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

MEMORANDUM

To: Interested Parties

From: Jonathan Wayne, Executive Director

Date: November 25, 2015

Subject: Invitation to Comment on Proposed Rule Amendments

The Ethics Commission is inviting comments on proposed amendments to the Commission Rules. The topics include:

- organizations making independent expenditures for communications to voters must include the top three donors of the organization in the communication (new requirement in the citizen initiative approved by voters on November 3, 2015)

- a simpler filing schedule for independent expenditures

- paid staff time collecting qualifying contributions for a Maine Clean Election Act candidate constitutes a prohibited in-kind contribution to the candidate, unless the payments to staff are exempt under Maine Election Law

- standards and procedures for the Commission to address non-compliance or false statements in the collection of qualifying contributions

- conforming the Commission's Rules to changes in the Maine Clean Election Act approved by voters on November 3, 2015

For your reference, I have enclosed a summary of the changes and the proposed insertions and deletions.

To receive comments from the public, the Commission will hold a hearing on Wednesday, December 16 at 9:00 a.m. at the Commission's office at 45 Memorial Circle (second floor), in Augusta. Written and e-mailed comments are also welcome. Please email comments to Jonathan.Wayne@maine.gov. The deadline for written and e-mailed comments is 5:00 p.m. on Monday, January 4, 2016.

If you have any questions, please telephone me at 287-4179. Thank you for your consideration of the proposed amendments.

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To: Commissioners

From: Jonathan Wayne, Executive Director

Date: November 25, 2015

Re: Explanation of Proposed Rule Amendments

Chapter 1, Section 7(12) – Disclosure of top funders in paid communications

Section 3 of the citizen initiative approved by voters on November 3, 2015 requires paid communications to voters advocating for or against candidates to include a statement identifying the top three funders of the organization making the independent expenditure. This new requirement was added to the existing disclaimer statute (21-A M.R.S.A. § 1014).

The initiative specifies that the "statement is required only for communications made through broadcast or cable television, broadcast radio, internet audio programming, direct mail or newspaper or other periodical publications." Accordingly, the statement is not required for electronic advertisements on the internet, electronic mail, social media messages, or campaign signs.

The statute directs the Commission to adopt rules on a few topics, such as the duration of the statement in video communications and the text size or screen size of the statement. The Commission proposes a 12-point font size, which is already a requirement in the disclaimer statute for communications not authorized by a candidate. For duration and screen size, the proposed rule relies on current requirements in federal communications law. We also propose that the statement of funders be conditioned on paying more than $250 to support or oppose a candidate, which is the spending threshold for when an independent expenditure report must be filed with the Commission.

Chapter 1, Section 10 - Independent Expenditure Reports

Independent expenditures are paid communications which expressly advocate for or against a candidate's election. They are usually made by PACs and party committees.

Schedule for filing reports. In 2015, the Legislature enacted Chapter 350 of the Public Laws of 2015. Section 6 of the chapter law increased the spending threshold for when an independent expenditure report must be filed. The new threshold is making an expenditure greater than $250 for a paid communication to support or oppose a candidate (increased from $100). The $250 threshold applies to each expenditure separately. This reduces the administrative burden on filers, because the spenders do not need to aggregate smaller expenditures per candidate to determine if they exceed $250.

The proposed new schedule for independent expenditure reports would be:

If the expenditure is made	The report is due
through the 61st day before an election	the 60th day before an election
during the 60th – 14th day before an election	within 2 days of the expenditure
after the 14th day before an election	within 1 day of the expenditure

The proposed rule eliminates an 11-day report due for expenditures between $100 and $250 per candidate and (consistent with Chapter 350) eliminates the aggregating of expenditures per candidate.

Extension of presumption period. Communications made in the weeks before an election are presumed to be an independent expenditure if the communication names or depicts a clearly identified candidate. The citizen initiative extended this presumption period to 28 days before a primary election, 35 days before a special election, and from Labor Day to the date of a general election.

Chapter 3, Section 2(3) – Seed Money Collected by Maine Clean Election Act Candidates

To be consistent with changes to the Maine Clean Election Act (MCEA) in the citizen initiative, the Commission proposes updating the rule that covers 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.

In addition, the citizen initiative eliminated the requirement for gubernatorial candidates to collect $40,000 in seed money. This was an eligibility requirement that was in effect during the 2010 gubernatorial elections.

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

To be eligible for MCEA funding, candidates must collect a minimum number of qualifying contributions during a qualifying period, which ends on April 20 for legislative candidates. The qualifying contributions are intended to be an indication of personal support of the candidate by the registered voter making the contribution. The donor is required to affirm, through a signature, that he or she made the contribution from personal funds in support of the candidate and did not receive anything in return for making the contribution.

Under the citizen initiative, after qualifying for MCEA funding ("certification"), candidates may continue to collect qualifying contributions in order to receive additional payments of MCEA funds. Candidates may collect these additional contributions until three weeks before the general election. The Commission proposes rule amendments 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

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 that they have made a qualifying contribution from their personal funds in support of the candidate. We seek to formalize existing policy that a qualifying contribution is not valid if the person purportedly making the contribution has not made the written acknowledgement required by statute.

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

The Commission has established an online qualifying contribution service for members of the public to use a credit card to make qualifying contributions. This service can reduce the administrative burden for candidates, because the candidate does not need to submit any paperwork to the Commission for these contributions. (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 a rule to acknowledge this service, which has been in operation since 2008.

