

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

2022 Candidate Guidebook

Running for Governor in Maine

Traditionally Financed Candidates







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. Its 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. When you decide to run, 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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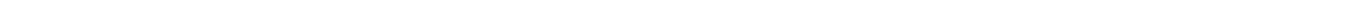
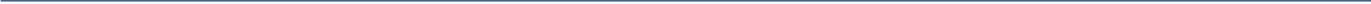
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CHAPTER 1

Getting Started as a 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 their 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). 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. A candidate may serve as their own treasurer, though the Commission strongly recommends appointing another person. 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 who will actively keep track of campaign



finances, save records of campaign contributions and expenditures, and file complete and accurate reports.

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 Robin Smith” or “Committee to Elect Dana 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). A candidate can only form a PAC for purposes other than their own election, such as

helping to elect other candidates or raising funds for legislative leadership campaigns.

CODE OF FAIR CAMPAIGN PRACTICES

The Maine Code of Fair Campaign Practices was adopted by the Maine Legislature in 1989 and is a voluntary statement for candidates running for Governor, the State Senate, and the State House of Representatives. Subscribing to the Code is voluntary. 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.

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



OPEN A SEPARATE BANK ACCOUNT

A candidate must have a separate bank account that is used only for their campaign and must deposit all contributions into that account. A candidate may never commingle campaign funds with any other funds. If a candidate has kept a bank account from a previous election open by maintaining personal funds in that account, they must remove those personal funds as soon as possible after becoming a candidate, or report them as contributions to the campaign. Candidates are allowed to spend any interest earned on campaign accounts, but the interest must be reported as an unitemized contribution.

The Election Law prohibits commingling campaign funds with any personal funds that belong to any person, including the candidate, their spouse/domestic partner, or campaign treasurer.

The Commission staff recommends using a campaign account’s debit card and checkbook 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.

WRITE-IN CANDIDATES

Under the Commission’s Rules, write-in candidates are required to register and to file campaign finance reports with the Commission according to the same reporting schedule as candidates on the ballot. (See Chapter 6.)

EXPLORATORY ACTIVITIES PRIOR TO BECOMING A CANDIDATE

Under the Election Law, an individual is allowed to raise and spend funds to explore whether to become a candidate. Any funds received to pay for exploratory activities are subject to the \$1,725 contribution limit. The individual and their spouse/domestic partner may spend an unlimited amount of personal funds on exploratory activities. If the individual decides to become a candidate, all funds raised and spent must be reported in their first campaign finance report. If the individual decides not to become a candidate, no report is required.

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), (4); 1016; 1016-A; 1017(2), (3-A), (10)
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)
Code of Fair Campaign Practices	21-A M.R.S.A. § 1101 <i>et seq.</i>
Commingling of Campaign and Personal Funds	21-A M.R.S.A. § 1016(1)
Write-In Candidates	Rules, Chapter 1, Section 1(5)
Exploratory Activities	21-A M.R.S.A. § 1015-B; Rules, Chapter 1, Sections 6(10) & 7(8)



CHAPTER 2

Contributions: Cash, In-Kind & Loans

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))

The full definition of a “contribution” is found in 21-A M.R.S.A. § 1012(2) (see Appendix) and Chapter 1, Section 6 of the Commission’s Rules.

CONTRIBUTION LIMITATIONS

For the 2022 elections, a single contributor may donate to a gubernatorial candidate no more than \$1,725 per election. Under Maine Law, the primary and general elections are separate elections. Gubernatorial candidates who are on the ballot for both elections may accept \$1,725 for the primary election and \$1,725 for the general election from the same contributor for a total of \$3,450.

Unenrolled Candidates. Unenrolled (independent) candidates do not have a primary election and may only receive contributions for a single election — the

general election. Therefore, unenrolled gubernatorial candidates may accept \$1,725 from any single source.

CONTRIBUTION LIMITS PER CONTRIBUTOR FOR 2022 CANDIDATES FOR GOVERNOR			
	PRIMARY	GENERAL	TOTAL
Party Candidates	\$1,725	\$1,725	\$3,450
Unenrolled Candidates	N/A	\$1,725	\$1,725

Contributors Subject to Limitations. The limits apply to all types of contributors, including:

- individuals,
- PACs and party committees,
- businesses, corporations, firms and partnerships, and
- Unions and other associations and organizations.

Contributions by Candidate and Candidate’s Spouse/Domestic Partner. The limits do not apply to contributions made by the candidate or by the candidate’s spouse/domestic partner, who both may contribute an unlimited amount to the campaign.

Corporate and Union Contributions. Corporations and labor unions may use general treasury funds to contribute to candidates in Maine.



Adjustments to Contribution Limitations. The Commission adjusts the contribution limits based on the consumer price index in December of each election year. The next adjustment will be made in December 2022.

ATTRIBUTING A CONTRIBUTION TOWARDS THE PRIMARY OR GENERAL ELECTION

Party Candidates. Candidates enrolled in a political party (Democratic, Green-Independent, Libertarian, or Republican) may participate in both the primary and general elections. Therefore, the campaigns must attribute contributions to an election appropriately when completing their campaign finance reports. Contributions received prior to, or on the date of, the primary election may be attributed to either the primary or general election. Contributions received after the primary must be attributed to the general election.

Collecting General Election Contributions Before the Primary Election. Before the primary election, a candidate may accept contributions from a single contributor for both the primary and general election at the same time, so long as:

- the candidate designates each contribution in campaign finance reports as having been received for the primary or the general election;
- all general election contributions received before the primary election are segregated from primary election campaign funds; and
- the candidate does not use general election contributions to promote the candidate's nomination in the primary election.

Unenrolled Candidates. Candidates who are not members of an officially recognized political party in

Maine must attribute all contributions received to the general election.

