ON ACCEPTING CASH CONTRIBUTIONS AND LOANS

Once a candidate has been certified as an MCEA candidate, the campaign may not accept contributions from any source. The candidate is not permitted to contribute cash or to make a loan to their campaign.

If a campaign accepts a contribution, it must be returned. If a contribution was inadvertently deposited into a campaign’s bank account, the funds must be withdrawn and returned to the contributor and the candidate should notify the Commission staff.

### PROHIBITION ON ACCEPTING IN-KIND CONTRIBUTIONS

“In-kind contributions” are goods and services provided to a campaign at no cost, or at a cost that is less than the usual and customary charge. MCEA candidates who receive an in-kind contribution should contact the Commission staff promptly for advice on how to correct the situation. The staff will likely advise the campaign to reimburse the provider of the in-kind contribution immediately with MCEA funds.

The following activities are examples of in-kind contributions:

- the candidate purchases campaign signs with personal funds and is not reimbursed by the campaign;
- a supporter of a candidate pays for some of the candidate’s advertising in a newspaper and is not reimbursed by the campaign;
- a friend of a candidate who owns a copy shop provides the campaign with a special discount on printing services;
- a volunteer who is making signs to give to the candidate buys plywood and paint and is not reimbursed by the campaign;
- the owner of a local business provides the campaign, free of charge, some of their paid staff members to work for the campaign on company time; or



- a commercial vendor extends credit to the campaign under terms that are not substantially similar to the terms extended in the ordinary course of business to nonpolitical customers.

#### **GOODS AND SERVICES NOT CONSIDERED CONTRIBUTIONS**

Certain goods and services are excluded from the legal definition of “contribution,” and a campaign’s acceptance of these items is not an in-kind contribution. Candidates and treasurers are encouraged to familiarize themselves with these exempt goods and services. The full list of exempted goods and services is in the Appendix *ii* of this Guidebook. Some examples of exempt goods and services are described in the following subsections.

**Donated Office Space and Use of Equipment.** A trade association, commercial business, labor union, business owner, etc., may donate office space or office equipment to a campaign, provided there are no additional costs (e.g., telephone and utility services). If there are additional costs, the campaign is required to pay for those costs.

**House Parties & Candidate Events.** An individual who actively volunteers for or hosts a house party or candidate-related event may spend up to \$250 toward the use of real or personal property, food, beverages, and/or invitations for the party or event. These expenses will not be considered contributions. Only one host (a person providing or paying for the event facility) may purchase invitations; the cost of invitations may not be shared among multiple hosts. Those who pay for food and beverages for the event must also provide volunteer services for the event (e.g., stuffing invitation envelopes, or setting up for the event). The

\$250 limit is per election per candidate, not per event.

#### **Assistance from State Party Committees.**

Candidates may receive some assistance from paid employees of a state party committee without that help constituting an in-kind contribution. State party committees may:

- provide up to 40 hours of assistance by paid employees to a candidate in each election (primary or general);
- recruit and oversee volunteers for campaign activities involving 3 or more candidates; and
- coordinate campaign events involving 3 or more candidates.

This exception applies only to state party committees (Democratic, Green-Independent, and Republican), and does not apply to local and county party committees, caucus committees, or PACs.

**Party Committee Slate Cards.** State, county, and local party committees may spend money to produce and distribute a slate card (“party candidate listing”) to promote 3 or more candidates without that publication constituting an in-kind contribution. This exception is not available to PACs or other organizations.

**Volunteer Services vs. Paid Assistance.** Individuals are permitted to provide their services — including professional services such as legal advice, assistance with databases, and web and graphic design — for free to a campaign as volunteers. A candidate may provide compensation to a volunteer for a portion of the volunteer’s time spent on campaign activities. However, if an individual provides their services to a campaign at the direction of their employer during the individual’s paid work-time, then the employer has



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made an impermissible in-kind contribution to the campaign.

### **COORDINATED EXPENDITURES**

Individuals (including friends and family) and organizations have a First Amendment right to spend money to promote the election of a candidate. To avoid making an in-kind contribution to the candidate, however, they must make the expenditures independently of the candidate and the candidate's campaign.

The Election Law states that:

*“Any expenditure made by any person in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate’s political committee or their agents is considered to be a contribution to that candidate.”* (21-A M.R.S.A. § 1015(5))

If any person or organization makes an expenditure to support a candidate, or oppose the candidate's opponent, and has cooperated or consulted with the candidate, campaign committee, or an agent of the candidate on the expenditure, the candidate has received an in-kind contribution.

Candidates, and their campaign committees, staffs, and agents, should avoid having discussions with others regarding the others' plans or intentions to spend money to support the candidate, or oppose the candidate's opponent. This is especially important to keep in mind when having discussions with others who may spend money on campaign communications in support of the candidate's election. (Party slate cards and membership communications are exempt from the definition of expenditure. Therefore, coordination is

allowed on those communications.)

The Commission has a rule that addresses in detail what “cooperation, consultation or in concert with” means. Candidates and their staffs are encouraged to review the rule and contact their Candidate Registrar with their specific questions.

Candidates are allowed to ask a person or organization not to spend money in support of their candidacies. If that person or organization were to spend money subsequently, the request would not constitute coordination on the part of the candidate.

### **APPEARING IN ADVERTISEMENTS SPONSORED BY ANOTHER**

If an individual or organization invites a candidate to appear in a paid advertisement, the value of the advertisement could be considered a contribution to the campaign. If the advertisement qualifies as a contribution, the candidate would be required to reimburse the individual or organization that paid for the advertisement. Candidates should feel free to contact the Commission staff for advice on whether an advertisement would be considered an in-kind contribution.

### **CONTRIBUTIONS FOR RECOUNTS**

If a candidate is in a recount of an election, they may not use MCEA funds for the recount. The candidate may accept unlimited funds and services from party committees and caucus campaign committees; attorneys and consultants and their firms may contribute unlimited services. MCEA candidates may also accept cash contributions for a recount, and are restricted to a contribution limit of \$400 per contributor. There is no limit on the amount of funds a candidate



may contribute to their own recount effort.

Anyone donating services for a recount is required to provide the campaign with an estimate of the value of those services.

All contributions received and expenditures made in connection with a recount must be disclosed in a special financial report due 90 days after the election. The Recount Report is filed on paper form and the Commission will distribute the forms to candidates and treasurer shortly after the recount is announced.

#### **CAN A CANDIDATE FUNDRAISE FOR A POLITICAL ACTION COMMITTEE OR POLITICAL PARTY COMMITTEE?**

Although an MCEA candidate may not establish their own PAC, the candidate may be involved in other PACs, ballot question committees, and state and local party committees.

MCEA candidates may:

- be active in a PAC organized by a party's legislative caucus, including raising money and making decisions for the PAC. However, the candidate must not be involved in any way with any spending by the PAC to promote his or her election;
- raise money for other candidates, endorse other candidates, or use personal funds to promote other candidates;
- be involved in the raising and spending of funds by a state or local political party committee, provided that the candidate is

not involved in any way with spending to promote their election (with the exception of "slate cards"); and

- raise money and make decisions for ballot question committees and PACs organized for the purpose of promoting or defeating a ballot question.

While a candidate is not prohibited from fundraising for a PAC or political party committee, the candidate should be aware of certain risks in doing so. If the PAC or party committee is going to spend money to promote the candidate, the candidate may wish to consider whether the assistance with fundraising will create the public perception or lead to the conclusion that the candidate cooperated with the PAC or party committee's expenditures to promote the candidate. For example, if a PAC's activities for the calendar year are primarily to promote or support the nomination or election of the candidate, the contributions solicited by the candidate are considered contributions to the candidate. Candidates are encouraged to contact the Commission staff for guidance if they have questions about fundraising for PACs or party committees that will be actively supporting or opposing candidates in the 2020 elections.



#### **LEGAL REFERENCES**

Ban on Accepting Contributions	21-A M.R.S.A. § 1125(6)
Definition of Contribution	21-A M.R.S.A. § 1012(2)
In-Kind Contributions	Rules, Chapter 1, Sections 6(4) - (5)
Discounted Goods or Services	Rules, Chapter 1, Section 6(4)
Contributions of Paid Employee Services	21-A M.R.S.A. § 1012(2)(A)(4); Rules, Chapter 1, Section 6(5)
Exempt Goods and Services	21-A M.R.S.A. § 1012(2)(B)
Assistance from State Parties	21-A M.R.S.A. § 1012(2)(B)(10)
Coordinated Expenditures	21-A M.R.S.A. § 1015(5) Rules, Chapter 1, Section 6(9)
Recounts of Elections	21-A M.R.S.A. § 1018-B
Political Committees and Intermediaries	21-A M.R.S.A. § 1015(4)
Leadership PACs	21-A M.R.S.A. § 1125(6-F)



## CHAPTER 8

# Campaign Communications & Disclosure Statements

### DISCLOSURE ON CAMPAIGN COMMUNICATIONS

Whenever a candidate, or a candidate's authorized political committee or agent, authorizes a communication expressly advocating the election of the candidate (or defeat of the candidate's opponent), the communication must clearly and conspicuously state that it has been so authorized. These communications include those made through broadcasting stations, newspapers, magazines, campaign signs or outdoor advertising facilities, publicly accessible websites, direct mail or other similar types of general public political advertising, flyers, handbills, bumper stickers, and other non-periodical publications. The communication must **also** clearly state the name of the person who paid for or financed the expenditure. The Commission strongly suggest including a disclosure statement on each piece of a multi-piece mailing or communication.

A communication financed by a candidate or a candidate's committee is not required to include the address of the person who made or financed the communication. If anyone other than the candidate or the candidate's committee financed the communication, the disclosure statement must include the full address of that person, unless the communication is broadcast by radio (see next page).

In addition, the disclosure requirements apply to any communication that names or depicts a clearly

identified candidate and is disseminated to voters in the last 28 days before the primary election, in the last 35 days before a special election, or from Labor Day to the date of a general election, even if the communication does not expressly advocate for or against a candidate.

**What Does “Expressly Advocate” Mean?** “Expressly advocate” is defined in Chapter 1, Section 10(2)(B) of the Commission’s Rules. Express advocacy takes place when a communication includes wording or phrases that urge voters to elect or defeat a candidate. This includes phrases such as “Jones for House of Representatives” or “Vote for the Governor,” and other words which in context can have no reasonable meaning other than to urge the election or defeat of one or more clearly identified candidates. The determination of whether a communication contains express advocacy is based on its entire content, and whether it has any reasonable meaning other than to urge the election or defeat of a candidate.

**What Does “Clearly Identified” Mean?** “Clearly identified” is defined in 21-A M.R.S.A. § 1012(1). A communication clearly identifies a candidate when the communication includes the name of the candidate, a photograph or drawing of the candidate, or identification of a candidate by an unambiguous reference.



## EXAMPLES OF DISCLOSURE STATEMENTS

The following are examples of suitable disclosure statements for political communications, including campaign websites, based on the person who paid for the communication.

### ***Communication Paid for by the Candidate or the Candidate's Committee (address not required):***

- “Paid for and authorized by Taylor Smith”
- “Paid for and authorized by the Candidate”
- “Paid for and authorized by the Committee to Elect Taylor Smith”

### ***Communication Paid for by a Candidate’s Agent (address not required):***

- “Authorized by the Candidate and paid for by Lee Jones, Treasurer”
- “Authorized by the Candidate and paid for by Jamie Brown, Chair of the Committee to Elect Taylor Smith”

### ***Communication Paid for by Others not Associated with the Campaign (address is required):***

- “Authorized by Candidate Taylor Smith and paid for by Jordan White, 5 Oak Street, Pinetree City, Maine”

A communication authorized by a candidate and paid for by a third party who is not associated with the campaign must be reported as an in-kind contribution, to which the seed money contribution limit applies. If necessary, the campaign must make a partial reimbursement to bring the in-kind contribution within contribution limits. No in-kind contributions of any type may be accepted after a candidate has been certified as an MCEA candidate.

The disclosure statement for radio advertisements paid for by a third party does not have to include the street address of the person who paid for the communication, but must include the town or city and state, as in the following example:

- “Authorized by Candidate Taylor Smith and paid for by Jordan White, Pinetree City, Maine”

## COMMUNICATIONS EXEMPT FROM DISCLOSURE

***Signs That Are Lettered or Printed by Hand.*** A sign is not required to have a disclosure statement if it:

- is lettered or printed individually by hand, including silk-screened, stenciled, or painted,
- has been paid for and authorized by the candidate/candidate committee, and
- clearly identifies the name of the candidate.