The website requires the donor to

1. enter their 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 through checking a box 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 their credit card number, name of account holder, and billing address, and
6. submit the payment.

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 staff believes that, in the past, some candidates, supporters or political party volunteers may have assisted donors in completing the online forms.

Our proposed rule specifies that the donor may receive assistance in person in completing the online forms, but the donor must personally make the affirmation and submit the payment (steps 4 and 6 above). This is intended to strengthen confidence that the donor personally supports the candidate and has elected to use personal funds to make a qualifying contribution. The proposed rule prohibits collecting the information by phone and entering the contribution on behalf of the donor.

Chapter 3, Section 2(4)(I)(J)& (K) – Non-Compliant or Fraudulent Qualifying Contributions; Additional Compliance Procedures for Gubernatorial Candidates

The overwhelming majority of candidates follow correct procedures in collecting qualifying contributions. In the experience of the Commission staff, it is very rare that candidates submit forms falsely claiming the collection of qualifying contributions. Most contributions are made by check, 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. In some cases the Commission, or its staff, has referred these matters to the Attorney General's office for criminal prosecution. In Section 2(4)(1), the staff proposes a rule describing these existing procedures.

In the past several elections, the Commission staff has denied MCEA funding to four 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 Section 2(4)(J), the Commission proposes a rule setting out policies for when a candidate may be held responsible for submitting non-compliant or fraudulent qualifying contributions to the Commission. The final rule should set high but fair standards for candidates, and should be appropriate both for legislative and gubernatorial campaigns. In the proposed rule, candidates are presumed to have verified the validity of all contributions submitted to the Commission and to be responsible for noncompliant contributions. The candidate may rebut the presumption upon showing that the candidate had no knowledge of the circumstances under which the noncompliant contributions were made and exercised due diligence in the collection and submission of qualifying contributions.

Due to the very large amount of funds potentially available to gubernatorial candidates under the citizen initiative, in Section 2(4)(K) the Commission proposes additional procedures for candidates for governor seeking MCEA funding. Within three weeks of declaring an intention to qualify, the candidate would need to appoint a compliance officer and submit a compliance plan addressing topics set out in the rule.

Chapter 3, Sections 2(4)(L) & (M) – Paid Staff Time and Other Assistance Provided to Candidates

The Commission proposes rules stating that if a party committee or other organization compensates others for collecting qualifying contributions on behalf of a candidate or incurs other expenses in providing assistance to candidates in collecting qualifying contributions, those activities constitute an in-kind contribution to the candidate.

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

Since candidates for Governor are no longer required to collect $40,000 in seed money, there is no need for them to obtain signed acknowledgement forms from their seed money donors. The Commission proposes deleting this section of the rule.

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

The Commission proposes rule changes reflecting 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

This subsection authorizes candidates to receive traditional contributions if there is insufficient money in the MCEA 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 to delete the specific dollar amounts in the rule. The Commission also proposes deleting 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(7) - **Prohibiting Large Payments of Cash**

The Commission proposes that MCEA candidates shall not make any payments of more than $50 in cash. Expenditures of more than $50 must be paid by check, debit or credit card, or wire transfer only. This will provide greater accountability of MCEA funds because the payee may be verified by the Commission through the candidates' financial institutions.

Thank you for your consideration of these proposed rule changes.

94-270 COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

Chapter 1: PROCEDURES

SUMMARY: This Chapter describes the nature and operation of the Commission, and establishes procedures by which the Commission's actions will be governed.

SECTION 7. EXPENDITURES

. . .

12. **Disclosure of top funders in paid communications.** If an organization makes an independent expenditure in excess of $250 to influence a candidate's election, the communication is required to contain the organization's top three funders under Title 21-A, section 1014, subsection 2-B.

A. A cable television or broadcast television communication must conform with those portions of federal regulations 47 CFR § 73.1212(a)(2)(ii) and 47 CFR § 76.1615(a) which regulate text size and duration of sponsorship information. Specifically, the text must

1. be equal to or greater than four percent of the vertical picture height, and
2. appear for not less than four seconds.

B. For communications listed in Title 21-A, section 1014, subsection 2-B with a visual aspect other than television or video communications, the statement of funders must appear in a font size that is 12-point or larger.

C. If an organization that has a major purpose other than influencing an election in Maine has established a PAC, the communication must contain the applicable number of funders of the organization that established the PAC.

Communications for which including the statement required by Title 21-A, section 1014, subsection 2-B would be impossible or impose an unusual hardship due to their format or medium are exempt from the requirements of that section.

SECTION 10. REPORTS OF INDEPENDENT EXPENDITURES

1. **General**. Any person, party committee, political committee or political action committee that makes ~~an~~ any independent expenditure ~~aggregating~~ in excess of $250 ~~$100~~ per candidate in an election must file a report with the Commission according to this section.

2. **Definitions**. For purposes of this section, the following phrases are defined as follows:

   A. "Clearly identified," with respect to a candidate, has the same meaning as in Title 21-A, chapter 13, subchapter II.

   B. "Expressly advocate" means any communication that

      (1) uses phrases such as "vote for the Governor," "reelect your Representative," "support the Democratic nominee," "cast your ballot for the Republican challenger for Senate District 1," "Jones for House of Representatives," "Jean Smith in 2002," "vote Pro-Life" or "vote Pro-Choice" accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice, "vote against Old Woody," "defeat" accompanied by a picture of one or more candidate(s), "reject the incumbent," or communications of campaign slogan(s) or individual word(s), which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s), such as posters, bumper stickers, advertisements, etc. which say "Pick Berry," "Harris in 2000," "Murphy/Stevens" or "Canavan!"; or

      (2) is susceptible of no reasonable interpretation other than as an appeal to vote for or against a clearly identified candidate.