UNSUCCESSFUL CANDIDATES IN THE PRIMARY ELECTION

Candidates who lose the primary election are required by law to take certain actions on their surplus funds and general election contributions. See Chapter 7 for detailed information on this subject.

LOANS ARE CONTRIBUTIONS

Loans Subject to Contribution Limits. Under the Election Law, non-commercial loans are considered contributions to the candidate. They are subject to the maximum amounts that a contributor may provide to a candidate per election.

Loans Not Subject to Contribution Limits. Loans to a candidate made by a financial institution in Maine in the ordinary course of business are not considered to be contributions and are not subject to the contribution limits. Also, loans directly from a candidate and their spouse/domestic partner are not subject to the contribution limit, the same as cash contributions.

CONTRIBUTIONS FROM SPOUSES AND DOMESTIC PARTNERS

If a candidate receives a contribution in the form of a check printed with the names of two spouses/domestic partners, the Commission staff recommends recording the contribution in the name of the individual who signed the check, unless:

- the other spouse/domestic partner has also signed the check or made a notation in the memo section of the check; or
- the candidate gets written confirmation that the non-signing spouse/domestic partner intended



to make the contribution (a handwritten note or email is sufficient).

If both spouses/domestic partners made the contribution, the candidate should allocate the contribution equally between both of them, unless the candidate receives something in writing indicating that the contributors prefer a different allocation.

OTHER CONTRIBUTION RESTRICTIONS AND PROHIBITIONS

Anonymous Contributions. Anonymous contributions of more than \$10 may not be accepted.

Contributions from Lobbyists. The Governor, and staff or agents of the Governor:

- may not solicit or accept a contribution from a lobbyist, lobbyist associate, lobbying firm, or client of a lobbyist *during a legislative session*
- may solicit and accept a contribution from a lobbying firm or client of lobbyist *outside of a legislative session*
- may solicit and accept a contribution from a lobbyist or lobbyist associate *outside of a legislative session only* if the lobbyist or lobbyist associate is eligible to vote for the Governor in the election

Candidates for Governor, and their staff or agents:

- may solicit and accept a contribution from a lobbying firm or client of lobbyist *at any time of year*
- may solicit and accept a contribution from a lobbyist or lobbyist associate *at any time of year only* if the lobbyist or lobbyist associate is eligible to vote for the candidate in the election

Contributions in the Name of Another. No person may make a contribution in the name of another person, and no candidate may knowingly accept such a contribution.

Candidates are expected to take reasonable steps to identify the original source of funds and to report the actual contributor. Misreporting the source of contributions is a serious violation of the Election Law. Candidates who knowingly accept a contribution made in the name of another person may be assessed a penalty of up to \$5,000. It is a crime to make a contribution in the name of another person or to knowingly accept a contribution made in the name of another person.

The Commission staff has received questions from candidates concerning this prohibition mainly in connection with parents contributing for their children. If a candidate is in doubt as to whether a minor gave a contribution, the Commission staff recommends that the candidate contact the contributor to confirm and document the minor gave the contribution and it was not given by the minor's parents.

Contributions from Corporations and Affiliated Entities.

In certain circumstances, the Election Law considers businesses, for profit and non-profit corporations, and other organizations to be a single contributor. If the entities are considered a single contributor, the combined total of their contributions to a candidate may not exceed the contribution limit. Candidates are expected to take reasonable actions to avoid accepting over-the-limit contributions from contributors considered to be a single source.

Two or more entities are considered a single entity if:

- a majority of their boards of directors are the same individuals;
- they share two or more officers;
- they are controlled or owned by the same majority shareholder(s);



- they are limited liability companies (LLCs) controlled or owned by the same majority member(s); or
- they are in a parent-subsidiary relationship.

A sole proprietorship and its owner are considered to be a single entity.

If a for profit or non-profit corporation controls or funds a PAC, the PAC and the corporation are considered to be the same contributor.

Earmarked Contributions. If a person gives an amount of money to an intermediary such as a PAC, a party committee, or another candidate, and directs that the money be contributed to a specific candidate, the original source of the funds is considered to be the contributor to the candidate, not the intermediary.

The intermediary is required to notify the candidate of the original source of the funds so that the candidate may report the contribution correctly. Examples of earmarked contributions would include:

- an employer giving \$250 to an employee and directing the employee to contribute the money to a candidate;
- an organization giving \$300 to a party committee, and asking the party committee to donate it to a candidate; or
- a parent giving \$100 to a teenage child and directing the minor to donate the money to a candidate.

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. They are subject to the \$1,725 per election aggregate contribution limit (except for in-kind contributions from the candidate or

the candidate’s spouse/domestic partner). 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; and
- 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.

The campaign must report a description and the fair market value of the goods and services received as an in-kind contribution. Fair market value is what the goods or services would have cost the campaign if it had paid cash for the donated goods or services. A discount on goods or services is an in-kind contribution and thus is reportable. The in-kind contribution is the amount of the discount. (See Chapter 6.)

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 of this Guidebook.

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 or report them as in-kind contributions.

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 made a 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 report receiving the value as an in-kind contribution, and it would count towards the contribution limit. Candidates should feel free to contact the Commission staff for advice on whether an advertisement would be considered a contribution.

CONSIDERATIONS WHEN COLLECTING CONTRIBUTIONS

Occupation and Employer Information Required.

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

The Commission staff recommends that campaigns ask contributors for their information at the time contributions are solicited. If the candidate uses a form for contributions or an online fundraising service, the forms 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 candidate 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 name and address of every person making a contribution of more than \$10, and the date and amount of the contribution.



Contributions from Minors. If a campaign receives a 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.