***Small Items.*** Some items are exempt from the disclosure requirement because of their small size:

Balloons	Lapel Stickers	Swizzle Sticks
Clothing	Memory Sticks	Fundraiser Tickets
Envelopes	Paper/Plastic Cups	Business Cards
Keychains	Pencils/Pens	Noisemakers
Buttons	Plastic Tableware	Plastic Jewelry

A disclosure statement is also not required on advertisements in electronic media where including the disclosure statement would be impractical due to size or character limitations.

The Commission may exempt similar, small items as well. If a candidate has any questions as to whether an item is required to have a disclosure statement, they should call the Commission staff.



## “ROBOCALLS” & SCRIPTED LIVE CALLS

The Federal Communications Commission (FCC) has specific regulations regarding the sponsor identification that must be included in “robocalls,” which are phone calls to landlines and mobile phones that use certain automated dialing technology, deliver a pre-recorded message, or use an artificial voice. The federal disclosure requirement is not limited to recorded voice messages, as it also applies to live calls if automated dialing technology is used to make the call.

Maine also has a requirement that robocalls and scripted live calls include a disclosure statement that clearly states the name of the person who paid for the communication. However, the FCC regulation is stricter than Maine’s and preempts Maine’s disclosure statute. Candidates are urged to read the FCC Enforcement Advisory in the Appendix *xii* to understand and comply with the federal disclosure requirements for robocalls.

There is one type of phone call that is subject to Maine’s disclosure requirement but not the FCC’s — a scripted live call made by a person without the use of automated dialing technology. For those calls, the caller must clearly state the name of the person who financed the communication.

## FREE ELECTRONIC COMMUNICATIONS

Certain types of communications are free to use and disseminate (e.g., email, social media posts/pages, etc.). If there is no cost associated with creating and disseminating a communication, the requirement to include a disclosure statement is not applicable. Nevertheless, the Commission staff recommends that candidates include a disclosure statement on these types of free electronic communications, stating they have authorized the communications. Doing so makes

it clear to the public who is sending the communication and that it is authorized by the candidate.

If there is a cost associated with the communication (e.g., paid staff time to produce the communication, the use of an email marketing service, the purchase of an email list, production costs for a video posted on or distributed through social media, etc.), a complete disclosure statement is required.

## ENFORCEMENT

A person who violates the disclosure requirement may be subject to a civil penalty up to 100% of the amount of the expenditure. If a disclosure statement on a yard sign is lacking or inadequate, the maximum penalty is \$200. In determining the amount of a penalty, the Commission will consider factors such as how widely the communication was disseminated, whether the omission was intentional, and whether the communication conceals or misrepresents the identity of the person who paid for the communication. If the person who paid for the communication or is responsible for the violation corrects it within 10 days of being notified by the Commission, the Commission may decide to assess no civil penalty.

## REQUIREMENTS FOR BROADCASTERS AND NEWSPAPERS

Broadcasting stations, cable television systems, and newspapers in Maine may not broadcast or print a communication that lacks the required information about the sponsor of the communications, and whether the communication was authorized by a candidate.

Under federal regulations (47 CFR § 73.1212(a)(2)(ii) and 47 CFR § 76.1615(a)), in the case of any television political advertisement concerning candidates for public office, the sponsor shall be identified with letters equal



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to or greater than four percent (4%) of the vertical picture height which must be visible on screen for not less than four seconds. This requirement applies to broadcast and cablecast television ads for all candidates, not just federal candidates.

If a candidate has any questions concerning these requirements, they should consult with the personnel who are producing the advertisements.

#### **TELEVISION ADS: CLOSED-CAPTIONING REQUIREMENT**

If a candidate uses MCEA funds to purchase television advertising, the candidate must include closed-captioning in the advertisement provided to the broadcast station or cable television system. It is the candidate's responsibility to ensure that the closed-captioning is included in the ad.

In the final four days before an election, closed-captioning may not be required under two circumstances: 1) if it would be impractical to include it or 2) if the timing of the advertisement would be delayed by including the closed-captioning.

#### **USE OF COPYRIGHTED MATERIAL**

If a candidate plans on using photographs or other material from an online source in campaign literature, the Commission staff recommends that the candidate check with the source first, to avoid copyright infringement.

#### **CONSTITUENT MAILINGS**

Constituent newsletters sent by incumbent Legislators are used to inform their constituents of the work accomplished during the legislative session. They are reviewed by the Clerk of the House or Secretary of the Senate to verify they do not advocate for the election

or defeat of any candidate. The purpose of these mailings is a factual account of the session and are not to be used for campaign purposes; thus, a disclosure statement is not required.

#### **PLACEMENT OF POLITICAL SIGNS**

The Commission has no jurisdiction over where candidates place roadside signs, or for how long they are posted. Guidance from the Maine Department of Transportation is included in the Appendix x.

#### **UNAUTHORIZED REMOVAL OF CAMPAIGN SIGNS FROM PUBLIC ROADWAYS**

The unauthorized removal or destruction of political signs in the public right of way is a civil violation under Maine law (23 M.R.S.A. § 1917-B), and may carry a fine of up to \$250. The law does not apply to a person authorized to remove the sign.

A candidate may file a complaint with the local police and/or the District Attorney's office if a sign has been removed in an unauthorized manner.



**LEGAL REFERENCES**

Required Disclosure on Candidate Communications	21-A M.R.S.A. § 1014(1), (2-A)
Expressly Advocate	Rules, Chapter 1, Section 10(2)(B)
Clearly Identified	21-A M.R.S.A. § 1012(1)
Exempted Communications	21-A M.R.S.A. § 1014(1)
Hand-made Signs	21-A M.R.S.A. § 1014(1)
Automated Telephone Calls	21-A M.R.S.A. § 1014(5)
Required Disclosure on Third-Party Communications	21-A M.R.S.A. § 1014(2), (2-A)
Broadcasters and Newspapers	21-A M.R.S.A. § 1014(3), (3-B)
Enforcement	21-A M.R.S.A. § 1014(4)
Sign Placement	23 M.R.S.A. § 1917-B
Closed-Captioning	21-A M.R.S.A. 1125(6-E)



## CHAPTER 9

# Campaign Records & Record-Keeping

### LEGAL REQUIREMENTS TO KEEP CERTAIN RECORDS

MCEA candidates and their treasurers are required by statute to obtain and keep certain financial records to document their campaign's financial activity and to provide them to the Commission, if requested. These documents or records are discussed in the following sections.

Complete and accurate records and careful record-keeping ensures accurate reporting and full compliance with MCEA requirements. All candidates are required to keep "a detailed and exact account" of all contributions received and all expenditures made by the campaign. Obtaining receipts for expenditures as they are made makes completing campaign reports easy and accurate.

Candidates or campaign treasurers are required to keep campaign records for three years following the final campaign finance reports for the election cycle.

### RECORDS FOR THE CAMPAIGN BANK ACCOUNT

Records concerning a campaign's bank account are one of the most important parts of a campaign's financial records because they document the deposits into the account and the expenditures out of the account.

Bank account records document seed money and MCEA funds were not commingled with any personal

or business funds, that reported expenditures were made out of the campaign account, or, if not made directly out of the account, that the purchaser was reimbursed.

The Commission staff requests campaign bank account records for candidates who are randomly selected for formal audits. Sometimes the Commission staff requests these records when a reporting issue or question is identified during a compliance review, or if a complaint or investigation is undertaken by the Commission.

RECORD RETENTION FOR 2020 MCEA CANDIDATES	
<b>Records must be kept until:</b>	
Candidates who were defeated in the primary election	July 2023
Candidates who participated in the general election	December 2023

**Required Bank Records.** Campaign bank account records include:

- account statements for the entire period that the account was used by the campaign; and
- images of all checks written on the account.

**Electronic and Paper Bank Account Records.** If a campaign uses electronic banking and receives only electronic copies of records, the campaign must either download and save or print and keep copies of the



bank records. Some financial institutions make electronic records available for only a limited period of time (e.g., current month and prior three months). A candidate should know a financial institution's policy regarding electronic records and they should take measures to obtain complete records.

### RECORDS FOR SEED MONEY CONTRIBUTIONS

MCEA candidates and their treasurers are required to obtain and keep the following information for each seed money contributor:

- the name and address for every contributor giving \$50 or less; and
- the name, address, occupation, and employer for every contributor giving more than \$50 — up to \$100 maximum allowed.

The Commission recommends keeping copies of all seed money checks and account deposit slips, since all cash contributions are required to be deposited into the campaign bank account. Account deposit slips verify receipt of cash contributions.

### RECORDS FOR EXPENDITURES

For expenditures over \$50, the Election Law requires MCEA candidates and their treasurers to obtain a vendor invoice or receipt and proof of payment to the vendor. Campaigns need to maintain expenditure documentation on file, but are not required to submit it to the Commission unless the candidate is audited after the election, or if the Commission staff requests it for other reasons.

Expenditure documentation is necessary to confirm whether an MCEA candidate purchased campaign-related goods and services from a vendor and used MCEA funds to pay the vendor. Candidates or their

treasurers must keep these records for three years after they file their last reports with the Commission.

**Vendor Invoice.** The campaign must obtain and keep an original invoice or receipt provided by the vendor for every expenditure greater than \$50 that states the particular goods or services purchased and the cost.

**Records for Payments for Campaign Staff.** When a candidate compensates a member of their campaign staff in the amount greater than \$50, the campaign is required to obtain an invoice or timesheet from the staff member stating the particular services provided. If there is a possibility the campaign will pay a campaign staff member more than \$500 over the course of the election cycle, the campaign is required to keep more detailed records. See the section on Required Documents for Services Over \$500 in this chapter.

**Proof of Payment.** Proof of payment is a written record verifying the vendor received the payment. Most commonly, this is a canceled check or a debit transaction from the campaign bank account identifying the vendor as the payee. For campaigns using electronic banking, the campaign must save copies of statements and cancelled checks monthly since some financial institutions only make these electronically available for a limited time.

**Proof of Payment for Reimbursements.** Commission staff encourages candidates to make all payments of MCEA funds directly from the campaign bank account to the vendor. Nevertheless, some candidates find it helpful or necessary for the candidate or another person (such as a volunteer or member of campaign staff) to use personal funds to pay a vendor for goods and services, and then to be reimbursed by the



campaign. In these situations, the same documentation requirements apply for expenditures of more than \$50.

A campaign must obtain from the candidate or other person an original invoice or receipt from the vendor, as well as a canceled check, account statement, or other document proving the vendor received the payment. An easy way to meet this requirement is for a campaign to adopt a policy that reimbursements will be made only when the documentation is provided by the candidate or other person at the time the request for reimbursement is made.

**Proof of Payment for Purchases Made with Cash.**  
The Commission staff does not recommend using cash to make even small purchases of \$50 or less. Instead, the staff recommends using a check or debit card for all purchases, because it is a better way to account for and report all campaign expenditures.

#### DOCUMENTING PURCHASES MADE BY A CONSULTANT

If a consultant working on behalf of a campaign purchases goods or services worth more than \$50, the campaign is required to obtain and keep an invoice or receipt from the actual vendor which provided the goods or services to the consultant, as well as an invoice from the consultant. An example of a consultant's invoice meeting documentation standards is found on the previous page.

The campaign is also required to obtain and keep proof that the actual vendor received payment from the consultant. For example, if a candidate hires a campaign consultant and the consultant commissions a research firm to do a poll, the candidate must obtain from the consultant the research firm's invoice and proof the research firm received payment from the consultant.

ELECTION Associates				456 State Street, Augusta, Maine 04332	What makes this invoice meet the record documentation standards?  Provided services are described.  Goods which the consultant purchased for the campaign are listed separately with the Invoice.	
BILL TO:		Invoice Date: 09/18/2020				
Honorable Taylor Smith c/o Committee To Elect Smith 123 Main Street Augusta, ME 04032						
Service/Product	Rate	Hours	Total			
Design of Palm Card	\$100 per hr	3.0	\$300			
Printing of card: Graphics Center Color Printing <b>SEE ATTACHED COPY OF INVOICE</b>	2,000 cards at \$0.50 each		\$1,000			
<b>Total Due 30 Days from Date of Invoice</b>		\$1,300				
Authorized Signature: <i>Sam Brown</i>	Print Name: Sam Brown		Title: Owner			



## DOCUMENTING PURCHASES MADE BY A MEDIA BUYER

When a media buyer working on behalf of a campaign purchases advertising spots from media outlets (TV and radio stations) worth more than \$50, the campaign is required to obtain and keep an invoice or receipt from the media outlets which provided the services. An invoice from the buyer is required for the goods and services provided by them directly, such as production costs or commissions. The campaign is also required to obtain and keep proof the media outlets received payment from the buyer.