   C. "Independent expenditure" has the same meaning as in Title 21-A §1019-B. 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 and is not an independent expenditure.

3. **Reporting Schedules**. Independent expenditures in excess of $250 per candidate per election made by any person, party committee, political committee or political action committee must be reported to the Commission in accordance with the following ~~provisions~~ schedule:

   A. ~~Independent expenditures aggregating in excess of $100 $per candidate per election made by any person, party committee, political committee or political action committee must be reported to the Commission in accordance with the following reporting schedule, unless required to be reported according to the schedule in paragraph B.~~

      ~~(1) **Quarterly Reports.** *[Repealed]*~~

      ~~(1-A) **60-Day Pre-Election Report**. A report must be filed by 11:59 p.m. on the 60th day before the election is held and be complete as of the 61st day before the election.~~

~~(1 B) **11 Day Pre-Election Report**. A report must be filed by 11:59 p.m. on the 11th day before the election is held and be complete as of the 14th day before the election.~~

~~If the total of independent expenditures made to support or oppose a candidate exceeds $100, each subsequent amount spent to support or oppose the candidate must be reported as an independent expenditure according to the schedule in this paragraph or paragraph B.~~

B. ~~Independent expenditures aggregating in excess of $250 per candidate made during the sixty days before an election must be reported within two calendar days of those expenditures.~~

~~[**NOTE**: WHEN THE CUMULATIVE AMOUNT OF EXPENDITURES TO SUPPORT OR OPPOSE A CANDIDATE EXCEEDS $250, AN INDEPENDENT EXPENDITURE REPORT MUST BE FILED WITH THE COMMISSION WITHIN TWO DAYS OF GOING OVER THE $250 THRESHOLD.~~

~~FOR EXAMPLE, IF AN INDIVIDUAL, ORGANIZATION OR COMMITTEE MAKES THREE EXPENDITURES OF $100 IN SUPPORT OF A CANDIDATE ON SEPTEMBER 8TH, SEPTEMBER 13TH, AND SEPTEMBER 29TH, FOR AN ELECTION ON NOVEMBER 6, 2012, AN INDEPENDENT EXPENDITURE REPORT MUST BE FILED BY OCTOBER 1ST. THE THIRD EXPENDITURE OF $100 MADE THE CUMULATIVE TOTAL OF EXPENDITURES EXCEED $250 AND THE TWO DAY REPORTING REQUIREMENT WAS TRIGGERED ON SEPTEMBER 29TH. THE REPORT MUST INCLUDE ALL THREE EXPENDITURES.~~

~~AFTER SEPTEMBER 29TH, IF THAT INDIVIDUAL, ORGANIZATION OR COMMITTEE MAKES ADDITIONAL EXPENDITURES TO SUPPORT THAT CANDIDATE, THE REQUIREMENT TO FILE AN INDEPENDENT EXPENDITURE REPORT WITHIN TWO DAYS WILL APPLY ONLY IF THE CUMULATIVE TOTAL SPENT AFTER SEPTEMBER 29TH EXCEEDS $250. FOR EXAMPLE, IF THE INDIVIDUAL, ORGANIZATION OR COMMITTEE MAKES TWO PAYMENTS OF $200 TO PROMOTE THE CANDIDATE ON OCTOBER 8TH AND OCTOBER 13TH, ANOTHER INDEPENDENT EXPENDITURE REPORT MUST BE FILED BY OCTOBER 15TH DISCLOSING THOSE TWO EXPENDITURES.]~~

~~Independent expenditures aggregating in excess of $100 per candidate made after the 14th day before an election must be reported within one calendar day of those expenditures.~~

(1) **60-Day Pre-Election Report**. A report must be filed by 11:59 p.m. on the 60th day before the election is held and be complete as of the 61st day before the election.

(2) **Two-Day Report.** From the 60th day through the 14th day before an election, a report must be filed within two calendar days of the expenditure.

(3) **One-Day Report.** After the 14th day before an election, a report must be filed within one calendar day of the expenditure.

For purposes of the filing deadlines in this paragraph, if the expenditure relates to a legislative or gubernatorial election and the filing deadline occurs on a weekend, holiday, or state government shutdown day, the report must be filed on the deadline. If the expenditure relates to a county or municipal election, the report may be filed on the next regular business day.

C. Reports must contain information as required by Title 21-A, chapter 13, subchapter II (§§ 1016-1017-A), and must clearly identify the candidate and indicate whether the expenditure was made in support of or in opposition to the candidate.

D. A separate 24-Hour Report is not required for expenditures reported in an independent expenditure report.

E. An independent expenditure report may be provisionally filed by facsimile or by electronic mail to an address designated by the Commission, as long as the facsimile or electronic copy is filed by the applicable deadline and an original of the same report is received by the Commission within five calendar days thereafter.

4. **Multi-Candidate Expenditures**. When a person or organization is required to report an independent expenditure for a communication that supports multiple candidates, the cost should be allocated among the candidates in rough proportion to the benefit received by each candidate.

A. The allocation should be in rough proportion to the number of voters who will receive the communication and who are in electoral districts of candidates named or depicted in the communication. If the approximate number of voters in each district who will receive the communication cannot be determined, the cost may be divided evenly among the districts in which voters are likely to receive the communication.