CONTRIBUTIONS FOR RECOUNTS

If a candidate is in a recount of an election, they may accept unlimited funds and services from party committees and legislative caucus committees. They may also receive unlimited donations of in-kind services from attorneys, consultants, and their firms who are not being reimbursed for their services. All

other contributors are restricted to the contribution limits found in this chapter.

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.

COMMISSION REVIEW OF CONTRIBUTIONS

The Commission staff reviews contributions disclosed by candidates in campaign finance reports, and sometimes requests additional information when reports are incomplete or a compliance question is raised. 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 requirements and the contribution limitations.

LEGAL REFERENCES

Definition of Contribution	21-A M.R.S.A. § 1012(2)
Contribution Limits	21-A M.R.S.A. § 1015(1) - (3)
Contributions in the Name of Another	21-A M.R.S.A. §§ 1004(3); 1004-A(3)
Contributions from Lobbyists	1 M.R.S.A. § 1015(3); Rules, Chapter 1, Section 12
Contributions from Affiliated Corporations and Organizations	21-A M.R.S.A. § 1015-A
Earmarked Contributions	21-A M.R.S.A. § 1015(4)
Loans	Rules, Chapter 1, Section 6(2)
Occupation and Employer of Contributor	21-A M.R.S.A. §§ 1016(3)(B); 1017(5)
In-Kind Contributions	Rules, Chapter 1, Section 6(4) - (5)
Assistance From Paid State Party Committee Employees	21-A M.R.S.A. §§ 1012(2)(A)(4), (2)(B)(7)(a)
Exempt Goods and Services	21-A M.R.S.A. § 1012(2)(B)
Coordinating Expenditures with Third-Parties	21-A M.R.S.A. § 1015(5)
Recounts of Elections	21-A M.R.S.A. § 1018-B



CHAPTER 3

Expenditures, Unpaid Debts & Reimbursements

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 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 candidate must disclose the debt or

obligation in a campaign finance report. Chapter 6 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

CONSIDERATIONS WHEN MAKING EXPENDITURES

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, it is best practice to keep records of all purchases, even if they cost \$50 or less. These records must be kept for two years following the filing of the final report for the campaign. Everyone making purchases on behalf of the campaign should be made aware of this record-keeping requirement. The campaign should have a procedure in place to ensure receipts and invoices are turned over to the treasurer (See Chapter 5). The Commission staff recommends paying for all purchases directly from the campaign bank account using a debit card or by writing checks.

This will assist campaigns in keeping track of the dates, payees, and amounts of their expenditures.



Making Reimbursements. If campaign goods and services are purchased with the personal funds or credit card of the candidate or a supporter, the campaign must reimburse the purchaser with campaign funds. When a reimbursement is made to a person (including the candidate), the campaign should institute a procedure which requires the person seeking the reimbursement 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.

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 all candidates involved in a joint expenditure clearly disclose in their campaign finance reports 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 campaign communication, the Commission staff recommends the required disclosure statement on the communication state 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 4 for more information on disclosure statements on campaign communications.

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

COMPLIANCE REVIEWS

The Commission staff conducts compliance reviews of all expenditures disclosed by candidates 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

Definition of Expenditure	21-A M.R.S.A. § 1012(3)
Unpaid Debts and Obligations	21-A M.R.S.A. §§ 1012(3)(A)(2), (4) Rules, Chapter 1, Section 7(3)
Joint Expenditures	Rules, Chapter 1, Section 7(11)



CHAPTER 4

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.

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 or paid for the communication, the disclosure statement must include the full address of that individual, 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 21 days before the primary election, in the last

35 days before a special election, and anytime after Labor Day before 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 the election or defeat of 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 printed political communications, 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”

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 contribution limit applies. If necessary, the campaign must make a partial reimbursement to bring the in-kind contribution within contribution limits.

Disclosure Statements on Radio Advertisements

There is an exception for radio advertisements paid for by a third party; the disclosure statement does not have to include the street address of the person who paid for the communication.

- “Authorized and 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 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 communication. Doing so makes it clear to the public who is sending the communication and that it is authorized by the candidate.

If, however, 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 to be on the communication.

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 to or greater than 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.

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 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.

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



CHAPTER 5

Campaign Records & Record-Keeping

LEGAL REQUIREMENTS TO KEEP CERTAIN RECORDS

The Election Law requires every campaign to keep a detailed and exact account of all expenditures and all contributions of more than \$10. For expenditures greater than \$50, the campaign must also retain an invoice or receipt. These records are not submitted to the Commission unless requested. Candidates and treasurers are required to keep campaign records for two years after filing the final campaign finance report required for the election.

Candidates in the 2022 general election, who have closed out their campaign with the filing of the 42-Day Post-General Report, must keep campaign records until December 2024. A campaign is closed out when the cash balance and outstanding debt and loan balances are all \$100 or less.

Campaigns that are filing post-election Semiannual Reports must keep records for two years after the filing of the final report of the campaign. Thus, records must be kept beyond December 2024 in those instances.

RECORDS FOR CONTRIBUTIONS

Contributions Between \$10 and \$50. For contributions greater than \$10 but equal to or less than \$50 during a reporting period, the campaign is required to keep a record of:

- the date of the contribution,
- the amount of the contribution, and
- the contributor's name and address.

All contributions from contributors giving \$50 or less in a reporting period may be totaled into a lump sum for reporting purposes, as long as none of the contributors have given more than \$50 in the aggregate for the reporting period.

Contributions Greater Than \$50. For individuals who have given more than \$50 during a reporting period (e.g., \$40 is given in the beginning of the reporting period and then another \$40 is given in the last week of the reporting period), the campaign is required to keep a record of the contributor's occupation and employer, in addition to their full name and address.