For example, a candidate, who hires a media buyer to purchase air time on television and radio stations, is required to obtain invoices from the broadcast stations documenting the air time sold to the campaign, and copies of checks written by the media buyer to the stations. Having only copies of the checks written from the campaign bank account to the media buyer is not sufficient documentation. When hiring a media buyer, a candidate should make the buyer aware of this requirement and include it in any contract. The candidate is then assured the documentation will be provided and their treasurer will have all of the information to correctly report media purchases.

## SPECIFIC RECORDS FOR VEHICLE TRAVEL

If a campaign chooses to use MCEA funds to reimburse the candidate or others for vehicle travel, the person receiving the reimbursement must keep a contemporaneous travel log showing the dates of travel, the number of miles traveled, and the destination and campaign purpose of the travel. An example of a travel log is found in the Appendix *vii*.

The reimbursement to the traveler must be no more than the standard mileage reimbursement rate for Maine State employees, which is currently \$0.45 per mile, multiplied by the number of miles documented in the log. If a travel log is not maintained by a person who has been reimbursed with MCEA funds, the Commission may disallow the reimbursement and require the campaign to repay the reimbursement to the State.

MCEA funds may not be used for reimbursements for travel that occurred before the candidate was certified.

All pre-certification travel must be paid for with seed money, unless the travel is covered by an exemption (see the Appendix *vii*). A travel log is also recommended, though not required, for reimbursements paid for with seed money.

## REQUIRED DOCUMENTS FOR SERVICES OVER \$500

Specific documentation is required when an MCEA campaign pays more than \$500 during an election cycle to an individual on the candidate's campaign staff or a vendor who provided consulting services to the campaign. The campaign must keep documents, such as invoices, timesheets, or contracts, specifying in detail the services which the vendor provided, the amount paid, and the basis for compensation paid by the campaign. (21-A M.R.S.A. § 1125(12-A)) These documents must be contemporaneous with the services provided and not created at the end of the campaign or after the services were provided.

**Campaign Staff.** If a candidate pays more than \$500 in MCEA funds to a member of campaign staff during an election cycle, the campaign must keep a contemporaneous document specifying in detail the staff services provided to the campaign. The



Commission staff recommends the staff member keep a detailed record of all work performed, including:

- the period (weeks or month) during which the work was provided,
- a specific description of the services provided, and
- the number of hours worked for the week or month (even if approximate).

**Consulting Services.** When a campaign contracts with a consulting firm or an individual consultant to provide services that cost more than \$500, the campaign must obtain a contemporaneous document such as an invoice, contract, or timesheet stating the services provided. The document should be signed by the individual or a principal of the firm who provided the services. An example of an acceptable invoice is found in this chapter.

#### COMMISSION'S REQUESTS FOR RECORDS

**Compliance Reviews.** As part of its compliance review of all expenditures of MCEA funds, the Commission staff sometimes requests a vendor invoice, proof of payment, or copy of bank statements.

**Audits.** The Commission staff will audit a random selection of 2020 legislative candidates receiving MCEA funding. The Commission's auditor will request the campaign bank account, vendor invoices and proof

of payment for selected expenditures, and the detailed records for services provided by campaign staff or consultants that cost more than \$500. See Chapter 12 for more information about the Commission's audit process.

#### FAILURE TO KEEP REQUIRED DOCUMENTATION

Keeping bank statements, vendor invoices, and proof of payment is a statutory requirement for MCEA candidates. Failing to keep these records is a violation of the MCEA. If a campaign cannot support its reported expenditures with the required documentation, the Commission may disallow the expenditures and require the campaign to repay those funds. Undocumented expenditures are considered on a case-by-case basis and each campaign will have an opportunity to explain the undocumented expenditures before being required to repay MCEA funds.

#### LEGAL REFERENCES

Requirement to Keep Records

21-A M.R.S.A. §§ 1013-A(4); 1016; 1125(12-A);  
Rules, Chapter 3, Section 8(1)

Records for Vehicle Travel

Rules, Chapter 3, Section 8(1)(C)

Authority to Conduct Audits

21-A M.R.S.A. § 1003(1)



## CHAPTER 10

### Campaign Finance Reporting

#### FILING REPORTS — RESPONSIBILITIES & LIABILITIES

A candidate is ultimately responsible for ensuring that their campaign complies with the requirements of the Election Law and the Commission's Rules. However, the legal responsibility for filing complete and accurate campaign finance reports lies squarely with the candidate's treasurer.

*"The treasurer shall file complete and accurate campaign finance reports as required by section 1017." (21-A M.R.S.A. § 1016-A(2))*

*"The treasurer shall certify the completeness and accuracy of the information in any report of contributions and expenditures filed with the commission as required by section 1017."*

(21-A M.R.S.A. § 1016)

While the responsibility for filing reports is the treasurer's, the liability for penalties arising out of reporting violations is shared by the treasurer and the candidate.

*"The commission may hold the candidate and treasurer jointly and severally liable for any penalties assessed for violations of the financial reporting...requirements of [the Election Law and the Commission's Rules]."*

(21-A M.R.S.A. § 1016-A(3))

If the treasurer has delegated the report filing responsibility to a deputy treasurer, that individual may be held jointly and severally liable for penalties related to reports they filed.

It is because of these significant reporting responsibilities and potential liabilities that the Commission staff strongly recommends candidates select a competent treasurer who will actively manage and oversee the campaign's financial activities and compliance with the Election Law. If a candidate, treasurer, deputy treasurer, or any other person handling financial reporting has a question about the reporting requirements, they should contact the campaign's Candidate Registrar. Many reporting questions and problems can be quickly resolved with a simple call or email.

#### FILING DEADLINES

Reports must be filed by 11:59 p.m. on the filing deadline. The only exception is for 24-Hour Reports, which must be filed within twenty-four hours of receiving an MCEA payment of \$1,000 or more, or making a single expenditure of \$1,000 or more, during the 13-day period prior to an election. Candidates who do not submit a report by the filing deadline will be assessed a civil penalty.

#### REPORTING PERIODS

Each campaign finance report covers a specific period of time. Treasurers must report all contributions received and expenditures made during the period, as well as all debts and obligations that remain unpaid at the end of a period.



## 2020 FILING SCHEDULE FOR MCEA CANDIDATES

NAME OF REPORT	DEADLINE	REPORT PERIOD
<b>2020 January Semiannual</b>	<b>January 15, 2020</b> <i>If necessary</i>	<b>Beginning of campaign - December 31, 2019</b> <i>(Required if candidates raise or spend more than \$500 in seed money by December 31, 2019)</i>
<b>Seed Money</b>	<b>April 21, 2020</b> <i>May be filed early or extended by one week</i>	<b>Beginning of campaign/January 1, 2020 - April 21, 2020</b> <i>Beginning of campaign, or January 1st if Semiannual was filed</i> <i>May be filed early (when candidate requests certification)</i> <i>Due date may be extended one week upon request</i>
<b>11-Day Pre-Primary</b>	<b>May 29, 2020</b>	<b>End date of Seed Money Report - May 26, 2020</b>
<b>42-Day Post-Primary</b>	<b>July 21, 2020</b>	<b>May 27 - July 14, 2020</b>
<b>42-Day Pre-General</b>	<b>September 22, 2020</b>	<b>July 15 - September 15, 2020</b>
<b>11-Day Pre-General</b>	<b>October 23, 2020</b>	<b>September 16 - October 20, 2020</b>
<b>42-Day Post-General</b>	<b>December 15, 2020</b>	<b>October 21 - December 8, 2020</b>

If any transactions were not included in a report that has already been filed, the treasurer must amend that report. When completing or amending reports, candidates and their treasurers are encouraged to call the Commission staff with any questions.

### REQUIRED REPORTS

**Semiannual Report for Candidates with Financial Activity in 2019.** If a candidate raises or spends more than \$500 in seed money before December 31, 2019, the treasurer must file a 2020 January Semiannual Report no later than January 15, 2020, covering all financial activity since registration.

**Seed Money Report.** The Seed Money Report is required for MCEA candidates. Treasurers file the report when their candidates request certification, which may be at any time prior and up to the

certification deadline of April 21, 2020. Candidates may request a one week extension for the Seed Money Report on the Request for Certification Form.

The Seed Money Report includes all seed money contributions received and expenditures made prior to the certification deadline, except for transactions disclosed in the 2020 January Semiannual Report, if filed.

The Commission staff reviews all Semiannual and Seed Money Reports to verify that all contributions and expenditures comply with the seed money restrictions. The Commission staff may also request records and documentation to verify the information in the report.

**Required Pre- and Post-Election Reports for All Candidates.** Treasurers are required to file campaign finance reports according to the schedule found in the



2020 PRIMARY ELECTION 24-HOUR REPORTING PERIOD MAY 27, 2020 – JUNE 8, 2020						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
May 24	May 25	May 26	May 27 BEGINS	May 28	May 29	May 30
May 31	June 1	June 2	June 3	June 4	June 5	June 6
June 7	June 8 ENDS	June 9 Primary Election	10	11	12	13

  

2020 GENERAL ELECTION 24-HOUR REPORTING PERIOD OCTOBER 21, 2020 – NOVEMBER 3, 2020						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
October 18	October 19	October 20	October 21 BEGINS	October 22	October 23	October 24
October 25	October 26	October 27	October 28	October 29	October 30	October 31
November 1	November 2 ENDS	November 3 General Election	4	5	6	7

**HOW TO FILE 24-HOUR REPORTS:**

- File reports electronically. eFiling will create a 24-Hour Report to file after the transaction is added.

**WHEN TO FILE 24-HOUR REPORTS:**

- Within twenty-four hours of the MCEA payment, expenditure, or debt or obligation.
- A report must be filed on a weekend or holiday if that is when it is due.
- Qualifying transactions taking place on the day before an election must be reported on election day.

table on the previous page. Each report covers a specific time period and must include all activity within that period.

**24-Hour Reports.** The 24-hour reporting requirement applies during the 13-day period prior to a contested election (calendar on next page). A 24-Hour Report must be filed within twenty-four hours when a candidate:

- Receives an MCEA payment of \$1,000 or more; or
- makes a single expenditure or incurs an unpaid debt or obligation of \$1,000 or more.

If a candidate incurs a debt or obligation with a vendor during the 24-hour reporting period, their treasurer must report the debt or obligation within twenty-four hours, regardless of when the vendor is paid. The table on the next page lists actions which constitute incurring a debt or obligation. Overhead costs, such as rent, taxes, utilities, and some salary payments, are exempt from 24-hour reporting. A debt payment of \$1,000 or more must be reported in the 24-hour reporting period, even if the debt itself has been reported in an earlier report.

Any transactions disclosed in a 24-Hour Report will be automatically entered into the next campaign finance report in the eFiling system.



UNPAID DEBTS AND OBLIGATIONS WHICH ARE REPORTABLE IN 24-HOUR REPORTS
The placement of an order for goods and services
A promise or agreement (even an implied one) that payment will be made
The signing of a contract for a good or service
The delivery of a good or service even if payment has not been made

**Post-Election Required Reports.** Candidates who are defeated in the primary election must have their treasurers file the primary election reports, but they are not required to file the general election reports. The 42-Day Post-Primary Report, due July 21, 2020, is the last election-based campaign finance report for those candidates. Candidates in the general election must have their treasurers file the 42-Day Post-General Report, due December 15, 2020. All surplus MCEA funds must be returned prior to the due date for the appropriate post-election report.

## REPORTING SEED MONEY CONTRIBUTIONS

**Reporting Contributions of \$50 or Less.** If a contributor has given seed money contributions that total \$50 or less, the candidate is not required to itemize those contributions. The contributions of \$50 or less may be entered as a lump sum. When reporting lump sum contributions in the eFiling system, candidates should use the source type of "Monetary (Unitemized)" and the contributor type of "Contributors Giving \$50 or Less" and enter the total for the reporting period. The candidate may use the date they deem most appropriate — typically the last date an unitemized contribution was received.