[NOTE: FOR EXAMPLE, IF CAMPAIGN LITERATURE NAMING SENATE CANDIDATE X AND HOUSE CANDIDATES Y AND Z ARE MAILED TO 10,000 VOTERS IN X'S DISTRICT AND 4,000 OF THOSE VOTERS RESIDE IN Y'S DISTRICT AND 6,000 OF THOSE VOTERS LIVE IN Z'S DISTRICT, THE ALLOCATION OF THE EXPENDITURE SHOULD BE REPORTED AS: 50% FOR X, 20% FOR Y, and 30% FOR Z.]

B. If multiple county or legislative candidates are named or depicted in a communication, but voters in some of the candidates' electoral districts will not receive the communication, those candidates should not be included in the allocation.

[NOTE: FOR EXAMPLE, IF AN EXPENDITURE ON A LEGISLATIVE SCORECARD THAT NAMES 150 LEGISLATORS IS DISTRIBUTED TO VOTERS WITHIN A TOWN IN WHICH ONLY ONE LEGISLATOR IS SEEKING RE-ELECTION, 100% OF THE COST SHOULD BE ALLOCATED TO THAT LEGISLATOR'S RACE.]

5. **Rebuttable Presumption**. Under Title 21-A M.R.S.A. §1019-B(1)(B), an expenditure made to design, produce or disseminate a communication that names or depicts a clearly identified candidate ~~in a race involving a Maine Clean Election Act candidate~~ and that is disseminated during the ~~21~~ 28 days before a primary election~~ and~~ , the 35 days before a ~~general~~ special election or from Labor Day to the general election will be presumed to be an independent expenditure, unless the person making the expenditure submits a written statement to the Commission within 48 hours of the expenditure stating that the cost was not incurred with the intent to influence the nomination, election or defeat of a candidate.

A. The following types of communications may be covered by the presumption if the specific communication satisfies the requirements of Title 21-A M.R.S.A. §1019-B(1)(B):

(1) Printed advertisements in newspapers and other media;

(2) Television and radio advertisements;

(3) Printed literature;

(4) Recorded telephone messages;

(5) Scripted telephone messages by live callers; and

(6) Electronic communications.

This list is not exhaustive, and other types of communications may be covered by the presumption.

B. The following types of communications and activities are not covered by the presumption, and will not be presumed to be independent expenditures under Title 21-A M.R.S.A. §1019-B(1)(B):

(1) news stories and editorials, unless the facilities distributing the communication are owned or controlled by the candidate, the candidate's immediate family, or a political committee;

(2) activity or communication designed to encourage individuals to register to vote or to vote if that activity or communication does not name or depict a clearly identified candidate;

(3) any communication from a membership organization to its members or from a corporation to its stockholders if the organization or corporation is not organized primarily for the purpose of influencing the nomination or election of any person for state or county office;

(4) the use of offices, telephones, computers, or similar equipment when that use does not result in additional cost to the provider; and

(5) other communications and activities that are excluded from the legal definition of "expenditure" in the Election Law.

C. If an expenditure is covered by the presumption and is greater~~, in the aggregate,~~ than ~~$100~~$250 per candidate per election, the person making the expenditure must file an independent expenditure report or a signed written statement that the expenditure was not made with the intent to influence the nomination, election or defeat of a candidate. The filing of independent expenditure reports should be made in accordance with the filing schedule in subsections 3(A) and 3(B) of this rule. Any ~~I~~independent expenditure~~s aggregating~~ of ~~$100~~$250 or less per candidate per election does not require the filing of an independent expenditure report or a rebuttal statement.

D. If a committee or association distributes copies of printed literature to its affiliates or members, and the affiliates or members distribute the literature directly to voters, the applicable ~~21-day or 35-day~~ presumption period applies to the date on which the communication is disseminated directly to voters, rather than the date on which the committee or association distributes the literature to its affiliates or members.

E. For the purposes of determining whether a communication is covered by the presumption, the date of dissemination is the date of the postmark, hand-delivery, or broadcast of the communication.

F. An organization that has been supplied printed communications covered by the presumption and that distributes them to voters must report both its own distribution costs and the value of the materials it has distributed, unless the organization supplying the communications has already reported the costs of the materials to the Commission. If the actual costs of the communications cannot be determined, the organization distributing the communication to voters must report the estimated fair market value.

G. If a person wishes to distribute a specific communication that appears to be covered by the presumption and the person believes that the communication is not intended to influence the nomination, election or defeat of a candidate, the person may submit the rebuttal statement to the Commission in advance of disseminating the communication for an early determination. The request must include the complete communication and be specific as to when and to whom the communication will be disseminated.

94-270 COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

Chapter 3: MAINE CLEAN ELECTION ACT AND RELATED PROVISIONS

SECTION 1. APPLICABILITY

This chapter applies to candidates running for Governor, State Senator and State Representative who choose the alternative campaign financing option established by the Maine Clean Election Act for elections to be held beginning in the year 2000. Candidates participating in the Maine Clean Election Act must comply with these rules and all other applicable election and campaign laws and regulations. Some sections in this chapter also apply to and impose obligations on privately financed candidates and political committees that raise contributions and make expenditures in races involving Maine Clean Election Act candidates.

SECTION 2. PROCEDURES FOR PARTICIPATION

1. **Declaration of Intent**. A participating candidate must file a Declaration of Intent within five days of collecting qualifying contributions. The Commission will provide a form for this purpose.