Candidates are required to request and then report contributors' employment and occupation information. The Commission staff recommends the campaign ask a contributor for their occupation and employer information at the time the contribution is solicited. If a contributor is unwilling to provide the information to the campaign, the campaign should report "information requested" in the occupation and employer fields in the campaign finance report. (See Chapter 6.)

RECORDS FOR EXPENDITURES

For expenditures over \$50, the Election Law requires the candidate or treasurer to keep a receipt (bill or



invoice marked paid) stating the particular goods or services purchased. The candidate and treasurer must also keep an exact and detailed account of every expenditure made by or on behalf of the candidate, including the name of each payee, and the date, amount, and purpose of the expenditure.

Documenting Reimbursements. The Commission staff recommends that candidates make all vendor payments directly from the campaign bank account. However, some candidates find it helpful or necessary for the candidate or an intermediary (such as a volunteer or member of campaign staff) to use personal funds to pay a vendor for goods and services, and then be reimbursed by the campaign. In these situations, the same documentation requirements apply for expenditures of more than \$50; the campaign must obtain an original invoice or receipt from the vendor, from the person who made the purchase.

Documenting Purchases Made by a Consultant. If a consultant hired by 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. For example, if a campaign consultant commissions a research firm to do a poll, the candidate must obtain the research firm’s invoice as well as the consultant’s invoice for their work. An example of a consultant’s invoice meeting documentation standards is found below.

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 companies which provided the services. An invoice from the buyer is required for the

ELECTION Associates		456 State Street, Augusta, Maine 04332		What makes this invoice meet the record documentation standards?
BILL TO: Honorable Taylor Smith c/o Committee To Elect Smith 123 Main Street Augusta, ME 04032		Invoice Date: 09/18/2018		
Service/Product	Rate	Hours	Total	Provided services are described.
Design of Palm Card	\$100 per hr	3.0	\$300	
Printing of card: Graphics Center Color Printing SEE ATTACHED COPY OF INVOICE	2,000 cards at \$0.50 each		\$1,000	Goods which the consultant purchased for the campaign are listed separately with the invoice.
Total Due 30 Days from Date of Invoice			\$1,300	
Authorized Signature: <i>Sam Brown</i>		Print Name: Sam Brown	Title: Owner	



goods and services provided by them directly — like production costs or commissions.

For example, a candidate who hires a buyer to purchase air time on television and radio stations is required to obtain invoices or other statements from the broadcast stations documenting the air time sold to the campaign. 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 they will have all of the information to correctly report media purchases.

OTHER CAMPAIGN RECORDS

Other documents that are usually kept as records of a campaign include:

- campaign bank account statements and cancelled checks,
- signed and dated contracts for services provided to the campaign, and
- labor records and tax forms for campaign staff.

REQUESTS FOR DOCUMENTS BY THE COMMISSION

As part of its compliance reviews, the Commission staff sometimes requests documentation for contributions and expenditures (e.g., a vendor invoice to verify the goods and services purchased). 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

Requirement to Keep Records	21-A M.R.S.A. §§ 1013-A(4), 1016
Required Records for Contributions	21-A M.R.S.A. § 1016
Records of Expenditures Made on Behalf of the Candidate	21-A M.R.S.A. § 1016(4)



CHAPTER 6

Campaign Finance Reporting

FILING REPORTS — RESPONSIBILITIES & LIABILITIES

A gubernatorial candidate is ultimately responsible for ensuring 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 the Commission staff strongly recommends that 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 for the campaign has a question about the reporting requirements, they should contact the Candidate Registrar for the campaign. 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 24-Hour Reports, which must be filed within twenty-four hours of receiving a contribution of \$1,000 or more, or making a single expenditure of \$1,000 or more, during the 13-day period prior to a contested election. Candidates who do not submit a report by the filing deadline may be assessed a civil penalty.

REPORTING PERIODS

Each campaign finance report covers a specific period of time. Campaigns must report all contributions



FILING SCHEDULE FOR GUBERNATORIAL CANDIDATES

TYPE OF REPORT	DEADLINE	REPORT PERIOD
2021 July Semiannual <i>If > \$1,000 raised or spent by June 30, 2021 OR if 2021 January Semiannual was filed</i>	July 15, 2021	Beginning of campaign/January 1 - June 30, 2021 <i>Beginning of campaign → If first report to be filed January 1, 2021 → If 2021 January Semiannual Report filed</i>
2022 January Semiannual <i>If 2021 July Semiannual Report filed OR > \$1,000 raised or spent by December 31, 2021</i>	January 18, 2022	Beginning of campaign/July 1 - December 31, 2021 <i>Beginning of campaign → If first report to be filed July 1, 2021 → If 2021 July Semiannual Report filed</i>
42-Day Pre-Primary <i>All candidates</i>	May 3, 2022	Beginning of campaign/January 1 - April 26, 2022 <i>Beginning of campaign → If neither semiannual report filed January 1, 2022 → If 2022 January Semiannual Report filed</i>
11-Day Pre-Primary <i>All candidates</i>	June 3, 2022	April 27 - May 31, 2022
42-Day Post-Primary <i>All candidates</i>	July 26, 2022	June 1 - July 19, 2022
42-Day Pre-General <i>Candidates participating in the general election</i>	September 27, 2022	July 20 - September 20, 2022
11-Day Pre-General <i>Candidates participating in the general election</i>	October 28, 2022	September 21 - October 25, 2022
42-Day Post-General <i>Candidates participating in the general election</i>	December 20, 2022	October 26 - December 13, 2022
2023 January Semiannual <i>Candidates unsuccessful in the primary AND have > \$100 in cash or unpaid loans/debts</i>	January 17, 2023	July 20 - December 31, 2022
2023 July Semiannual <i>All candidates who have > \$100 in cash or unpaid loans/debts</i>	July 17, 2023	December 14, 2022/January 1 - June 30, 2023 <i>December 14, 2022 → If 42-Day Post-General Report filed January 1, 2023 → If 2023 January Semiannual Report filed</i>

received and expenditures made during the period, as well as all debts and obligations that remain unpaid at the end of a period.

