STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

To: Administrative Procedure Officer, Office of the Maine Secretary of State

From: Jonathan Wayne, Executive Director

Date: November 8, 2016

Re: Statement of Factual and Policy Basis for Draft Rule Amendments Proposed for Public Comment

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Chapter 3, Section 2(2) - Declaration of Intent Form

Factual and Policy Basis: Under the Maine Clean Election Act (MCEA), candidates must file a Declaration of Intent form indicating that they will be seeking public campaign funds. Candidates are required to file this form with the Commission within five business days of beginning to collect $5 qualifying contributions (21-A M.R.S.A. § 1125(1)). The Commission has developed a form for this purpose which sets out a number of program requirements for the candidates to acknowledge through their signature. To prevent fraud in the collection of qualifying contributions, the Commission proposes a change to the content of the form: candidates would need to affirm that they will provide adequate training to individuals they have authorized to collect qualifying contributions for them. The proposed changes would also fix a cross-reference to the correct paragraph of Section 2(3) (changing a C to a D).

Chapter 3, Section 2(3) – Seed Money Contributions

Factual and Policy Basis: To be consistent with changes to the Maine Clean Election Act in the November 3, 2015 citizen initiative, the Commission proposes changes to its Rule relating to seed money contributions. These are contributions of up to $100 from individuals that candidates may solicit and spend to start their campaigns while they are qualifying for MCEA funds. The citizen initiative doubled the total amount of seed money that legislative candidates may collect. The initiative also eliminated the requirement for gubernatorial candidates to collect $40,000 in seed money. (This eligibility requirement was in effect during the 2010 gubernatorial elections.)

The proposed changes also fix the headings for paragraphs 2(3)(G) & (H) to clarify the subject matter of those paragraphs.

The Commission proposes a new paragraph 2(3)(I) to formalize a longstanding policy of the Commission that MCEA candidates have relied upon during several elections. To facilitate opening a campaign bank account and to avoid minimum balance fees, the Commission staff has permitted candidates to deposit a limited amount of personal funds in their campaign account – provided that they do not spend these funds for campaign purposes.

Chapter 3, Sections 2(4)(A) - (G) – Extending the Period of Time for Collecting Qualifying Contributions

Factual and Policy Basis: Under the citizen initiative, after qualifying for MCEA funding ("certification"), candidates may continue to collect additional qualifying contributions in order to receive up to eight supplemental payments of MCEA funds for the general election. Candidates may collect these additional contributions until three weeks before the general election. The Commission proposes a Rule amendment in Section 2(4) to reflect that candidates may collect qualifying contributions *after certification*. These amendments include changing the phrase "participating candidate" to "candidate," because the term "participating candidate" refers to a candidate who is seeking to qualify for MCEA funding (*i.e.*, prior to certification).

Chapter 3, Section 2(4)(E) – Signatures by Family Members on Commission Forms

Factual and Policy Basis: The Commission has an existing Rule setting out conditions under which family members and others living in a single household may make qualifying contributions in the form of a single check or money order. The Commission proposes an amendment clarifying that each individual must affirm on the Commission's Receipt & Acknowledgment form that they have made a qualifying contribution from their personal funds in support of the candidate. The Commission seeks to formalize existing policy that a qualifying contribution is not valid if the person purportedly making the contribution has not made this written acknowledgement.

Chapter 3, Section 2(4)(H) - Online Qualifying Contribution Service

Factual and Policy Basis: The Commission has established an online qualifying contribution service for members of the public to use a credit card to make qualifying contributions (www.maine.gov/cleanelections). This service can reduce the paperwork burden for candidates. (The service attempts to verify through data from the Central Voter Registry that the donor is registered to vote in the legislative district of the candidate.) The Commission proposes section 2(4)(H) to acknowledge this service, which has been in operation since 2008.