2. **Content**. The Declaration of Intent must include the following information:

   A. an affirmation that the candidate is seeking certification as a Maine Clean Election Act candidate;

   B. an affirmation that the candidate understands that any qualifying contributions collected more than five days before filing the Declaration of Intent will not be counted toward the eligibility requirement;

   C. an affirmation that the candidate has not accepted any contributions, except for seed money contributions, after becoming a candidate;

   D. an affirmation that the candidate has disposed of any campaign surplus before becoming a candidate for the new election, as required by paragraph 3.C [Campaign Surplus] of this section;

   E. an affirmation that if the candidate has any campaign deficit, that the candidate will not accept contributions to repay that deficit as a participating candidate or certified candidate, except that the candidate may forgive any campaign loans to himself or herself made during any previous campaigns;

   F. an affirmation that the candidate will continue to comply with applicable seed money restrictions and other requirements of the Act including, but not limited to, procedures for collecting qualifying contributions;

   G. an affirmation that the candidate has read and will comply with the Commission's guidelines on permissible expenditures; and

H. authorization by the candidate for the Commission, its agents or representatives to conduct financial audits of the candidate's campaign financial records and account(s).

3. **Seed Money Restrictions**

A. **General**. After becoming a candidate and before certification, a participating candidate may collect and spend only seed money contributions. The restrictions on seed money contributions apply to both cash and in-kind contributions.

B. **Total Amount**

(1) A participating candidate must limit the candidate's total seed money contributions to the following amounts:

(a) two hundred thousand dollars for a gubernatorial candidate;

(b) ~~one thousand five hundred~~three thousand dollars for a candidate for the State Senate; or

(c) ~~five hundred~~one thousand dollars for a candidate for the State House of Representatives.

(2) Notwithstanding any other provision of this chapter, a candidate may carry forward to a new candidacy of that candidate campaign equipment or property, subject to the reporting requirements of Title 21-A, chapter 13 [Campaign Reports and Finances].

(3) The Commission periodically will review these limitations and, through rulemaking, revise these amounts to ensure effective implementation of the Act.

C. ~~**Required seed money for gubernatorial candidates.** In addition to the other requirements for certification, a candidate for Governor seeking to qualify for Maine Clean Election Act funding shall collect at least $40,000 in seed money contributions from registered voters in Maine. Only cash seed money contributions count toward the $40,000 requirement. The candidate shall obtain documentation of the contributions as required by the Act [§1125(2-B)].~~

D. **Campaign surplus**. A candidate who has carried forward campaign surplus according to Title 21-A, chapter 13, subchapter II [§1017(8) and §1017(9)], and who intends to become a participating candidate, must dispose of campaign surplus in accordance with the requirements of Title 21-A, chapter 13, subchapter II [§1017(8)]; provided, however, that a candidate may carry forward only those portions of campaign surplus that comply with the provisions of this Act regarding seed money contributions [§§ 1122(9) and 1125(2)]. Any campaign surplus (excluding campaign equipment or property) carried forward under this provision will be counted toward that candidate's total seed money limit.

INFORMATIONAL NOTE: The Commission will provide educational materials to all former candidates who have a campaign surplus describing the requirement that individuals must dispose of campaign surplus to remain eligible for participation as a Maine Clean Election Act candidate.

E. **Return of Contributions Not in Compliance with Seed Money Restrictions**. A participating candidate who receives a contribution exceeding the seed money per donor restriction or the total amount restriction must immediately return the contribution and may not cash, deposit, or otherwise use the contribution.

F. **Case-by-Case Exception**. A participating candidate who has accepted contributions or made expenditures that do not comply with seed money restrictions may petition the Commission to remain eligible for certification as a Maine Clean Election Act candidate. The Commission may approve the petition and restore a candidate's eligibility for certification if the candidate successfully establishes all of the following criteria:

(1) the failure to comply was the result of an unintentional error;

(2) the candidate immediately returned all contributions that did not comply with seed money restrictions or paid for goods or services contributed that did not comply with seed money restrictions;

(3) the candidate petitioned the Commission promptly upon becoming aware of the unintentional error; and

(4) the failure to comply did not involve expenditures by the participating candidate significantly in excess of seed money total amount restrictions or otherwise constitute systematic or significant infractions of seed money restrictions.

G. After becoming a candidate and prior to certification, accepting a loan from any source including a financial institution and spending money received in the form of a loan, are violations of the seed money restrictions of the Act.

H. **Other**. A seed money contributor may also make a qualifying contribution to the same participating candidate provided that the contributor otherwise meets the requirements for making a qualifying contribution.

4. **Qualifying Contributions**

A. **General**. A ~~participating~~ candidate may collect qualifying contributions only during the relevant qualifying period for certification and the relevant period for additional qualifying contributions [§§ 1122(8) and 1125(8-E)]. Qualifying contributions collected more than five days before filing a Declaration of Intent with the Commission will not be counted toward the eligibility requirement. Qualifying contributions must be acknowledged by the person making the contribution and reported on forms provided by the Commission.