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

REQUIRED REPORTS

Semiannual Reports for Candidates with Financial Activity in 2021.

If a candidate raises or spends more than \$1,000 before June 30, 2021, the campaign must file a 2021 July Semiannual Report no later than July 15, 2021, covering all financial activity since registration or the 2021 January Semiannual Report (if filed). If a candidate who is not required to file the July report raises or spends \$1,000 prior to December 31, 2021, the campaign must file the 2022 January



**2022 PRIMARY ELECTION 24-HOUR REPORTING PERIOD
JUNE 1 – JUNE 13, 2022**

Sun	Mon	Tue	Wed	Thu	Fri	Sat
May 29	May 30	May 31	June 1 BEGINS	June 2	June 3	June 4
June 5	June 6	June 7	June 8	June 9	June 10	June 11
June 12	June 13 ENDS	June 14 Primary Election	June 15	June 16	June 17	June 18

**2022 GENERAL ELECTION 24-HOUR REPORTING PERIOD
OCTOBER 26 – NOVEMBER 7, 2022**

Sun	Mon	Tue	Wed	Thu	Fri	Sat
October 23	October 24	October 25	October 26 BEGINS	October 27	October 28	October 29
October 30	October 31	November 1	November 2	November 3	November 4	November 5
November 6	November 7 ENDS	November 8 General Election	November 9	November 10	November 11	November 12

HOW TO FILE 24-HOUR REPORTS:

- File reports electronically. e-Filing 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 contribution, 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.

Semiannual Report no later than January 18, 2022, covering all financial activity since registration. Candidates who are required to file the July report will also need to file the January report, with a reporting begin date of July 1, 2021.

Required Pre- and Post-Election Reports for All Candidates. Candidates are required to file campaign finance reports according to the schedule found in the 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 an election (calendar above). A 24-Hour Report must be filed within twenty-four hours when a candidate:

- receives a single contribution or loan 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, they 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.

Any transactions disclosed in a 24-Hour Report will be automatically entered into the next campaign finance report in the E-Filing 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 file the primary election reports, but are not required to file the three general election reports. The 42-Day Post-Primary Report, due July 26, 2022, for those candidates, is the last election-based campaign finance report. Candidates in the general election must file the 42-Day Post-General Report, due December 20, 2022. A candidate who has a cash, loan, or debt balance of more than \$100 after filing the 42-Day Post-Election Report must file semiannual reports every January 15th and July 15th until the cash balance, outstanding loans, and/or debts are \$100 or less. (See Chapter 7.)

Candidates have four years after the election to dispose of a cash balance greater than \$100. Cash surpluses may only be disposed of in certain ways, which are listed in the Appendix.

REPORTING CASH AND IN-KIND CONTRIBUTIONS

Reporting Contributions of \$50 or Less. If a contributor has given a candidate contributions that total \$50 or less during a reporting period, the candidate is not required to itemize these contributions in their campaign finance report. The contributions of \$50 or less may be entered as a lump sum. When reporting lump sum (“unitemized”) contributions in the e-Filing 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. (While the candidate may aggregate small contributions for the report, they must still keep a record of each contribution — see Chapter 5.)

After a contributor donates more than \$50 in a reporting period, the candidate must itemize the contribution(s) in the report. For example, a contributor donates \$20 at the beginning of a reporting period, and a month later — and within the same reporting period — the same contributor donates an additional \$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 who is an individual has given contributions totaling more than \$50 during a reporting period, the candidate 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 candidate should report “information requested” when entering the contribution.

Reporting a Return of a Contribution. If a campaign returns a contribution to a contributor, the candidate must disclose the returned funds in a campaign finance report. A return of a contribution is required in certain circumstances:

- when an over-the-limit contribution is received and deposited in the campaign bank account; or
- when a general election contribution was collected before the primary by a candidate who was defeated in the primary election.

Reporting Fees for Using an Online Fundraising Service. Many candidates use fundraising services to collect campaign contributions online. These

companies may charge a service or transaction 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 “OTH - Other” in the E-Filing system. Contribution fee expenditures may be aggregated per reporting period on campaign finance reports.

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

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 contributor, the campaign does not report them.

REPORTING EXPENDITURES AND DEBTS

The Election Law requires all candidates to disclose the date, amount, payee, and purpose of all expenditures in campaign finance reports submitted to the Commission, including debts which 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.

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 good or service the worker has provided to the campaign. How to report reimbursements is explained below.

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 a candidate 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 reimburses the candidate or supporter. Otherwise, the candidate or supporter has made an in-kind contribution to the campaign.

The purchase 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 paid the vendor and who received the reimbursement must be stated clearly, along with the description of the purpose. For example, a campaign staffer named Sage White purchases stamps online from USPS.com on March 20, 2022. When reporting the expenditure, the payee is USPS, the date is 03/20/2022, and the description of the expenditure would read: “Stamps purchased by Sage White. Reimbursed March 23, 2022.” 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.

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, a candidate should enter the name of the person receiving the reimbursement as the payee. Volunteers may spend up to \$350 of their personal funds per election (primary or general) on



Date of Expenditure	Payee	Remark	Type	Amount
03/20/2022	USPS 10 Sewall Street Augusta, ME 04330	Stamps purchased by Sage White. Reimbursed 03/23/2022.	POS	\$98.00
04/13/2022	Hannaford 100 Whitten Road Augusta, ME 04330	Food for volunteer event. Reimbursed to Avery Green, candidate's spouse, on April 21, 2022.	FOD	\$77.45
09/15/2022	Election Associates 456 State Street Augusta, ME 04330	Design of palm cards	LIT	\$300.00
09/25/2022	Graphics Center Color Printing 120 Water Street Augusta, ME 04330	250 palm cards; purchased by Election Associates	LIT	\$1,000.00

campaign travel, using a consistent mileage rate (the current State of Maine rate is \$0.45/mile; the IRS mileage rate in 2021 is \$0.56/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.