**Reporting Contributions of Greater than \$50.** After a contributor donates more than \$50 in seed money, the candidate must itemize the contribution(s). For example, a contributor donates \$20 in February of 2020, and in March of 2020 donates another \$40. Both contributions must be itemized by reporting the name, address, occupation, and employer of the contributor.

**Duty to Report Contributor's Occupation and Employer.** If a contributor has given seed money contributions totaling more than \$50, the candidate/treasurer is required to request and report the contributor's occupation and employer. Under the Commission's Rules, a campaign must make a reasonable effort to obtain the information from contributors. If a contributor is unwilling to provide the information in response to a request, the treasurer should report "information requested" when entering the contribution.

**Reporting a Return of a Contribution.** If a campaign returns a contribution, the treasurer must report the returned funds. A return of a contribution is required in certain circumstances:

- when an over-the-limit seed money contribution is received and deposited in the campaign bank account; or
- when a seed money contribution from an unallowable source (e.g., a business or a PAC) is received and deposited in the campaign bank account.

**Reporting Fees for Using an Online Fundraising Service.** Some candidates use fundraising services to collect seed money online. These companies may charge a fee, which is deducted before the contribution is transferred to the campaign. For example, a contributor makes a \$100 contribution and the



transaction fee is \$3.50, thus the company transfers \$96.50 to the campaign.

The correct amount to report as the contribution is \$100. The service or transaction fee of \$3.50 is an expenditure and should be reported using the expenditure purpose code “Other”. Treasurers may aggregate fees for online contributions in one expenditure per report. This practice is not allowed with any other type of expenditure.

Some companies may give contributors the option to pay the fees instead of the campaign. Usually, when a contributor agrees to pay the fees, the reportable contribution amount is the amount transferred to the campaign. Since the fees were agreed to and paid by the contributor, the campaign does not report them.

## REPORTING RECEIPTS OF MCEA FUNDS

The Commission staff enters a candidate’s MCEA payments into the eFiling system. If a payment is approved during a 24-hour reporting period, the candidate’s treasurer is responsible for filing a 24-Hour Report for that payment.

## REPORTING EXPENDITURES AND DEBTS

The Election Law requires campaign treasurers to disclose the date, amount, payee, and purpose of all expenditures in campaign finance reports submitted to the Commission, including debts that are unpaid at the end of a reporting period.

The “payee” is the vendor that provided the goods or services to the campaign. It is not acceptable to report “cash,” “reimbursement,” the method of payment (“Visa”), or the candidate’s name as the payee.

### EXPENDITURE TYPES\*

APP	Apparel (t-shirts, hats, embroidery, etc.)	OTH	Other and fees (bank, contribution, and money order fees, etc.)
CON	Contribution to party committee, non-profit, other candidate, etc.	PER	Personnel and campaign staff, consulting, and independent contractor costs
EQP	Equipment of \$50 or more (computer, tablet, phone, furniture, etc.)	PHO	Phones (phone banking, robocalls and texts)
EVT	Campaign and fundraising events (venue or booth rental, entertainment, supplies, etc.)	POL	Polling and survey research
FOD	Food for campaign events or volunteers, catering	POS	Postage for US Mail and mailbox fees
HRD	Hardware and small tools (hammer, nails, lumber, paint, etc.)	PRO	Professional services (graphic design, legal services, web design, etc.)
LIT	Printed campaign materials (palmcards, signs, stickers, flyers, etc.)	RAD	Radio ads and production costs only
MHS	Mail house and direct mail (design, printing, mailing, and postage all included)	TKT	Entrance cost to event (bean suppers, fairs, party events, etc.)
NEW	Newspaper and print media ads only	TRV	Travel (mileage and lodging, etc.)
OFF	Office supplies, rent, utilities, internet service, phone minutes and data	TVN	TV/cable ads, production, and media buyer costs only
ONL	Social media and online advertising only	WEB	Website and internet costs (website domain and registration, etc.)

\*Please note that as of January 2020, some expenditure types have been added or updated..



The only time the candidate's name should appear as the payee is when the candidate is receiving a reimbursement for mileage. The name of a campaign worker may appear as the payee if the worker is receiving a reimbursement for mileage, or if the campaign worker is being paid for a service provided to the campaign. How to report reimbursements is explained on the next page.

**Types of Expenditures and Required Remarks.** To report the purpose of the expenditure, the Commission requires candidates to indicate an “expenditure type” for each expenditure (see table on previous page). All expenditure types also require a more detailed description of the nature of the goods or services purchased. It is important for the treasurer to choose the most appropriate expenditure type, and give a concise but descriptive explanation for each transaction.

**Reporting Reimbursements Made to a Candidate, Supporter, or Candidate’s Household Member.** Many candidates ask if they or supporters can use personal funds or a credit card to pay for campaign goods or services and later be reimbursed by the campaign. This is permissible as long as the campaign promptly reimburses the candidate or supporter. Otherwise, the candidate or supporter has made an impermissible in-kind contribution to the campaign.

The purchase for which there was a reimbursement must be disclosed in the reporting period in which the vendor received the payment. When a candidate or a supporter uses personal funds or a credit card to pay a vendor, the vendor must be reported as the payee, and the date must be the one on which the vendor received payment. In the explanation section, the name of the person who received the reimbursement must be

stated clearly, along with the description of the purpose. For example, a campaign staffer named Dana Jones purchases stamps online from USPS.com on January 20, 2020. When reporting the expenditure, the payee is USPS, the date is 1/20/2020, and the description of the expenditure would read: “Stamps purchased by Dana Jones. Reimbursed January 23, 2020.” An example is provided on the next page.

If a candidate or supporter purchases goods or services from a vendor with a personal credit card and is not reimbursed by the campaign by the end of the reporting period, the transaction should be reported as an expenditure, with the description noting who is awaiting reimbursement. MCEA candidates should avoid this situation, if possible.

If the person receiving the reimbursement is a member of the candidate’s immediate family or household, the relationship to the candidate must be disclosed (e.g., “Reimbursement to Avery Green, candidate’s spouse”).

**Reporting Mileage Reimbursements.** When reporting a mileage reimbursement, the name of the person receiving the reimbursement is the payee. Volunteers may spend up to \$350 of their personal funds per election (primary or general) on campaign travel; mileage reimbursement cannot exceed the State of Maine rate of \$0.45/mile. After that, the campaign must reimburse the volunteer for their travel expenditures, or the amount over \$350 will be considered an in-kind contribution to the campaign. A candidate and their spouse/domestic partner may spend an unlimited amount of personal funds on travel.

**Reporting Travel Expenditures.** Candidates may use MCEA funds to pay for lodging for campaign purposes, but must keep lodging expenses reasonable. Candidates may also pay for their own lodging



Date of Expenditure	Payee	Remark	Type	Amount
1/20/2020	USPS 10 Sewall Street Augusta, ME 04330	Stamps purchased by Dana Jones. Reimbursed 01/23/2018.	POS	\$98.00
4/13/2020	Hannaford 100 Whitten Road Augusta, ME 04330	Food for volunteer event. Reimbursed to Avery Green, candidate's spouse, on April 21, 2020.	FOD	\$77.45
9/15/2020	Election Associates 456 State Street Augusta, ME 04330	Design of palm cards	LIT	\$300.00
9/25/2020	Graphics Center Color Printing 120 Water Street Augusta, ME 04330	250 palm cards; purchased by Election Associates	LIT	\$1,000.00

expenses, so long as they are not reimbursed by others. If a candidate is paying for lodging, they should describe the campaign purpose of the travel in the Explanation of Purpose section (e.g., "attended candidate debate at the Univ. of Maine, Orono;" "interviews with Portland TV and radio stations on 10/1 and 10/2/2020").

**Reporting Purchases Made by a Consultant or Firm.** When a consultant makes expenditures on behalf of the campaign, the treasurer is required by the Election Law and the Commission's Rules to report those expenditures as though the campaign made them directly. The reported payee of these expenditures must be the vendor of the goods or services purchased, not the consultant. The consultant who purchased the goods or services should be noted in the explanation section. An example is shown on the next page for a situation in which a consultant purchased palm cards for a candidate.

The Commission staff recommends that when a candidate hires a consultant, they ask the consultant to provide the campaign with a receipt, invoice, or other statement from any vendor that received a payment of

\$50 or more from the consultant. It is a campaign's responsibility to obtain information about and documentation for expenditures made by consultants on the campaign's behalf, in order to report those expenditures completely and accurately. An example of a consultant invoice is found in Chapter 9.

If a treasurer reported a lump sum payment to a consultant in a previously filed report, they may need to amend that report to deduct from that amount any expenditures made by the consultant so the costs are not double-reported. The candidate should note in the explanation section the expenditures were made by the consultant.

**Reporting Payments Made to Household Members.** When MCEA candidates make payments to household members (See Chapter 6 for more information on payments made to household members), the relationship between the candidate and the payee must be clearly disclosed in the description of the expenditure.

**Reporting Expenditures to PACs and Party Committees.** An MCEA campaign may purchase



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goods and services from PACs and party committees, provided the candidate pays the fair market value of the goods or services received. A discount from a PAC or party committee may constitute an impermissible in-kind contribution. Also, the payment must be solely for the purpose of promoting a candidate's own nomination or election. These expenditures, when reported, must contain a clear and detailed explanation of the purchase and its sole benefit to the candidate's campaign.

#### **REPORTING THE PURCHASE AND SALE OF CAMPAIGN PROPERTY**

When a campaign uses MCEA funds to purchase property or equipment costing \$50 or more that could be converted to personal use after the campaign, the purchase of such property or equipment should be reported with an expenditure type of "Equipment."

After the election, MCEA candidates must sell equipment at fair market value and return the proceeds by the deadline for the campaign finance report due 42 days after the election. For candidates defeated in the primary election, proceeds must be returned by July 21, 2020; for candidates who participated in the general election, proceeds must be returned by December 15, 2020. The proceeds should be reported as a contribution with the contribution type of Equipment Sales Proceeds.

#### **REPORTING WITHDRAWALS OF CASH**

The Commission staff recommends making expenditures by writing checks or using a debit card from a campaign's bank account. This will help campaigns keep track of the dates, amounts, and payees of all expenditures which must be included on campaign finance reports. Using cash to make an

expenditure of greater than \$50 is prohibited. If a campaign chooses to withdraw cash to make small expenditures, the expenditures should be reported as explained in this chapter, not as an expenditure to "cash."

#### **REPORTING INTEREST EARNED ON BANK ACCOUNTS**

Candidates are permitted to earn interest on campaign funds in bank accounts, and spend that interest for campaign purposes. At the end of each reporting period, treasurers should calculate the total amount of interest earned for the entire reporting period, and enter the total onto the report as an unitemized contribution.

#### **REPORTING UNPAID DEBTS AND OBLIGATIONS**

If a candidate has incurred debts and obligations which remain unpaid at the end of a reporting period, the treasurer must report the name and address of the creditor (the vendor providing the goods or services), the amount and date of the debt or obligation, and purpose of the transaction. When any payment (full or partial) is made on a debt or obligation, that payment amount should be entered in the eFiling system.

#### **FILING REPORTS ELECTRONICALLY**

After a candidate registers, they and their treasurer will receive an email with instructions on how to log into the eFiling system. The campaign may use the eFiling system in two ways:

- directly enter each transaction into the eFiling system on the Commission's website; or
- upload the information via a template (the Commission staff should be contacted for more information on this option).



## FILING REPORTS ON PAPER FORMS

**Electronic Filing Waiver.** The Commission staff strongly recommends that candidates use the eFiling system to file their reports. However, candidates who do not have access to the technology, or do not have the technological ability to file reports electronically, may file their reports using the paper forms after requesting a waiver of the electronic filing requirement. The Commission staff grants all reasonable requests for a waiver. If a candidate would like a waiver of the requirement, he or she needs to complete the Electronic Filing Waiver request form and submit it to the Commission. The deadline for filing a waiver request is April 15, 2020, but the Commission will honor requests filed later.

**File the Original Signed Report by the Deadline.** For those candidates who have received permission to file reports on paper, the Commission must receive the original campaign finance report, signed by the treasurer, at its office by 5:00 p.m. on the filing deadline, except in two circumstances:

- a properly signed report may be faxed to the Commission office, at (207) 287-6775, by 11:59 p.m. on the deadline, provided that the original report is received by the Commission within five days of the fax. The time stamp from the Commission's fax machine will be deemed the time the report is filed; and
- a report sent by certified or registered mail and is postmarked at least two days before the filing deadline will not be considered late, even if it is received after the deadline.