The forms must include:

(1) the name, residential address and signature of the contributor;

(2) an affirmation by the contributor that the contribution was made with his or her personal funds, in support of the candidate and that the contributor did not receive anything of value in exchange for his or her signature and contribution;

(3) a clear and conspicuous statement that the candidate is collecting signatures and qualifying contributions in order to obtain public funding to finance the candidate's campaign;

(4) the signature of the municipal registrar or his or her designee verifying the voter registration of the contributors listed on the form; and

(5) an affirmation by the person who circulated the form that the circulator collected the contribution, that to the best of the circulator's knowledge and belief the contribution came from the personal funds of the contributor, that nothing was provided to the contributor in exchange for the contribution, and any additional information required by the Commission in order to protect the reliability of the qualification process. Contributions made through the Commission's online qualifying contribution service do not require a circulator's affirmation.

B. **Required Number of Qualifying Contributions**. A participating candidate must obtain the number of qualifying contributions for certification during the qualifying period as required by the Act [§1122(7); §1122(8); §1125(3)].

C. **Exchanges for Qualifying Contributions Prohibited**

(1) A ~~participating~~ candidate or an agent of that candidate may not give or offer to give a payment, gift, or anything of value in exchange for a qualifying contribution.

(2) This provision does not prohibit a ~~participating~~ candidate or that candidate's agent from collecting qualifying contributions at events where food or beverages are served, or where campaign promotional materials are distributed, provided that the food, beverage, and campaign materials are offered to all persons attending the event regardless of whether or not particular persons make a qualifying contribution to the ~~participating~~ candidate.

(3) This provision does not prohibit a candidate from using seed money to pay the fee for a money order provided the qualifying contributor pays the $5 amount reflected on the money order as permitted by 21-A M.R.S.A. §1125(3).

D. **Checks Drawn on Business Accounts**. Qualifying contributions must be made with the personal funds of the contributor. The Commission will not count a check drawn from an account with a business name toward the eligibility requirements, unless the name of the contributor is included in the name of the

account or the candidate submits a written statement from the contributor indicating that he or she uses the business account for personal expenses.

E. **Family Members**. Family members, domestic partners, and live-in caregivers who reside in a single household may make qualifying contributions in the form of a single check or money order of more than $5 provided that:

(1) all contributors sign the receipt and acknowledgement form;

(2) all contributors are registered to vote at the address of the household; and

(3) all contributions are made with the personal funds of the contributors.

For a qualifying contribution to be considered valid, the contributor must affirm that the contribution was made with his or her personal funds, in support of the candidate and that the contributor did not receive anything of value in exchange for his or her signature and contribution. The affirmation may not be made by a family member, domestic partner or live-in caregiver, unless the contributor is unable to sign the form due to a physical impairment.

F. **Verification of Registered Voters**

(1) Before submitting qualifying contributions to the Commission, a ~~participating~~ candidate must establish that contributors who made qualifying contributions to that candidate are registered voters.

(2) For qualifying contributions made by check or by money order, a ~~participating~~ candidate must obtain written verification from the Registrar of the number of persons providing qualifying contributions who are registered voters within the electoral division for the office the candidate is seeking.

(3) For qualifying contributions made over the Internet, the Commission may establish an automated system by which the contributor can verify his or her voter registration based on data derived from the Central Voter Registration System. If the contributor is unable to verify the voter registration, the ~~participating~~ candidate must obtain written verification from the Registrar.

(4) Upon request of a ~~participating~~ candidate, and within 10 business days after the date of the request, the Registrar must verify the names of contributors of qualifying contributions who are registered voters within the electoral division for the office the candidate is seeking.

G. **Timing of Verification**. For purposes of this chapter, the Commission will deem verification of registered voters by the Registrar at any time during the qualifying period for certification or the relevant period for additional qualifying contributions [§§ 1122(8) and 1125(8-E)] to be an accurate verification of voter registration even if the registration status of a particular voter may have changed at the time the Commission determines certification of the participating candidate or before the additional qualifying contribution is submitted to the Commission.

Proof of voter verification submitted after the qualifying period for certification will not be accepted by the Commission and those qualifying contributions will not be counted toward the number required for certification.

H. Online Qualifying Contribution Service. The Commission may establish an online service for members of the public to make qualifying contributions in support of candidates seeking Maine Clean Election Act funding. To make an online qualifying contribution, the contributor must use the Commission's procedures to affirm that the contributor made a contribution from their personal funds in support of the candidate and that the contributor did not receive anything of value in exchange for his or her contribution. The affirmation and the payment must be made and submitted by the contributor and not by any other person. Assistance may be provided to a contributor in using the online service, as long as the assistance is provided in person and the contributor personally makes the affirmation and submits the online payment. A candidate and any person collecting qualifying contributions on behalf of a candidate may not collect the required information from the contributor by phone or any other means, other than in-person contact, and enter it into the online service on behalf of the contributor.

I. Fraudulent qualifying contributions. If the Commission staff reasonably believes that fraudulent qualifying contributions have been submitted to the Commission, the staff shall undertake an investigation to determine whether the qualifying contributions are fraudulent. The Commission staff may request investigative assistance from the Office of the Maine Attorney General or refer the matter for possible criminal prosecution. For purposes of this chapter, "fraudulent qualifying contributions" includes, but is not limited to, asking an individual to sign a Receipt and Acknowledgement form as a contributor when the individual did not make a qualifying contribution, giving money or something of value to someone in exchange for making a qualifying contribution, making false statements in the circulator section of a Receipt and Acknowledgement form, or signing the name of another person in the contributor section of the Receipt and Acknowledgment form unless the person signing the form does so on behalf of a family member who is unable to sign due to a physical impairment.