Reporting Purchases Made by a Consultant or Firm. When a consultant hired by a campaign makes expenditures on behalf of the campaign, the candidate 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 above 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 5.

If a candidate 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.

Candidates may pay campaign funds to members of their immediate families or households for goods or services they have provided to the campaign. If such payments are made, the candidate must report the family or other relationship (e.g., "spouse," "domestic partner," "sibling," "roommate," etc.) in the explanation section for that expenditure. The candidate must also report the relationship if the campaign reimburses a family or household member for a purchase they made on behalf of the campaign.



Reporting Unreimbursed Expenditures from the Candidate's Personal Funds.

A candidate who is self-funding all or part of their campaign can either enter expenditures made for the campaign as in-kind contributions, or enter the expenditures and corresponding cash contributions in the same amounts. If only the expenditures paid for by the candidate are entered, the campaign's cash balance will be incorrect in the e-Filing system.

REPORTING WITHDRAWALS OF CASH

The Commission staff recommends making expenditures by writing checks or using a debit card from a campaign's bank account, so as many expenditures as possible are made through the campaign account. This will help campaigns keep track of the dates, amounts, and payees of all expenditures which must be included on campaign finance reports.

If a campaign chooses to withdraw cash to make expenditures, the candidate should not report a payment to "cash." Instead, for each expenditure made with cash, the candidate should obtain a receipt or record, which includes the date, amount, payee, and purpose of the expenditure, so this information can be included in campaign finance reports. A receipt or invoice is required for all cash expenditures over \$50.

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, candidates 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 LOANS

Under the Election Law, any loan that is not from a financial institution in Maine is considered a contribution to the campaign, and is subject to the limitations on contributions, as explained in Chapter 2, unless the loan is from the candidate or the candidate's spouse/domestic partner. All loan activity — receipt of the loan, loan payments, and forgiveness — must be reported.

REPORTING UNPAID DEBTS AND OBLIGATIONS

If a candidate has incurred debts and obligations which remain unpaid at the end of a reporting period, the candidate 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 e-Filing system.

FILING REPORTS ELECTRONICALLY

Electronic Filing Requirement. Gubernatorial candidates in the 2022 elections are required to file all campaign finance reports electronically on the Commission's website.

How to File Electronically. After a candidate registers, they will receive an email with instructions on how to log into the e-Filing system. The campaign may use the e-Filing system in two ways:

- directly enter each transaction into the e-Filing 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).



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 e-Filing account. The Commission staff mails a reminder to all candidates at least two weeks before each filing deadline, and the e-Filing system also automatically sends email reminders two weeks, one week, and one 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 candidate or 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, the Commission staff 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 candidate and/or treasurer to discuss how to remedy any errors or omissions. (See Chapter 8.)

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 financial activity in the report, the number of days the report is late, and if the campaign has prior late-filed reports. 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.

LEGAL REFERENCES

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



CHAPTER 7

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, the candidate may miss important notices and filing reminders. It is also important for the staff to know how to contact candidates as the staff conduct their reviews of campaign finance reports.

42-DAY POST-ELECTION & SEMIANNUAL CAMPAIGN FINANCE REPORTS

All candidates in an election must file a report no later than 42 days after the date of that election. For all candidates in 2022, the 42-Day Post-Primary Report is due July 26, 2022. For candidates participating in the 2022 general election, the 42-Day Post-General Report is due December 20, 2022.

Most gubernatorial candidates will have more than \$100 in unspent cash, or unpaid loans and debts, after their final 42-day post-election reports. This will trigger semiannual reports to be filed on the 15th of January and July each year (unless the 15th falls on a holiday or weekend) until the balance(s) is below \$100. For unsuccessful candidates in the 2022 primary election who are required to file semiannual reports, the first report will be due January 17, 2023. For 2022 general election candidates with cash, loans, or unpaid debts

over \$100, the first semiannual report will be due July 17, 2023. The reporting periods for these reports are in Chapter 6 of this guidebook.

Candidates who have made loans to their campaigns may wish to forgive the unpaid amounts rather than be responsible for filing semiannual reports.

UNSUCCESSFUL CANDIDATES IN THE PRIMARY ELECTION: ACCEPTING & RETURNING CONTRIBUTIONS AFTER THE PRIMARY

Maine Election Law allows candidates who lose the primary election to accept contributions for the purpose of paying off debts and outstanding loan balances. In this situation, contributions received after the date of the primary election must be attributed to the primary, and therefore a contributor is not permitted to give more than the contribution limit of \$1,725 in the aggregate.

For example, if a contributor gives a candidate \$1,000 before the primary, this same contributor is permitted to give the candidate an additional \$725 after the primary (provided the candidate has debts or obligations to pay) — for a total of \$1,725. However if a contributor gives the candidate \$1,725 before the primary, this contributor is not permitted to give the candidate any additional amount after the primary.

If a candidate who has lost the primary election accepted contributions for the general election prior to



the primary, those contributions must be returned to the contributor. If a contributor did not meet or exceed the primary contribution limit, their general election contribution may be reallocated to a primary contribution, as long as the \$1,725 contribution limit for the primary is not exceeded.

RECOUNTS

If a candidate is in a recount of an election, they may accept unlimited funds and services from party committees and caucus campaign committees. They may also receive unlimited donations of in-kind services from attorneys, consultants, and their firms who are not being reimbursed for their services. All other contributors are restricted to the contribution limits found in Chapter 2.