## REMINDERS BY THE COMMISSION

A packet of information, including the filing schedule for campaign finance reports, is given to all candidates. In

addition, the filing schedule is posted on the Commission's website and candidate's eFiling account. The Commission staff mails a reminder to all candidates and treasurers at least two weeks before each filing deadline, and the eFiling system also automatically sends email reminders two weeks, one week, and the day before a filing deadline. Failure to receive a reminder notice does not excuse late-filed reports.

## AMENDMENTS

Treasurers are required by the Election Law to certify the completeness and accuracy of the information included in each report, and are expected to take that certification seriously. If a treasurer unintentionally makes an omission in a report, or includes incomplete or inaccurate information, they must promptly file an amendment.

The Commission staff reviews all amended reports. If the staff determines that a report did not substantially conform to the disclosure requirements, they may consider the report late, even if it was filed by the deadline.

## COMMISSION'S REVIEW OF REPORTS

The Commission staff reviews all campaign finance reports for completeness and compliance with the Election Law. If a report is incomplete or requires additional information, the Commission staff will contact the campaign to discuss how to remedy any errors or omissions.

## PENALTIES & REQUESTS FOR WAIVERS

Financial penalties are assessed whenever a report is filed late. Penalties are calculated by using a formula set out in statute that takes into account the amount of



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financial activity in the report, the number of days the report is late, and if the campaign has filed late reports previously. Campaigns may request a waiver of the penalty assessed by statute. Instructions on how to request a waiver of penalty are included in the notices of violation and penalty that are mailed to candidates and treasurers.

#### **LEGAL REFERENCES**

<b>Requirement to File Reports</b>	21-A M.R.S.A. §§ 1013-A(4); 1016; 1017(3-A)
<b>24-Hour Reporting Requirement</b>	21-A M.R.S.A. § 1017(3-A)(C) Rules, Chapter 3, Section 3(1)(C)
<b>Seed Money Report</b>	21-A M.R.S.A. § 1125(2-A)
<b>Required Contents of Report</b>	21-A M.R.S.A. § 1017(5)
<b>Reporting Payments to Members of Household and Family</b>	21-A M.R.S.A. § 1017(5)
<b>Required Reporting of Expenditures, including date, payee, amount, purpose</b>	21-A M.R.S.A. § 1017(5)
<b>Report Forms</b>	21-A M.R.S.A. § 1017(6)
<b>Electronic Filing Requirement</b>	21-A M.R.S.A. § 1017(10)
<b>Fax and Certified Mail Submission of Reports</b>	21-A M.R.S.A. § 1020-A(4-A)
<b>Substantially Non-Conforming Reports</b>	21-A M.R.S.A. § 1020-A(2)
<b>Reporting Expenditures by Consultants, Employees, and Other Agents</b>	21-A M.R.S.A. § 1016(4); Rules, Chapter 1, Section 7(1)
<b>Reporting Reimbursements</b>	Rules, Chapter 1, Section 7(5)
<b>Penalties</b>	21-A M.R.S.A. § 1020-A(4-A)
<b>Reporting Purchases of Equipment</b>	Rules, Chapter 3, Section 8(2)(C)



# CHAPTER 11

## Post-Election Responsibilities

### NOTIFY COMMISSION OF CHANGES OF ADDRESS AND PHONE NUMBER

During and after a campaign, it is important for candidates and treasurers to notify the Commission directly when an address and/or telephone number changes. If the Commission is not notified, they may miss important notices and filing reminders. It is also important for the staff to know how to contact candidates and treasurers as the staff conduct their reviews of campaign finance reports.

### POST-ELECTION ACTIVITIES

Candidates may spend limited amounts of MCEA funds on thank-you notes or advertising to thank supporters or voters:

- \$250 for State Representative candidates
- \$750 for State Senate candidates

Candidates may spend an unlimited amount of personal funds for these purposes.

The purchase of gifts and gift cards for campaign workers and volunteers is not permitted with MCEA funds, but may be purchased with the personal funds of the candidate. Law prohibits the spending of MCEA funds on election night or post-election parties. Candidates wishing to host an election night or post-election party may do so with personal funds.

IMPORTANT POST-ELECTION DEADLINES FOR MCEA CANDIDATES	
<ul style="list-style-type: none"> <li>• Pay all outstanding debts &amp; reimbursements</li> <li>• Sell all equipment and return sale proceeds</li> <li>• Return unspent MCEA funds</li> </ul>	
Candidates who were defeated in the primary election	July 21, 2020
All general election candidates	December 15, 2020

### UNSPENT MCEA FUNDS

***Returning Unspent Funds.*** Candidates are required to return all MCEA funds that were not spent on their campaigns. These unspent funds must be returned by the deadline of the final campaign finance report for their campaigns.

***Determining the Amount of Unspent Funds.*** Once all debits and checks have cleared the campaign bank account, the campaign should write a check to the Maine Clean Election Fund for the entire amount of funds left in the account. This amount, when entered into the eFiling system by the Commission staff, should result in a zero balance on the post-election report.

If the balance on the post-election campaign finance report cannot come to zero, the campaign and the Commission staff will be in contact, as the staff will assist the campaign in identifying the reporting error(s) causing the difference.



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If any check is outstanding by the end date of the post-election report's reporting period, the vendor or individual should be contacted. They must cash the check to ensure that the campaign does not receive an in-kind contribution, which is a violation of the MCEA.

Reporting errors may be due to:

- personal funds used to open the account or to maintain a minimum balance were spent on campaign purchases;
- an expenditure amount was not correctly reported;
- an expenditure was entered multiple times;
- an expenditure was not reported; or
- a reimbursement was reported but not made (check not written).

**Unspent Amount Verified.** The Commission staff verifies whether the unspent amount returned is consistent with the expenditures that have been reported by a candidate. If there is a discrepancy, the Commission staff will request the candidate resolve it by amending the reported expenditures to accurately disclose the candidate's actual payments of MCEA funds.

#### **SALE OF PROPERTY THAT COULD BE CONVERTED TO THE CANDIDATE'S PERSONAL USE**

After the election, MCEA candidates must sell any campaign property or equipment purchased with public funds that could be converted to personal use (e.g., computers, printers, cell phones). The candidates are required to sell the goods at fair market value and return the proceeds to the Commission no later than the 42-Day Post-Election Report deadline. The sale proceeds should be reported as "Equipment Sales Proceeds."

#### **42-DAY POST-ELECTION REPORT**

MCEA candidates must pay all outstanding obligations, including reimbursements to themselves or campaign workers, by the 35th day after the candidate's last election for the year (primary or general).

Treasurers must file a final campaign finance report no later than 42 days after the election. For candidates in the 2020 general election, this report deadline is December 15, 2020. For candidates who did not win the primary election, the deadline is July 21, 2020.

#### **VENDOR REFUNDS**

***Refund Received Prior to Filing 42-Day Post-Election Report.*** If a candidate receives a vendor refund prior to the filing of the final report for their campaign, the date of the refund should be reported as the date it was received. A "return" option is available when amending a filed expenditure in eFiling.

***Refund Received After the Filing of 42-Day Post-Election Report.*** If a candidate receives a vendor refund after the end of the reporting period for the final report of their campaign, the treasurer should contact the Commission staff for assistance in entering the refund correctly in the eFiling system.

***Returning a Refund to the Commission.*** A candidate must either deposit a refund check in the campaign bank account and write a check from the campaign account payable to "MCE Fund" (for the same amount of the refund), or endorse the refund check "Payable to MCE Fund," sign it, and mail it to the Commission.

#### **POST-ELECTION AUDITS**

The Commission staff will contract with an independent auditor to audit at least 20% of legislative campaigns



receiving MCEA funding. See Chapter 12 for more information on the audits.

#### **PERSONAL FINANCIAL STATEMENT**

Legislative candidates who win the general election are required to file a Statement of Sources of Income form covering the year in which the election was held. The forms are provided to Legislators shortly after the New Year. The statement includes the sources of income which the Legislator received during the election year from employment, self-employment, gifts, and other sources. For legislative candidates winning the 2020 general election, the deadline for filing the SOSOI is February 15, 2021.

#### **LEGAL REFERENCES**

Change of Address or Telephone Number	21-A M.R.S.A. § 1013-A(5)
Disposing of Surplus Cash After an Election	21-A M.R.S.A. § 1017(8)
Semiannual Reports	21-A M.R.S.A. § 1017(3-A)(E)
Statement of Sources of Income	1 M.R.S.A. § 1016-C



# CHAPTER 12

## Compliance Reviews & Audits of MCEA Campaigns

### PURPOSE AND CONDUCT OF REVIEWS

The Commission staff conducts compliance reviews of all campaign finance reports. The purpose of the reviews is to verify all transactions were accurately reported and meet Election Law requirements. The reviews typically occur in the two to three weeks following each filing deadline. After each review, the Commission staff may request that the treasurer amend a campaign finance report to correct any errors or to provide more complete information about a transaction.

In order to verify that an expenditure was accurately reported and made for campaign purposes, the Commission staff may request campaign records such as receipts, travel logs, or bank account statements.

### INFORMATION REVIEWED

During the review, the Commission staff verifies whether:

- the correct payee has been reported for reimbursements;
- the correct expenditure type has been reported, and a description of the goods or services has been included in the explanation field;
- sub-vendors have been reported, especially for media purchases involving TV, radio, and cable ads; and

- the reported cash balance found on the financial summary is not negative and appears to be accurate.

### FOLLOW UP BY COMMISSION

If a review identifies a potential non-compliance issue, the Commission staff will contact the campaign. The Commission staff will explain the issue and the method(s) for correcting the error(s). The campaign is given a reasonable amount of time to correct the error(s) and amend any reports. The campaign is highly encouraged to seek assistance from the Commission staff when amending reports.

### FORMAL AUDIT

An independent auditor will formally audit a random selection of MCEA candidates. The purpose of these audits is to confirm all campaign expenditures were accurately reported, approved by the candidates, properly documented, and made for campaign-related purposes. Approximately 20% of MCEA legislative candidates are audited after every election.

### BEING PREPARED FOR THE AUDIT

***Helpful Practices.*** In order to assist the audit go smoothly, campaigns should:

- obtain all records required by the MCEA;
- verify that all campaign consultants obtain the required documentation for their purchases on



#### **REQUIRED SUPPORTING DOCUMENTATION FOR CAMPAIGN EXPENDITURES**

The following are acceptable forms of the required documentation for expenditures made by MCEA legislative candidates in the primary and general elections:

1. A copy of all campaign bank account statements.
2. A copy of the original vendor invoice.
3. One of the following:
  - a. Copy of cancelled (cleared) check;
  - b. Copy of cleared check image provided by the bank;
  - c. Debit card transaction – copy of the relevant bank statement showing the payee name and amount;
  - d. Credit card transaction – copy of the relevant credit card statement showing the payee and amount;
  - e. Cash receipt issued by the vendor showing the amount paid and the date of purchase.
4. For reimbursements to the candidate or a campaign worker for campaign expenditures, the candidate must provide the following documentation:
  - a. Copy of the original vendor invoice,
  - b. Proof of payment by the person reimbursed in one of the forms described above, and
  - c. Proof of reimbursement by the campaign in one of the forms described above.

behalf of the campaign;

more than \$50.

- institute procedures to ensure the campaign maintains all records that may be required by the auditor;
- accurately report the date, payee, amount, and purpose of every expenditure of MCEA funds; and
- pay for as many campaign expenditures as possible directly from the campaign bank account.

Additionally, the Commission recommends keeping copies of all seed money checks and money orders.

***Additional Documentation for Cash Contributions.***

Since all cash contributions are required to be deposited in the campaign bank account, account deposit slips should be copied and retained to verify receipt of cash contributions.

***Required Records Documenting Expenditures.***

MCEA candidates and their treasurers are required to obtain the following documents for every expenditure over \$50:

- Audit Documentation for Seed Money Contributions.** MCEA candidates and their treasurers are required to obtain and keep the following information for each seed money contributor:
- the name and address for every contributor giving \$50 or less; and
  - the name, address, occupation, and employer for every contributor giving

- a vendor invoice stating the particular goods and services purchased, as well as the cost, and
- proof of payment — a record proving that the vendor received payment.



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The proof of payment may take the form of a cancelled check, a receipt from the vendor showing payment, or a bank debit or credit card statement identifying the vendor as the payee.