J. Compliance; oversight. If a candidate has other individuals collect qualifying contributions on the candidate's behalf, the candidate is responsible for ensuring that these individuals receive adequate training in the procedures for collecting qualifying contributions. The candidate must exercise due diligence to ensure that all qualifying contributions submitted to the Commission on the candidate's behalf comply with requirements of the Act and the Commission's rules. A candidate is presumed to have verified the validity of all qualifying contributions submitted to the Commission on the candidate's behalf and to be responsible for noncompliant qualifying contributions. A candidate may rebut the presumption if the Commission determines by a preponderance of evidence that the candidate had exercised due diligence in the collection and submission of qualifying contributions, had no involvement with the collection of the noncompliant qualifying contribution, and had no knowledge of the circumstances under which the noncompliant qualifying contribution was made. For the purpose of rebutting the presumption, the term "candidate" includes an agent of the candidate or the candidate' committee, including a gubernatorial candidate's compliance officer.

K. Compliance by gubernatorial candidates. Within three weeks of declaring an intention to qualify for Maine Clean Election Act funding, candidates for Governor must appoint one or more compliance officers who will oversee the collection of qualifying contributions and must submit a compliance plan for training and oversight of persons collecting qualifying contributions. The compliance plan must describe the procedures for

(1) training the circulators who will be collecting qualifying contributions,

(2) minimizing the risk of error or fraud by communicating with circulators during the collection process to verify that the circulator received personal funds from each contributor listed in qualifying papers, nothing of value was provided to the contributor, and every contributor personally made the required acknowledgment by signing a paper form or completing the online procedure for making a qualifying contribution,

(3) the compliance officer's personal verification with each circulator that he or she complied with required procedures before the campaign's acceptance of qualifying contributions from that circulator, and

(4) responding appropriately when receipt and acknowledgement forms have been completed erroneously or fraudulent qualifying contributions have been collected through investigating the extent of the error or fraud and taking remedial action to avoid risk of future error or fraud.

L. Collection of qualifying contributions by paid staff. If a party committee or other person compensates others for collecting qualifying contributions on behalf of a candidate, the paid staff time constitutes an in-kind contribution to the candidate, unless specifically exempted under Title 21-A M.R.S.A. §§ 1012 and 1052.

M. Assistance from political party committees and political action commitees. A candidate may receive assistance from a political party committee or a political action committee to collect qualifying contributions provided that political party committee or political action committee incurs no expense for providing the assistance or any cost associated with the assistance is excepted from the definitions of contribution and expenditure in 21-A M.R.S.A. §§ 1012 and 1052. Otherwise, the candidate must reimburse the committee for the cost of the assistance provided.

SECTION 3. CERTIFICATION OF PARTICIPATING CANDIDATES

1. **Request for Certification**. A participating candidate may submit a completed request for certification to the Commission at any time during the qualifying period but not later than 5:00 p.m. on the last day of the relevant qualifying period. The request will be deemed complete and considered for certification only when the candidate has submitted to the Commission:

A. the qualifying contributions attached to the corresponding original receipt and acknowledgement forms that have been verified by the Registrar(s) of the electoral division for the office the candidate is seeking;

B. a list of all individuals making qualifying contributions and their town or city of residence, sorted alphabetically by the contributor's last name;

~~C. for gubernatorial candidates, the following documentation for required seed money contributions as required by the Act ([1125(2-B)]: the acknowledgement forms signed by the contributors of seed money, list of seed money contributions, photocopies of checks or money orders received from seed money contributors, and bank or merchant account statements which list contributions made by credit or debit card;~~

D. a seed money report of contributions, expenditures, and obligations made or incurred after becoming a candidate, including a report of any unspent seed money; and

E. a signed request for certification on a form provided by the Commission which contains an affirmation by the candidate that he or she has complied with all seed money and qualifying contribution requirements, has established a separate federally-insured bank account for campaign purposes and, if applicable, that any person who circulated receipt and acknowledgement forms and collected qualifying contributions acted with the candidate's knowledge and consent, and any other information relevant to the certification process.

F. A candidate may request an extension of time to comply with paragraphs B, D, and E. The Commission staff shall grant all reasonable requests or state in writing the reasons for denying the request. The Commission and the Commission staff may not grant an extension of time to comply with paragraph A or C.

2. **Order of Review**. The Commission will review candidate requests for certification in the order in which they are received, except that it will give priority to those candidates who are in a contested primary election.

3. **Unspent Seed Money**. In order to distribute funds expeditiously, the Commission will deduct from the initial distribution from the Fund to a certified candidate an amount equal to the amount of unspent seed money reported by that candidate.

4. **Certification**. The Commission will certify a candidate as a Maine Clean Election Act candidate upon the participating candidate's satisfaction of the requirements of the Act [§1125] and this chapter.

5. **Appeals**. Any appeals challenging a certification decision by the Commission must be in accordance with the Act [§1125(14)].

SECTION 4. FUND ADMINISTRATION

1. **Coordination with State Agencies**. The Commission will coordinate with the Office of the Controller and other relevant State agencies to ensure the use of timely and accurate information regarding the status of the Fund.

2. **Publication of Fund Revenue Estimates**. ~~By September 1st preceding each election year, the Commission will publish an estimate of revenue in the Fund available for distribution to certified candidates during the upcoming year's election. The Commission~~

~~will update the estimate of available revenue in the Fund after April 15th of an election year and again within 30 days after the primary election in an election year.~~ The Commission will provide the Legislature and Governor with financial projections required under the Act [§1124(4)] and may submit legislation to request additional revenues to the Fund if the Commission determines that projected revenue will not be sufficient to meet demands.