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.

DISPOSING OF SURPLUS CASH AFTER THE ELECTION

After an election, a candidate may be left with a cash surplus in the campaign account. Surplus cash greater than \$100 may not be converted to the candidate's personal use. A candidate must dispose of surplus cash greater than \$100 within four years of the election for which the funds were received. Under 21-A M.R.S.A. § 1017(8), a candidate may dispose of surplus cash greater than \$100 only by:

- returning contributions to the candidate's contributors, as long as no contributor receives more than the amount contributed;
- making a gift to a qualified political party within Maine, including any county or municipal subdivision of such a party;
- making an unrestricted gift to the State;

- carrying forward the funds to a political committee established to promote the same candidate for a subsequent election;
- carrying forward the surplus balance for use by the candidate for a subsequent election;
- transferring the surplus balance to one or more other registered candidates or to the political committees established to promote the election of those candidates, provided that the amount transferred does not exceed contribution limits;
- repaying any loans or retiring any other debts incurred to defray campaign expenses of the candidate;
- paying for any expense incurred in the proper performance of the office to which the candidate is elected, as long as each expenditure is reported on campaign finance reports; and
- making a gift to a charitable or educational organization that is not prohibited, for tax reasons, from receiving such a gift.

The statute on disposing of surplus cash is included in the Appendix.

PAYING AND FORGIVING LOANS

If a campaign has an outstanding loan balance of more than \$100 and wants to close out the campaign, it should:

- use campaign funds to reduce the outstanding loan balance to \$100 or less — it is permitted to raise funds after an election for the purpose of paying off loans;
- use the candidate's personal funds to pay the person to whom the loan is owed. The payment of personal funds to the lender should be reported as a contribution; or



- ask the lender to forgive the outstanding loan. If the campaign’s loan is owed to the candidate, or the candidate’s spouse or domestic partner, an unlimited amount may be forgiven. If the loan is owed to anyone else the maximum the lender may forgive is \$1,725.

RETIRING UNPAID DEBTS AND OBLIGATIONS

If a campaign has an unpaid debt of more than \$100 and wants to close out the campaign, it should:

- use campaign funds to pay the debt. It is permitted to raise funds after an election for the purpose of paying off debts;
- use the candidate’s personal funds to pay the person to whom the debt is owed (“the creditor”). The payment of personal funds to the creditor should be reported as a contribution; or
- ask the creditor to forgive the unpaid debt or obligation. The maximum the creditor may forgive is \$1,725. If the creditor forgives the unpaid debt, the receipt of the goods or services without payment should be reported as an in-kind contribution from the creditor.

Under the Commission’s Rules, it is presumed any debt that remains unpaid more than six months after the election in which the debt was incurred to be an in-kind contribution to the candidate, unless the candidate provides clear and convincing evidence to the

Commission they intend to raise funds or take other measures to satisfy the debt. If the debt remains unpaid for four years, the Commission is required by its rules to determine whether the debt is an in-kind contribution.

STATEMENT OF SOURCES OF INCOME

The gubernatorial candidate who wins the general election is required to file a Statement of Sources of Income covering the year in which the election was held. The statement includes the sources of the income which the Governor-elect received during the election year from employment, self-employment, gifts, and other sources. The deadline for filing this financial statement is 30 days after the general election.

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	5 M.R.S.A. § 19(3)(A)



CHAPTER 8

Compliance Reviews of Campaign Finance Reports

PURPOSE AND CONDUCT OF REVIEWS

The Commission staff conducts compliance reviews of all campaign finance reports. The purpose of the reviews is to verify contributions and expenditures 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 candidate or treasurer amend a campaign finance report to correct any errors or to provide more complete information about a transaction.

INFORMATION REVIEWED

During the review, the Commission staff verifies whether:

- the campaign received any over-the-limit contributions);
- the occupation and employer information has been reported for contributors giving more than \$50 in a reporting period;
- the contributor's complete name and address has been reported for contributions of more than \$50;
- the correct contributor type has been reported;
- 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.



AVOID THESE COMMON REPORTING ERRORS	
Incomplete Contributor Information	Missing addresses, first names, occupation, and employer information. Action: Request this information when soliciting contributions.
Incorrect Reporting of Occupation	Occupation is not “Self” or “Self-Employed;” occupation is “accountant,” “teacher,” “gift shop owner;” “business owner” is acceptable, etc. Action: Provide guidance to contributors on what is an “occupation.”
Incorrect Reporting of Employer Name	Employer name is the name of the business, organization, etc. that employs the contributor. For contributors who are business owners, the name of their business is the employer name. For example, “gift shop owner” is an occupation and “Maine Street Gifts” is the employer name. Action: Provide guidance to contributors on what is an “employer name.”
Contribution Amount Assigned to Wrong Election	A \$3,450 contribution received before the primary is assigned to the primary election only — resulting in a reported over-the-limit contribution — whereas it should have been reported as \$1,725 for the primary election and \$1,725 for the general election. Action: Review spreadsheet, database, or report before filing report.
In-Kind Contributions Reported as Expenditures	In-kind contributions reported <u>only</u> as expenditures cause an incorrect cash balance, sometimes a negative cash balance. A corresponding cash contribution must be reported to avoid this error — or — report all in-kind contributions as in-kind contributions, not expenditures. Action: Review Summary Schedule of the report — cash balance should not be negative.
Sub-Vendor Reporting Missing	Error mostly occurs when a media buyer is used to purchase TV and radio advertising and when a consultant uses a vendor to print communications (signs, palmcards, etc.). The payments to sub-vendors (media companies, print shops, etc.) must be reported as if the campaign made the payments directly. Action: Require vendors to attach copies of sub-vendor invoices when the vendor is requesting payment from the campaign.
Incorrect Payee Name for Reimbursements	The name of the person receiving the reimbursement is reported incorrectly as the payee name. The payee is the vendor where the person seeking reimbursement purchased the goods/services. The only exception is when the campaign is making a reimbursement for travel/mileage. In this situation, the payee name is the name of the person receiving the reimbursement. Action: Review expenditures reported to individuals — expenditure type should be TRV, PER, or PRO in most cases.