For campaigns using electronic banking, the Commission staff recommends saving copies of statements and cancelled checks monthly since some financial institutions only make these electronically available for a limited time.

If a campaign is audited, the campaign must submit to the auditor a copy, not the originals, of the supporting documentation for each transaction selected by the auditor as part of the audit.

**Specific Records Documenting Consulting Services and Salaries.** When a campaign contracts for services with a consulting firm or hires an individual for personal services, the supporting documentation for these expenditures is either:

- an invoice signed by either an officer of the firm or, if services were contracted with an individual, the individual who provided the services;
- a contract signed by an officer of the firm or the individual who provided the services; or
- a timesheet or work record of the individual.

These documents are required to be contemporaneous to the services provided and not created at the end of the campaign or when requested.

**Specific Records Documenting Expenditures by Sub-Vendors.** Sometimes when a campaign contracts with a vendor (consultant, individual, or business) to provide goods or services, the vendor purchases

goods and services from another vendor, a “sub-vendor.” A sub-vendor must provide the required documentation to the vendor, which then provides it to the campaign.

Any vendor who is planning to use a sub-vendor should be made aware of this requirement. Ultimately, the candidate and treasurer are responsible to obtain the required documentation to support the expenditure. Unsupported expenditures – including those from sub-vendors – may be disallowed by the Commission and required to be repaid to the Maine Clean Election Fund. If a consultant or individual purchases goods or services on behalf of a campaign, the receipt or invoice for the purchased goods or services must be provided to the campaign. The campaign may want to require sub-vendor invoices attached to the consultant’s invoice before making a final payment to the consultant.

## AUDIT PROCESS

**Draft Audit Report.** After a campaign has had a reasonable opportunity to provide requested documentation and information, the auditor prepares and sends to the candidate a draft version of the audit report. Minor reporting or record-keeping violations that were corrected through the audit process are not discussed in the draft audit report. The draft audit report includes any other findings of non-compliance or deficiencies and recommendations for Commission action. If the audit identifies no violations, the auditor will not issue a draft report but will instead issue a final report stating that no exceptions (violations or deficiencies) were found. The draft audit report is a final opportunity for the campaign to address any unresolved issues in the audit or to disagree with the auditor’s findings.



**Final Audit Report and Presentation.** After considering any response from a candidate, the auditor prepares a final audit report which includes the candidate's comments on the draft audit report. The final report is presented to the members of the Commission at a public meeting. The candidate has an opportunity to address the Commission members at the public meeting when the audit report is presented.

#### AUDIT FINDINGS: PREVIOUS ELECTIONS

For previous elections, the Commission staff audited all MCEA candidates for Governor and 20% of the MCEA candidates for the Legislature. While many audits found no deficiencies, the auditors identified a number

of reporting, record-keeping, and other violations. The errors found by the auditors ranged from failure to maintain required expenditure documentation to misreporting and misuse of MCEA funds. Some of the findings and actions by the Commission are listed in the table on the next page.



#### PREVIOUS ELECTIONS: NON-COMPLIANCE ISSUES IDENTIFIED THROUGH AUDITS

NON-COMPLIANCE ISSUE	COMMISSION ACTION
Candidate spent MCEA funds for personal or other purposes that were not campaign-related	Finding of violation; assessment of a financial penalty; required repayment of misused MCEA funds
Substantial debts or unpaid obligations missing from the appropriate report	Finding of violation; assessment of late-filing penalty
Commingling MCEA funds with personal or business funds	Finding of violation; assessment of a financial penalty
Substantial undocumented expenditures (no vendor invoice or proof the vendor received payment)	Finding of violation; assessment of a financial penalty; may require repayment of MCEA funds used for undocumented expenditures
Substantial misreporting and unreported expenditures	Finding of violation; assessment of a financial penalty; amendment to campaign finance report
Overspending (campaign spending in excess of the authorized amount of MCEA funds)	Finding of violation; assessment of a financial penalty
Paying for goods or services received in the qualifying period with the initial MCEA funds payment	Finding of violation; assessment of a financial penalty
Reimbursing for mileage that took place during the qualifying period with MCEA funds	Finding of violation; required repayment of improperly spent funds
Failure to return unspent MCEA funds on time	Finding of violation; assessment of a financial penalty
Incomplete or missing mileage logs for mileage and fuel reimbursements	Finding of violation; assessment of a financial penalty
False reporting of contributions and expenditures	Referral to Attorney General

#### LEGAL REFERENCES

Compliance Reviews  
Authority to Conduct Audits  
Financial Penalties  
Referral to Attorney General

Rules, Chapter 1, Section (4)(2)(A)  
21-A M.R.S.A. § 1003(1)  
21-A M.R.S.A. § 1127  
21-A M.R.S.A. § 1127



## APPENDIX

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## **DEFINITION OF CONTRIBUTION AND EXPENDITURE**

### **(21-A M.R.S.A. §§ 1012(2) AND (3))**

**2. Contribution.** The term "contribution:"

**A. Includes:**

- (1) A gift, subscription, loan, advance or deposit of money or anything of value made for the purpose of influencing the nomination or election of any person to state, county or municipal office or for the purpose of liquidating any campaign deficit of a candidate, except that a loan of money to a candidate by a financial institution in this State made in accordance with applicable banking laws and regulations and in the ordinary course of business is not included;
- (2) A contract, promise or agreement, express or implied, whether or not legally enforceable, to make a contribution for such purposes;
- (3) Funds received by a candidate or a political committee that are transferred to the candidate or committee from another political committee or other source; and
- (4) The payment, by any person other than a candidate or a political committee, of compensation for the personal services of other persons that are provided to the candidate or political committee without charge for any such purpose; and

**B. Does not include:**

- (1) The value of services provided without compensation by individuals who volunteer a portion or all of their time on behalf of a candidate or political committee;
- (2) The use of real or personal property and the cost of invitations, food and beverages, voluntarily provided by an individual to a candidate in rendering voluntary personal services for candidate-related activities, if the cumulative value of these activities by the individual on behalf of any candidate does not exceed \$250 with respect to any election;
- (3) The sale of any food or beverage by a vendor for use in a candidate's campaign at a charge less than the normal comparable charge, if the charge to the candidate is at least equal to the cost of the food or beverages to the vendor and if the cumulative value of the food or beverages does not exceed \$100 with respect to any election;
- (4) Any unreimbursed travel expenses incurred and paid for by an individual who volunteers personal services to a candidate, if the cumulative amount of these expenses does not exceed \$350 with



- respect to any election;
- (4-A) Any unreimbursed campaign-related travel expenses incurred and paid for by the candidate or the candidate's spouse or domestic partner;
- (5) The payment by a party's state, district, county or municipal committee of the costs of preparation, display or mailing or other distribution of a party candidate listing;
- (6) Documents, in printed or electronic form, including party platforms, single copies of issue papers, information pertaining to the requirements of this Title, lists of registered voters and voter identification information, created, obtained or maintained by a political party for the general purpose of party building and provided to a candidate who is a member of that party;
- (7) Compensation paid by a state party committee to its employees for the following purposes:
- (a) Providing no more than a total of 40 hours of assistance from its employees to a candidate in any election;
  - (b) Recruiting and overseeing volunteers for campaign activities involving three or more candidates; or
  - (c) Coordinating campaign events involving three or more candidates;
- (8) Campaign training sessions provided to three or more candidates;
- (8-A) Costs paid for by a party committee in connection with a campaign event at which 3 or more candidates are present;
- (8-B) Wood or other materials used for political signs that are found or contributed if not originally obtained by the candidate or contributor for campaign purposes;
- (8-C) The use or distribution of any communication, as described in section 1014, obtained by the candidate for a previous election and fully paid for during that election;
- (9) The use of offices, telephones, computers and similar equipment when that use does not result in additional cost to the provider;
- (10) Activity or communication designed to encourage individuals to register to vote or to vote if that activity or communication does not mention a clearly identified candidate; or
- (11) A purchase of apparel from a commercial vendor with a total cost of \$25 or less by an individual when the vendor has received a graphic or design from the candidate or the candidate's authorized committee.



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**3. Expenditure.** The term "expenditure:"

**A. Includes:**

- (1) A purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value made for the purpose of influencing the nomination or election of any person to political office, except that a loan of money to a candidate by a financial institution in this State made in accordance with applicable banking laws and regulations and in the ordinary course of business is not included;
- (2) A contract, promise or agreement, expressed or implied, whether or not legally enforceable, to make any expenditure;
- (3) The transfer of funds by a candidate or a political committee to another candidate or political committee; and
- (4) A payment or promise of payment to a person contracted with for the purpose of influencing any campaign as defined in section 1052, subsection 1; and

**B. Does not include:**

- (1) Any news story, commentary or editorial distributed through the facilities of any broadcasting station, newspaper, magazine or other periodical publication, unless the facilities are owned or controlled by any political party, political committee, candidate, or candidate's immediate family;
- (1-A) Any communication distributed through a public access television station if the communication complies with the laws and rules governing the station and all candidates in the race have an equal opportunity to promote their candidacies through the station;
- (2) Activity or communication designed to encourage individuals to register to vote or to vote if that activity or communication does not mention a clearly identified candidate;
- (3) Any communication by any membership organization or corporation to its members or stockholders, if that membership organization or corporation is not organized primarily for the purpose of influencing the nomination or election of any person to state or county office;
- (4) The use of real or personal property and the cost of invitations, food and beverages, voluntarily provided by an individual to a candidate in rendering voluntary personal services for candidate-related activities, if the cumulative value of these activities does not exceed \$250 with respect to any election;
- (5) Any unreimbursed travel expenses incurred and paid for by an individual who volunteers personal



- services to a candidate, if the cumulative amount of these expenses does not exceed \$350 with respect to any election;
- (5-A) Any unreimbursed campaign-related travel expenses incurred and paid for by the candidate or the candidate's spouse or domestic partner;
- (6) Any communication by any person that is not made for the purpose of influencing the nomination for election, or election, of any person to state or county office;
- (7) The payment by a party's state, district, county or municipal committee of the costs of preparation, display or mailing or other distribution of a party candidate listing;
- (8) The use or distribution of any communication, as described in section 1014, obtained by the candidate for a previous election and fully paid for during that election campaign;
- (9) Documents, in printed or electronic form, including party platforms, single copies of issue papers, information pertaining to the requirements of this Title, lists of registered voters and voter identification information, created or maintained by a political party for the general purpose of party building and provided to a candidate who is a member of that party;
- (10) Compensation paid by a state party committee to its employees for the following purposes:
- (a) Providing no more than a total of 40 hours of assistance from its employees to a candidate in any election;
  - (b) Recruiting and overseeing volunteers for campaign activities involving three or more candidates; or
  - (c) Coordinating campaign events involving three or more candidates;
- (10-A) Costs paid for by a party committee in connection with a campaign event at which three or more candidates are present;
- (11) Campaign training sessions provided to three or more candidates;
- (11-A) Wood or other materials used for political signs that are found or contributed if not originally obtained by the candidate or contributor for campaign purposes;
- (12) The use of offices, telephones, computers and similar equipment when that use does not result in additional cost to the provider; or
- (13) A purchase of apparel from a commercial vendor with a total cost of \$25 or less by an individual when the vendor has received a graphic or design from the candidate or the candidate's authorized committee.



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COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

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## **POLICY ON PAYING CAMPAIGN FUNDS TO FAMILY MEMBERS**

This memorandum describes the policies and procedures regarding the use of campaign funds to pay a member of the candidate's immediate family or household.

### **DISCLOSING A PAYMENT TO A MEMBER OF THE CANDIDATE'S FAMILY OR HOUSEHOLD (applies to gubernatorial, legislative, and county candidates)**

- *Traditionally financed candidates.* If a candidate uses campaign funds to pay or reimburse a member of the candidate's immediate family or household, the candidate must report the family or other relationship (e.g., "brother" or "roommate") in the remarks section of Schedule B (for expenditures) of the campaign finance report.
- *Maine Clean Election Act candidates.* If a candidate uses Maine Clean Election Act funds to pay or reimburse a member of the candidate's "immediate family" (defined below), a member of the candidate's household, or a business or nonprofit entity affiliated with a member of the candidate's immediate family, the candidate must disclose the family or household relationship (e.g., "brother," "roommate," or "business owned by daughter") in the remarks section of Schedule B of the campaign finance report.