3. **Computation of Disbursement Amounts**. ~~By July 1, 1999, and at least every 4 years after that date, the Commission will determine the amount of revenue to be distributed to certified candidates based on the type of election and office in accordance with the Act [§1125(8)].~~ Every two years, the Commission shall adjust the amounts of distributions made to candidates in accordance with the Act [§§ 1125(8-B) - (8-F)].

4. **Authorizing Contributions due to Shortfall in the Fund**.

A. **Authorization by Commission to accept contributions.** If the Commission determines that the revenues in the Fund may be insufficient to make payments under section 1125 of the Act, the Commission may reduce payments of public campaign funds to certified candidates and permit them to accept and spend contributions in accordance with the Act [§1125(13)].

B. **Limitations on permitted contributions.** If permitted to accept contributions, a certified candidate may not accept a contribution in cash or in-kind from any contributor, including the candidate and the candidate's spouse or domestic partner, that exceeds ~~$750 per election for gubernatorial candidates and $350 per election for State Senate and State House candidates~~ the applicable statutory contribution limit as adjusted for inflation. [§§ 1015(1) & (2)]. A candidate may not solicit or receive any funds in the form of a loan with a promise or expectation that the funds will be repaid to the contributor. If a contributor made a seed money contribution to a candidate, the amount of the seed money contribution shall count toward the contribution limit for the primary election. For a replacement candidate or candidate in a special election, a seed money contribution shall count toward the contribution limit for the election in which the candidate is running.

C. **Apportioning reductions in public funds payments.** Upon determining the amount of the projected shortfall, the Commission shall then determine the amount and apportionment of the reductions in payments to certified candidates.

D. **Campaign contributions to replace matching funds.** *[Repealed]*

E. **Written notice to candidates.** The Commission shall notify participating and certified candidates in writing of any projected shortfall in the Fund and specify timelines and procedures for compliance with this subsection in the event of a shortfall.

F. **Procedures for candidates.** The candidate shall deposit any authorized contributions into the campaign account into which Maine Clean Election Act funds have been deposited~~, except funds which must be deposited in a separate account under paragraph D~~. The candidate shall disclose all contributions received in regular campaign finance reports. The Commission's expenditure guidelines for Maine Clean Election Act funds apply to the spending of the contributions authorized under this subsection.

G. **Disposing of surplus campaign funds.** After the election, the candidate must return any surplus campaign funds which the candidate was authorized to spend to the Commission upon the filing of the 42-day post-election report except for any money retained for purposes of an audit by the Commission pursuant to section 7, subsection 2(B). If the candidate has collected campaign contributions which the candidate was not authorized to spend, the candidate may dispose of those funds within 60 days after the election by returning them to the contributors, donating them to the Maine Clean Election Fund, or by making an unrestricted gift to the State. All expenditures of surplus campaign funds must be disclosed in campaign finance reports in accordance with 21-A M.R.S.A. § 1017.

H. **Effect of fundraising on matching funds calculation.** *[Repealed]*

SECTION 5. DISTRIBUTION OF FUNDS TO CERTIFIED CANDIDATES

1. **Fund Distribution**

A. **Establishment of Account**. Upon the certification of a participating candidate, the Commission will establish an account with the Office of the Controller, or such other State agency as appropriate, for that certified candidate. The account will contain sufficient information to enable the distribution of revenues from the Fund to certified candidates by the most expeditious means practicable that ensures accountability and safeguards the integrity of the Fund.

B. **Manner of Distribution of Fund**. The Commission will authorize distribution of revenues from the Fund to certified candidates in accordance with the time schedule specified in the Act [§§1125(7), (7)(B) & (8-B) - (8-F)] by the most expeditious means practicable that ensures accountability and safeguards the integrity of the Fund. Such means may include, but are not limited to:

(1) checks payable to the certified candidate or the certified candidate's political committee; or

(2) electronic fund transfers to the certified candidate’s or the certified candidate's political committee’s campaign finance account.

C. **Coordination with Other State Agencies**. The Commission will coordinate with the Office of the Controller and other relevant State agencies to implement a mechanism for the distribution of Fund revenues to certified candidates that is expeditious, ensures public accountability, and safeguards the integrity of the Fund.

SECTION 6. LIMITATIONS ON CAMPAIGN EXPENSES

A certified candidate ~~must~~ shall:

1. limit the candidate's campaign expenditures and obligations to the applicable Clean Election Act Fund distribution amounts;

2. not accept any contributions unless specifically authorized in writing to do so by the Commission in accordance with the Act [§1125(2) and §1125(13)];

3. use revenues distributed from the Fund only for campaign-related purposes as outlined in guidelines published by the Commission, and not for personal or any other use;

4. not use revenues distributed from the Fund to purchase goods to sell for profit;

5. not spend more than the following amounts of Fund revenues on post-election parties, thank you notes, or advertising to thank supporters or voters:

   A. $250 for a candidate for the State House of Representatives;

   B. $750 for a candidate for the State Senate; and

   C. $2,500 by a gubernatorial candidate.

   The candidate may also use his or her personal funds for these purposes; ~~and~~

6. not use revenues distributed from the Fund for the payment of fines, forfeitures, or civil penalties, or for the defense of any enforcement action of the Commission~~.~~; and

7. not make any payment of more than $50 in cash. Payments of more than $50 in Maine Clean Election Act funds must be made by check, debit or credit card or wire transfer.