LEGAL REFERENCES

Compliance Reviews

Rules, Chapter 1, Section (4)(2)(A)





APPENDIX

TITLE	PAGE
DEFINITION OF CONTRIBUTION AND EXPENDITURE	A1
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FCC ROBOCALL ADVISORY	A10



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.



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.



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

- *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.

For purposes of this disclosure requirement, "immediate family" means the candidate's spouse, parent, grandparent, child, grandchild, sister, half-sister, brother, half-brother, stepparent, step grandparent, stepchild, step grandchild, 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))



DISPOSITION OF SURPLUS FUNDS

21-A M.R.S.A. § 1017(8)

Disposition of surplus. A treasurer of a candidate registered under section 1013-A or qualified under sections 335 and 336 or sections 354 and 355 must dispose of a surplus exceeding \$100 within 4 years of the election for which the contributions were received by:

- A. Returning contributions to the candidate's or candidate's authorized political committee's contributors, as long as no contributor receives more than the amount contributed;
- B. A gift to a qualified political party within the State, including any county or municipal subdivision of such a party;
- C. An unrestricted gift to the State. A candidate for municipal office may dispose of a surplus by making a restricted or unrestricted gift to the municipality;
- D. Carrying forward the surplus balance to a political committee established to promote the same candidate for a subsequent election;
 - D-1. Carrying forward the surplus balance for use by the candidate for a subsequent election;
- E. Transferring the surplus balance to one or more other candidates registered under section 1013-A or qualified under sections 335 and 336 or sections 354 and 355, or to political committees established to promote the election of those candidates, provided that the amount transferred does not exceed the contribution limits established by section 1015;
- F. Repaying any loans or retiring any other debts incurred to defray campaign expenses of the candidate;
- G. Paying for any expense incurred in the proper performance of the office to which the candidate is elected, as long as each expenditure is itemized on expenditure reports; and
- H. A gift to a charitable or educational organization that is not prohibited, for tax reasons, from receiving such a gift.

The choice must be made by the candidate for whose benefit the contributions were made.



Janet T. Mills
GOVERNOR

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

Bruce A. Van Note
COMMISSIONER

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.

Changes were made to the temporary sign laws during the 129th Legislature. The law allows temporary signs, which include campaign signs, to be placed in the right-of-way for up to 6 weeks from January 1st to June 30th and another 6 weeks between July 1st and December 31st. The law further states that individual signs bearing substantially the same message must be placed at least 30 feet from one another and requires that each sign be labeled with the owner's name, address and the date on which the sign was erected. This will help MaineDOT discern whether a sign is in compliance and also allows the Department to contact an entity if a sign needs to be removed for any reason.

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, Route 1 between Bath and Brunswick and 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 their ramps and the portion of Route 1 between Bath and Brunswick do not have C.O.A. signage. The signage denoted to the right has been erected on those other roadways that have C.O.A.

Temporary signs are also prohibited on traffic control devices (stop signs, yield signs, warning signs, guide signs, regulatory signs, etc.), all utility poles and trees, on islands within a rotary/roundabout, and in medians/islands in the center of the road that are less than 6 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.*



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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 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 in 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.

MaineDOT appreciates your cooperation in this effort.

Sincerely,

Stephen Landry, P.E.
State Traffic Engineer
MaineDOT

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PUBLIC NOTICE

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Washington, D.C. 20554

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Internet: <http://www.fcc.gov>
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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 rules¹ 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.²

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 tool 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.

¹ See 47 CFR § 64.1200.

² 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 Autodialed Calls to Cell Phones and Other Mobile Services.**

Prerecorded voice messages and autodialed calls (including autodialed 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.”³ This broad prohibition covers prerecorded voice and autodialed 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 autodialed calls to cell phones or other mobile service numbers have the burden of proof to show that they obtained such consent.⁴ Further, call recipients may revoke their consent to be called using any reasonable method including verbally or in writing.⁵

Prerecorded Voice Messages and Autodialed Calls to Landline Telephones. Political campaign-related prerecorded voice messages or autodialed 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 autodialed 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.⁶

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.⁷
- 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).⁸
- In addition, the telephone number of such business, individual, or other entity must be provided either during or after the prerecorded voice message.⁹

³ 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.

⁴ *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 autodialed calls to cell phones are responsible for demonstrating such consent was granted).

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

⁶ Non-emergency prerecorded voice or autodialed 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).

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

⁸ 47 CFR § 64.1200(b)(1).

⁹ 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



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.¹⁰ 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.¹¹

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.¹²

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).

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

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

¹² 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 or Mary Romano at (202) 418-0975 or mary.romano@fcc.gov in the Telecommunications Consumers Division, Enforcement Bureau. More information can also be found at www.fcc.gov/guides/robocalls. To file a complaint, visit 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.

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 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.



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.”¹ 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.² 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

¹ 47 CFR § 64.1200(f)(2).

² *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.³ 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.⁴

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.”⁵ 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.⁶

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 or Mary Romano at (202) 418-0975 or mary.romano@fcc.gov. To file a complaint, visit 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.

³ *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).

⁴ *Id.* at 8017-22, paras. 108-22.

⁵ *2003 TCPA Order*, 18 FCC Rcd at 14115, para. 165.

⁶ 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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2022 CANDIDATE GUIDEBOOK

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