The website requires the donor to enter information and make selections through a series of online forms:

1. select the contributor's municipality and enter the contributor's street address and name,
2. select the candidate(s) to be supported through checking an online box,
3. type the amount(s) of the qualifying contribution(s) ($5 is the default),
4. affirm by typing the contributor's name that the donor made a contribution from their personal funds in support of the candidate and did not receive anything in exchange for the contribution,
5. enter the contributor's credit card number, name of account holder, and billing address, and
6. submit the payment.

(Screen shots illustrating these steps are attached.) If the website cannot verify the donor's registration status on the first try, the website offers the donor a second opportunity to type his or her name.

The website is designed for *use by the donor* who is making the contribution. The Commission proposes a Rule amendment which specifies that the donor may receive assistance in entering information in the online forms, but the donor must personally make the affirmation and submit the payment (steps 4 and 6 above). This Rule is intended to

strengthen confidence that the donor personally supports the candidate and is using personal funds to make a qualifying contribution. The Rule prohibits collecting the information by phone and entering the contribution on behalf of the donor.

Chapter 3, Section 2(4)(I), (J) & (K) – Preventing Fraudulent Qualifying Contributions

Factual and Policy Basis: The overwhelming majority of candidates follow the correct procedures in collecting qualifying contributions. In the experience of the Commission, it is very rare that candidates submit forms falsely claiming the collection of qualifying contributions. Most contributions are made by check or by credit card, which confirms that the donor has made the contribution from his or her personal funds.

On occasions when the Commission staff has detected that a candidate or volunteer has falsely claimed to have collected qualifying contributions *by cash* from donors, the Commission staff has invalidated the contributions attributed to that candidate or volunteer. This has generally resulted in the denial of MCEA funds to the candidate by the Commission staff.

In the past several elections, the Commission staff has denied MCEA funding to five legislative candidates who falsely claimed the collection of qualifying contributions. None of them appealed the staff's decision to the Commission. Also, the Commission staff has denied MCEA funding to two candidates for Governor because some of their volunteers falsely claimed qualifying contributions. One of the two candidates filed an appeal and later withdrew the appeal. In some cases the Commission, or its staff, has referred these matters to the Attorney General's office for criminal prosecution.

The staff expects the rate of fraud in candidates' collection of qualifying contributions will continue to be low. Nevertheless, there could be an increased risk of fraud because of the greater amount of campaign funds available to candidates and because candidates can receive additional campaign funds in proportion to the number of qualifying contribution collected.

In Section 2(4)(I) & (J), the Commission proposes two paragraphs setting out procedures to be used in the future when fraudulent qualifying contributions are detected. Section 2(4)(I) defines "fraudulent qualifying contributions" and directs the Commission staff to investigate further, when the staff reasonably believes fraud may be present. The Rule authorizes the staff to call upon the Attorney General's office for investigative assistance or to refer matters to that office for possible criminal investigation.

In Section 2(4)(J), the Commission proposes a Rule setting out standards for candidates to oversee other individuals that they have authorized to collect qualifying contributions on their behalf. The proposed rule requires the candidate to:

- ensure that these other individuals receive adequate training in the procedures for collecting qualifying contributions, and
- exercise due diligence to ensure that all qualifying contributions collected by these individuals and submitted to the Commission on the candidate's behalf are not fraudulent and otherwise comply with requirements of the Act and the Commission's Rules.

The proposed Rule states that if a candidate or the candidate's agents have submitted fraudulent qualifying contributions, the candidate is ineligible for MCEA funding unless the candidate demonstrates by a preponderance of evidence that the candidate exercised due diligence as described above, and had no knowledge of and did not participate in the collection of the fraudulent qualifying contributions. This is a variation on the rebuttable presumption approach provisionally adopted in January 2016.

Due to the very large amount of funds potentially available to gubernatorial candidates under the citizen initiative, in Section 2(4)(K) the Commission staff proposed additional procedures for candidates for governor seeking MCEA funding. Within three weeks of declaring an intention to qualify, a candidate for Governor would need to appoint a compliance officer and submit a compliance plan addressing topics set out in the Rule. These procedures would not apply to legislative candidates.