For purposes of this disclosure requirement, "immediate family" means the candidate's spouse, parent, grandparent, child, grandchild, sister, half-sister, brother, half-brother, step-parent, stepgrandparent, stepchild, stepgrandchild, stepsister, stepbrother, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, guardian, former guardian, domestic partner, the immediate family of the candidate's domestic partner, the half-brother or half-sister of the candidate's spouse, or the spouse of the candidate's half-brother or half-sister. (21-A M.R.S.A. §§ 1(20) & 1122(4-A))

### **RESTRICTIONS FOR MAINE CLEAN ELECTION ACT CANDIDATES (21-A M.R.S.A. § 1125(6-B))**

A candidate may not pay Maine Clean Election Act (MCEA) funds to:

- the candidate or a sole proprietorship owned by the candidate,
- the candidate's spouse or domestic partner or a sole proprietorship owned by the candidate's spouse or domestic partner,
- a member of the candidate's immediate family or household,
- a business entity in which the candidate or a member of the candidate's immediate family or household holds a significant proprietary or financial interest, or
- a nonprofit entity in which the candidate or a member of the candidate's immediate family or household is a director, officer, executive director or chief financial officer.



The Legislature also provided two narrow exceptions to this prohibition:

### **I. Permitted Payments to Family and Household Members**

A candidate may use MCEA funds to pay a member of the candidate's immediate family or household, a business entity in which a member of the candidate's immediate family or household holds a significant proprietary or financial interest, or a nonprofit entity in which a member of the candidate's immediate family or household is a director, officer, executive director or chief financial officer only if the expenditure is made:

- for a legitimate campaign-related purpose,
- to an individual or business that provides the goods or services being purchased in the normal course of their occupation or business, and
- in an amount that is reasonable taking into consideration current market value and other factors the Commission may choose to consider.

The candidate shall provide documentary evidence that the expenditure qualifies for the exception at the time the expenditure is reported or when the Commission requests such evidence, whichever is sooner. This evidence must consist of documentation that the payee currently is employed by or engaged in a business that provides the goods or services provided; justification for the amount of the expenditure including the usual price paid by other clients; and an explanation of why the expenditure is campaign-related. Occasional or sporadic employment on political campaigns (e.g., field work, public relations, or organizing volunteers) will be insufficient to demonstrate a normal course of business.

This exception does not apply to either the candidate or the candidate's spouse or domestic partner.

### **II. Reimbursements**

Reimbursements, including travel reimbursements, that are made in accordance with the Commission's rules and guidelines are exempt from this restriction. However, the candidate must disclose the family or household relationship when reporting the reimbursement as described above.

If a MCEA candidate or a family or household member uses personal funds or a personal credit card to pay a vendor for campaign goods or services, the candidate must reimburse the individual with MCEA funds. (There are limited circumstances when reimbursement is not required. Please refer to the Commission's *Candidate Guidebook* for more information.)



## TRAVEL LOG FOR MCEA CANDIDATES AND THEIR CAMPAIGN STAFF

A travel log is required if MCEA funds are used for travel reimbursements and must be maintained for 3 years.

**Candidate's Name:**

**Name:**

(Person requesting reimbursement)

**Address:**

Date of Travel (Required)	Odometer Reading at Start (Recommended)	Odometer Reading at End (Recommended)	Number of Miles Traveled (Required)	Purpose and Destination of Travel (Required)
<b>HOW TO USE THIS FORM</b>				Number of miles this page
• Logs must be completed contemporaneously—at the time of travel.				Number of miles from attached pages
• Start and end odometer readings are highly recommended.				Total miles traveled
• The purpose of the travel must be specified in detail: "door to door," "attended meet and greet," "candidates' forum" - are acceptable descriptions. "Campaigning" or "candidate activities" are not acceptable because they do not provide enough detail.		\$		Multiply total miles by \$0.45 This is the <u>maximum</u> reimbursement amount based on mileage. The payments for fuel can not exceed this amount.

**Affirmation.** To be completed by the person requesting reimbursement from the campaign for that person's travel expenses.

I, \_\_\_\_\_, affirm that my travel reported in this log: (1) was campaign related; (2) occurred on the dates and to the destinations listed; (3) is, to the best of my knowledge, an accurate record of the number of miles traveled; and (4) that the entries in this log were made on the day the travel occurred.

\_\_\_\_\_  
Signature of person requesting reimbursement

\_\_\_\_\_  
Date

(For use by campaign) Date of Reimbursement:	\$ _____	Actual Amount of Reimbursement
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**TRAVEL LOG FOR MCEA CANDIDATES AND THEIR CAMPAIGN STAFF**

A travel log is required if MCEA funds are used for travel reimbursements and must be maintained for 3 years.

Page \_\_\_\_\_

Date of Travel (Required)	Odometer Reading at Start (Recommended)	Odometer Reading at End (Recommended)	Number of Miles Traveled (Required)	Purpose and Destination of Travel (Required)
Total miles traveled this page				



STATE OF MAINE  
DEPARTMENT OF TRANSPORTATION  
16 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0016

Janet T. Mills  
GOAL-DRIVE

Bruce A. Van Noy  
GOAL-DRIVE

To Whom It May Concern:

As we approach another campaign season, the Maine Department of Transportation would like to take this opportunity to offer some information regarding the placement of temporary signs in the right-of-way on state and state aid highways.

Current law states that temporary signs, which include campaign signs, may be placed in the right-of-way for up to 12 total weeks during any calendar year. The current law further states that individual signs bearing substantially the same message must be placed at least 30 feet from one another. This law also requires that each sign be labeled with the owner's name, address, and the date on which the sign was erected.

There are areas within the state's roadway system that are off-limits to temporary signs. These areas include the Maine interstate system, the Maine Turnpike Authority system, and Route 1 between Bath and Brunswick including all connecting interchanges and ramps. Along with the interstate system, some sections of state highways have been designated as "control of access" (C.O.A.) roadways where ingress and egress to and from the highway is prohibited/limited. No temporary signs of any kind can be placed along these control of access areas. These areas have been officially designated with signage indicating the beginning and ending of a C.O.A. A sample of these signs has been provided below for your reference:



Note: The interstate, including the Maine Turnpike and all its ramps and the portion of Route 1 between Bath and Brunswick are not signed. The signage denoted here is for those other roadways that have C.O.A.

Per recent law changes, temporary signs are also prohibited on traffic control devices (stop signs, yield signs, warning signs, guide signs, regulatory signs, etc.), on all utility poles and trees, on islands within a rotary/roundabout, and in medians/islands in the center of the road that are fewer than six feet wide.

Here are some questions that campaign personnel may ask regarding the placement of political signs:

**How do I recognize a "control of access" area?**

- *Aside from the interstate system, MaineDOT officials have marked C.O.A areas across the state. These areas will have signs indicating the beginning and ending of a C.O.A.*

**What will happen to my sign if it has been placed within a C.O.A. section?**



- *MaineDOT personnel have been advised to remove temporary signs from within the C.O.A. areas. Maintenance crews have also been instructed to safely store the signs until the owner of the sign can be contacted or for 60 days, whichever comes first.*

**Does MaineDOT enforce these sign placement restrictions statewide?**

- *MaineDOT is committed to providing the equitable enforcement of these sign restrictions upon notification of a violation.*
- *Per a recent statute change, temporary signs within urban compact areas may be enforced by the municipality they are within.*

**What do I need to know about placing my sign along the roadway?**

- *The first thing to consider in placement is the safety of the traveling public. Please do not install your signs where they will limit the sight line of anyone trying to pull out of a side road or driveway. Signs that block a driver's sight line will be removed and held at the closest MaineDOT maintenance lot to be picked up by the owner.*

In summary, when placing political signs, the important areas to avoid are the interstate system with the connecting interchanges, including the MTA system, and control of access areas across the state. Also, individual signs bearing the same message can be no closer than 30 feet from one another and must contain appropriate contact information and the date on which the sign was placed in the ROW. Candidates/referendums/special interest signage may want to work with sign making companies to have the contact information printed on their signs. MaineDOT will continue to provide the necessary information to help Maine's candidates.

For more information regarding the appropriate placement of political signs, please contact the department's legislative liaison, Meghan Russo, at [meghan.russo@maine.gov](mailto:meghan.russo@maine.gov) or 207-624-3558.

MaineDOT appreciates your cooperation in this effort.

Sincerely,

A handwritten signature in black ink that reads "Stephen Landry".

Stephen Landry, P.E.  
State Traffic Engineer  
MaineDOT



# PUBLIC NOTICE

Federal Communications Commission  
445 12<sup>th</sup> St., S.W.  
Washington, D.C. 20554

News Media Information 202 / 418-0500  
Internet: <http://www.fcc.gov>  
TTY: 1-888-835-5322

DA 16-264  
March 14, 2016  
Enforcement Advisory No. 2016-03

## FCC ENFORCEMENT ADVISORY

### TELEPHONE CONSUMER PROTECTION ACT ROBOCALL AND TEXT RULES

### BIENNIAL REMINDER FOR POLITICAL CAMPAIGNS ABOUT ROBOCALL AND TEXT ABUSE

With the 2016 campaign season underway, the FCC's Enforcement Bureau reminds political campaigns and calling services that there are clear limits on the use of autodialed calls or texts (known as "robocalls") and prerecorded voice calls. The FCC is committed to protecting consumers from harassing, intrusive, and unwanted robocalls and texts, including to cell phones and other mobile devices.

Since its adoption in 1991, the Telephone Consumer Protection Act ("TCPA") has placed limits on unsolicited prerecorded telemarketing calls to landline home telephones, and all autodialed calls or prerecorded voice calls to wireless numbers, emergency numbers, and patient rooms at health care facilities. The FCC's corresponding rules<sup>1</sup> governing automated telephone calls set forth restrictions that govern the use of prerecorded voice messages and automatic telephone dialing systems including those that deliver text messages. These provisions apply to all such prerecorded voice calls and autodialed calls or texts, including those made by political campaigns or other organizations involved in the 2016 election. The restrictions vary according to whether a call is delivered to a business or residential landline telephone, a cell phone, or some other category of protected telephone lines such as toll-free lines, emergency lines, or those lines servicing hospitals, nursing homes, or paging systems.<sup>2</sup>

We expect this Advisory will facilitate compliance with the law and rules by senders of campaign related voice messages and autodialed calls and texts and again remind all those using these tools to carefully observe the legal limits. The FCC's Enforcement Bureau will rigorously enforce the important consumer protections in the TCPA and our corresponding rules.

<sup>1</sup> See 47 CFR § 64.1200.

<sup>2</sup> By this Enforcement Advisory, the FCC's Enforcement Bureau highlights certain obligations under the TCPA and corresponding Commission rules. Failure to receive this notice does not absolve an entity of the obligation to meet the requirements of the Communications Act of 1934, as amended, or the Commission's rules and orders. Companies, individuals, and other entities should read the full text of the relevant portions of the TCPA and corresponding Commission rules, respectively, at 47 U.S.C. § 227 and 47 CFR § 64.1200.



**Prohibition Against Prerecorded Voice Messages and Autodialer Calls to Cell Phones and Other Mobile Services.** Prerecorded voice messages and autodialer calls (including autodialer live calls, prerecorded or artificial voice messages, and text messages) to cell phones and other mobile services such as paging systems are prohibited, subject to only three exceptions: (1) calls made for emergency purposes, (2) calls made with the prior express consent of the called party, (3) and calls made to collect debts “owed to or guaranteed by the United States.”<sup>3</sup> This broad prohibition covers prerecorded voice and autodialer calls, including those sent by nonprofit or political campaign-related organizations. Callers contending that they have the prior express consent to make prerecorded voice or autodialer calls to cell phones or other mobile service numbers have the burden of proof to show that they obtained such consent.<sup>4</sup> Further, call recipients may revoke their consent to be called using any reasonable method including verbally or in writing.<sup>5</sup>

**Prerecorded Voice Messages and Autodialer Calls to Landline Telephones.** Political campaign-related prerecorded voice messages or autodialer calls—whether live or prerecorded—to most landline telephones are not prohibited, so long as they adhere to the identification requirements set forth immediately below. However, prerecorded campaign-related voice messages or autodialer calls to emergency telephone lines; lines in guest or patient rooms at a hospital, nursing home, or similar establishment; or toll-free lines are prohibited unless the called party has agreed to receive such calls.<sup>6</sup>

**Identification Requirements for Prerecorded Voice Messages.** All prerecorded voice messages, campaign-related and otherwise, that are permissible under Section 227 of the Communications Act of 1934, as amended, and the Commission’s rules must include certain information to identify the party responsible for the message. In particular:

- All artificial and prerecorded voice messages must state clearly, at the beginning of the message, the identity of the business, individual, or other entity that is responsible for initiating the call.<sup>7</sup>
- If a business or other corporate entity is responsible for the call, the prerecorded voice message must contain that entity’s official business name (the name registered with a state corporation commission or other regulatory authority).<sup>8</sup>
- In addition, the telephone number of such business, individual, or other entity must be provided either during or after the prerecorded voice message.<sup>9</sup>

<sup>3</sup> See 47 U.S.C. § 227(b)(1)(A)(iii); see also 47 CFR § 64.1200(a)(1)(iii) (prohibiting such calls to “any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service which the called party is charged for the call”). Congress has amended the TCPA to exempt federal debt collection calls and the Commission is in the process of implementing rules related to that exemption.