Chapter 3, Sections 2(4)(L) – Prohibition against Receiving Services Paid by Others

Factual and policy basis: The Commission proposes a new section 2(4)(L) to clarify that under the current definition of "contribution" in Election Law, organizations may not compensate people to collect qualifying contributions for MCEA candidates – except that the state political parties may pay their employees to provide up to 40 hours of paid assistance to a candidate in any election.

Chapter 3, Sections 2(4)(M) — Candidates Compensating People to Collect Qualifying Contributions

Factual and policy basis: The Commission proposes a new section 2(4)(M), which permits MCEA candidates to use their campaign funds to compensate individuals to collect qualifying contributions, but with two restrictions:

1) Candidates must make the payments from currently available campaign funds, and may not promise to compensate individuals from future MCEA funding yet to be received.
2) Candidates could *not* compensate individuals for collecting qualifying contributions *based on the number of qualifying contributions collected by that individual*. The Commission seeks to prohibit a rate of payment that could incentivize mistakes or fraud in the collection of qualifying contributions.

Chapter 3, Section 3(1)(C) – Requirement for Gubernatorial Candidates to Obtain Special Documentation of Required Seed Money Contributions

Factual and policy basis: As a result of the citizen initiative, candidates for Governor are no longer required to collect $40,000 in seed money to qualify for public campaign funds. This was an eligibility requirement the Legislature enacted and was in effect for the 2010 elections. Consequently, the Commission proposes an amendment deleting this section of the Rule.

Chapter 3, Section 4(2) & (3) – Financial Projections, Adjusting Payment Amounts for Inflation

Factual and policy basis: The Commission proposes a Rule change reflecting the new requirements in the citizen initiative to provide four-year financial projections to the Legislature and Governor and to adjust the payment amounts to candidates every two years based on inflation.

Chapter 3, Section 4(4)(B) & (F) – Authorizing Contributions Due to Shortfall in the Fund

Factual and policy basis: This subsection authorizes candidates to collect traditional campaign contributions if there is insufficient money in the Maine Clean Election Fund to make payments of public funds to candidates. These contributions would be capped by the same maximum that applies to traditionally financed candidates. Since these maximums are re-adjusted every two years for inflation, the Commission proposes an amendment deleting the specific dollar amounts in the Rule. The amendment also deletes a clause from paragraph F which refers to the deposit of matching funds in a separate bank account, since matching funds are no longer a component of the program.

Chapter 3, Section 6 – Distribution of Supplemental Funds

Factual and Policy basis: The Commission proposes a Rule amendment setting out the procedures for candidates submitting additional qualifying contributions to receive supplemental payments of MCEA funds. These procedures are generally similar to the

existing procedures for legislative candidates to submit qualifying contributions by April 20 of the election year to qualify for MCEA funding. Because of the amount of public campaign funding available to candidates is directly proportional to the number of valid qualifying contributions, the Rule requires candidates to submit a list of qualifying contributions in an electronic format such as Microsoft Excel. This will greatly facilitate the staff's timely evaluation of the qualifying contributions and ensure payment of public funds in the correct amount.

In order to position this proposed Rule in the most appropriate location within Chapter 3, this Rule was numbered Section 6, and that the existing Sections 6, 7, and 8 have been renumbered to 7, 8, and 9.

Chapter 3, Section 7 - Prohibiting Large Payments of Maine Clean Election Act funds in Cash [renumbered from Section 6]

Factual and Policy Basis: The Commission proposes a Rule amendment prohibiting candidates from spending more than $50 of Maine Clean Election Act funds in cash. Under this proposal, expenditures of more than $50 would be paid by check, debit or credit card, or wire transfer only. This would create a more reliable audit trail, in order to ensure the accountability of MCEA funds.

Thank you.