<sup>4</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling and Order, 30 FCC Rcd 7961, 7990, para. 47 (2015) (*TCPA Omnibus Declaratory Ruling and Order*); see also *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling, 23 FCC Rcd 559, 565, para. 10 (2008) (concluding that creditors and debt collectors claiming prior express consent to deliver prerecorded voice or autodialer calls to cell phones are responsible for demonstrating such consent was granted).

<sup>5</sup> *TCPA Omnibus Declaratory Ruling and Order*, 30 FCC Rcd at 7996, para. 64.

<sup>6</sup> Non-emergency prerecorded voice or autodialer calls to such destinations are permissible only with the prior express consent of the called party. 47 U.S.C. § 227(b)(1)(A); 47 CFR § 64.1200(a)(1).

<sup>7</sup> 47 U.S.C. § 227(d)(3)(A)(i); 47 CFR § 64.1200(b)(1).

<sup>8</sup> 47 CFR § 64.1200(b)(1).

<sup>9</sup> 47 U.S.C. § 227(d)(3)(A)(ii); 47 CFR § 64.1200(b)(2). Any telephone number so provided may not be for (1) the



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**Line Seizure by Prerecorded Voice Messages and Autodialed Calls.** Automatic telephone dialing systems that deliver prerecorded voice messages must release the called party's telephone line within five seconds of the time that notification is transmitted to the system that the called party has hung up.<sup>10</sup> In addition, an automatic telephone dialing system may not be used in a way that simultaneously engages two or more telephone lines of a multi-line business.<sup>11</sup>

As we have done in previous election cycles, we remind senders of campaign-related prerecorded voice messages and autodialed calls or texts that failure to comply with the relevant sections of the TCPA and corresponding rules may subject them to enforcement action, including monetary forfeitures as high as \$16,000 per violation for any person who does not hold a license or other authorization issued by the Commission.<sup>12</sup>

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autodialer or prerecorded message player that placed the call, (2) a 900 number, or (3) any other number for which charges exceed local or long distance transmission charges. 47 CFR § 64.1200(b)(2).

<sup>10</sup> 47 U.S.C. § 227(d)(3)(B); 47 CFR § 68.318(c).

<sup>11</sup> 47 U.S.C. § 227(b)(1)(D); 47 CFR § 64.1200(a)(5).

<sup>12</sup> This amount reflects inflation adjustments to the forfeitures specified in Section 503(b)(2)(D) of the Communications Act. Section 503(b)(2)(D) provides for forfeitures of up to \$10,000 for each violation by a person who is not a broadcast station licensee, cable operator, common carrier, or applicant for any broadcast station, cable operator, or common carrier license issued by the Commission. See 47 U.S.C. § 503(b)(2)(D). The Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. No. 101-410, 104 Stat. 890, as amended by the Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, Sec. 31001, 110 Stat. 1321 (DCIA), requires the Commission to adjust its forfeiture penalties periodically for inflation. See 28 U.S.C. § 2461 note (4). The Commission most recently adjusted its penalties to account for inflation in 2013. See *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, 28 FCC Rcd 10785, 10786-790, paras. 3-5 (EB 2013); see also *Inflation Adjustment of Maximum Forfeiture Penalties*, 78 Fed. Reg. 49370-01, 49370 (2013) (setting September 13, 2013, as the effective date for the increases). The Commission has made such inflation adjustments and the current maximum forfeiture is \$16,000 for each violation under Section 503(b)(2)(D). See *Inflation Adjustment of Maximum Forfeiture Penalties*, 78 Fed. Reg. at 49371. The penalties for broadcast station licensees, cable operators, common carriers, and applicants for broadcast station, cable operator, and common carrier licenses are higher.

**Need more information?** For further information regarding requirements for prerecorded voice and autodialed calls, contact: Kristi Thompson at (202) 418-1318 or [kristi.thompson@fcc.gov](mailto:kristi.thompson@fcc.gov) or Mary Romano at (202) 418-0975 or [mary.romano@fcc.gov](mailto:mary.romano@fcc.gov) in the Telecommunications Consumers Division, Enforcement Bureau. More information can also be found at [www.fcc.gov/guides/robocalls](http://www.fcc.gov/guides/robocalls). To file a complaint, visit [www.consumercomplaints.fcc.gov](http://www.consumercomplaints.fcc.gov) or call 1-888-CALL-FCC.

Media inquiries should be directed to Will Wiquist at (202) 418-0509 or [will.wiquist@fcc.gov](mailto:will.wiquist@fcc.gov).

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). You may also contact the Enforcement Bureau on its TTY line at (202) 418-1148 for further information about this Enforcement Advisory, or the FCC on its TTY line at 1-888-TELL-FCC (1-888-835-5322) for further information about the Telephone Consumer Protection Act.

**Attachments:** (1) "At a Glance," Political Calls; (2) Frequently Asked Questions.

Issued by: Chief, Enforcement Bureau

**ATTACHMENT 1****"AT A GLANCE"****POLITICAL CALLS**

- Political campaign-related calls are subject to restrictions governing prerecorded voice and autodialed calls.
- There are no restrictions on live manually-dialed political calls, which may be delivered to any landline telephone or cell phone.
- Prerecorded voice and autodialed calls may NOT be delivered to the following types of landline phones without the prior express consent of the called party:
  - ✓ any emergency line (including any 911 line and any emergency line of a hospital, medical physician or service office, health care facility, poison control center, or fire protection or law enforcement agency);
  - ✓ the telephone line of any guest room or patient room of a hospital, health care facility, elderly home, or similar establishment; or
  - ✓ any service for which the called party is charged for the call such as toll-free lines.
- Prerecorded voice and autodialed calls (including live calls, prerecorded voice messages, and text messages) may NOT be delivered to cell phones, pagers, or other mobile devices without the prior express consent of the called party. This restriction governs all prerecorded voice and autodialed calls.
- All prerecorded voice messages must contain the following information:
  - ✓ the name of the person or entity responsible for the call, which must be provided at the beginning of the message;
  - ✓ the telephone number of the person or entity responsible for the call, which must be provided during or after the message.
- The National Do-Not-Call Registry and company-specific do-not-call lists do not apply to political calls.
- Individuals or entities who do not hold (and are not required to hold) FCC licenses responsible for unlawful political prerecorded voice messages or autodialed calls may face forfeiture penalties of up to \$16,000 per violation. The penalties are higher for FCC licensees, such as broadcasters, cable operators, and common carriers.



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## ATTACHMENT 2

### **FREQUENTLY ASKED QUESTIONS**

**The following Frequently Asked Questions are addressed in this Advisory:**

- What are the rules covering prerecorded voice messages and autodialed calls, and where can I find them?
- What is an autodialed call?
- Are nonprofit organizations exempt from the prohibition against making prerecorded voice calls or autodialed calls or texts to cell phones and other mobile service numbers?
- What does it mean to make a prerecorded voice or autodialed call for “emergency purposes”?
- Does the same prohibition against making autodialed calls to cell phones apply to sending autodialed text messages to cell phones?
- Do the rules allow me to send campaign-related prerecorded voice messages to a landline telephone number that is registered on the National Do Not Call Registry?
- Before making a prerecorded voice or autodialed call, how can I determine whether the target telephone number is associated with a landline phone or a wireless phone?
- What if I have questions?

***What are the rules covering prerecorded voice messages and autodialed calls, and where can I find them?***

These calls are subject to the general restrictions on prerecorded voice messages and autodialed calls, found at 47 U.S.C. § 227 and 47 CFR § 64.1200.

***What is an autodialed call?***

An autodialed call is any type of call or message, including a text message, that is made by an “autodialer” or “automatic telephone dialing system,” which is “equipment which has the capacity to store or produce telephone numbers to be called using a random or sequential number generator and to dial such numbers.”<sup>1</sup> The Commission has emphasized that this definition covers any equipment—including predictive dialers—that has the specified *capacity* to dial numbers without human intervention whether or not the numbers called actually are randomly or sequentially generated or come from calling lists.<sup>2</sup> The Commission has further emphasized that the capacity of a dialing system is not limited to any current configuration or present ability but also includes

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<sup>1</sup> 47 CFR § 64.1200(f)(2).

<sup>2</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, 18 FCC Rcd 14014, 14092-93, para. 133 (2003) (2003 TCPA Order). Predictive dialers use automated equipment to dial numbers (either from lists or randomly or sequentially) and then connect the called party to a live person. The distinctive element of a predictive dialer is software that predicts calling patterns to minimize the time live agents spend between calls while also minimizing the incidence of individuals answering a call when no agent is available.



potential functionalities that are more than mere theoretical possibilities.<sup>3</sup> Finally, the Commission has made clear that Internet-to-phone text messaging technology and text messaging apps that send to all or virtually all text-capable U.S. phone numbers constitute autodialers.<sup>4</sup>

***Are nonprofit organizations exempt from the prohibition against making prerecorded voice calls or autodialed calls or texts to cell phones and other mobile service numbers?***

No. Although nonprofit organizations enjoy certain exemptions under the TCPA, there is NO blanket exemption that allows nonprofit organizations to make either prerecorded voice calls or autodialed calls or texts to cell phones or other mobile service numbers without prior express consent.

***What does it mean to make a prerecorded voice or autodialed call for "emergency purposes"?***

Under Commission rules, "emergency purposes means calls made necessary in any situation affecting the health and safety of consumers." 47 CFR § 64.1200(f)(4). Political campaign-related prerecorded voice messages and autodialed calls are NOT included in this definition.

***Does the same prohibition against making autodialed calls to cell phones apply to sending autodialed text messages to cell phones?***

Yes. The Commission has determined that the prohibition against placing autodialed calls to cell phones without prior express consent "encompasses both voice calls and text calls to wireless numbers including, for example, short message service (SMS) calls, provided the call is made to a telephone number assigned to [a wireless] service."<sup>5</sup> Accordingly, only manually placed text messages are permissible without prior express consent.

***Do the rules allow me to send political campaign-related prerecorded voice messages to a landline telephone number that is registered on the National Do-Not-Call Registry?***

Yes. Political campaign-related prerecorded voice messages (as well as live political calls) are not subject to the National Do-Not Call Registry because such messages (or live calls) do not include telephone solicitations.<sup>6</sup>

***Before making a prerecorded voice or autodialed call, how can I determine whether the target telephone number is associated with a landline phone or a wireless phone?***

There are a variety of commercial services that callers may use to identify wireless telephone numbers.

***What if I have questions?***

For further information regarding requirements for prerecorded voice and autodialed calls, contact one of the following individuals in the Telecommunications Consumers Division, Enforcement Bureau: Kristi Thompson at (202) 418-1318 or [kristi.thompson@fcc.gov](mailto:kristi.thompson@fcc.gov) or Mary Romano at (202) 418-0975 or [mary.romano@fcc.gov](mailto:mary.romano@fcc.gov). To file a complaint, visit [www.consumercomplaints.fcc.gov](http://www.consumercomplaints.fcc.gov) or call 1-888-CALLFCC.

Media inquiries should be directed to Will Wiquist at (202) 418-0509 or [will.wiquist@fcc.gov](mailto:will.wiquist@fcc.gov).

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<sup>3</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling and Order, 30 FCC Rcd 7961, 7974-77, paras. 15-21 (2015).

<sup>4</sup> *Id.* at 8017-22, paras. 108-22.

<sup>5</sup> 2003 TCPA Order, 18 FCC Rcd at 14115, para. 165.

<sup>6</sup> In order to constitute a "telephone solicitation," a call or message must be "for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services." 47 CFR § 64.1200(f)(14); see also 47 U.S.C. § 227(a)(4).



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## 2018 CANDIDATE GUIDEBOOK

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