

Guidebook for Political Action Committees & Ballot Question Committees

PAC & BQC Guidebook



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS &
ELECTION PRACTICES

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Publication Date: July 2017. The information in this Guide reflects the current Election Law pertaining to political action committees and ballot question committees as of the Second Regular Session of the 127th Legislature. The Commission has taken care to make this Guide concise and accurate. However, the Guide is not a substitute for the applicable statutory provisions of the Election Law and Commission's rules. The statutes and rules are controlling in the event of any omission or misstatement in this publication.



Commission on Governmental Ethics and Election Practices

The Commission is pleased to publish this edition of the Guidebook for Political Action Committees and Ballot Question Committees. As always, the Commission staff is available to assist you with any questions regarding campaign finance laws and reporting requirements for candidates, political action committees and ballot question committees. The Commission may be reached by calling (207) 287-4179.

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Chapter 1

Getting Started as a Committee

Organizations and groups that raise or spend money to influence elections or initiate a referendum in Maine may be required to register as a political action committee (PAC) or a ballot question committee (BQC) and file campaign finance reports with the Commission. It is important for an organization to identify whether it is a PAC or BQC and to register accordingly, because the reporting requirements differ for the two types of organizations.

WHAT IS A POLITICAL ACTION COMMITTEE?

Maine Election Law defines a PAC as:

- Any separate or segregated fund established by any corporation, membership organization, cooperative or labor, or other organization whose purpose is to initiate or influence a campaign.
Example: A corporation, labor union, or membership organization sets aside funds in a separate or segregated account for the purpose of influencing campaigns.
- Any organization, including any corporation or association, that has as its major purpose initiating or influencing a campaign and that receives contributions or makes expenditures aggregating more than \$1,500 in a calendar year for that purpose, including for the collection of signatures for a direct initiative or referendum.
Example 1: A new voluntary association of individuals raises and spends money on independent expenditures to support the election of a like-minded candidate.
Example 2: The leadership of a State-recognized political party in a chamber of the Maine Legislature raises and spends money to promote the election and retention of party candidates for that Chamber. Commonly referred to as a “caucus PAC.”
- Any organization that does not have as its major purpose influencing candidate elections but that receives contributions or makes expenditures aggregating more than \$5,000 in a calendar year for the purpose of influencing the nomination or election of any candidate to political office.
Example: A national organization that raises and spends money to advance causes it supports across the country decides spend money in Maine on independent expenditures to support a group of candidates who are proponents of the interest and goals of the organization.



If an organization's or group's only financial activity in the prior two years is to make a contribution to a candidate, party committee, PAC, or ballot question committee (BQC) registered with the Commission from funds it has on hand, the group does not have to register with the Commission. However, the raising of funds for the purpose of influencing elections or making contributions could trigger the registration requirement.

WHAT IS A BALLOT QUESTION COMMITTEE?

If a person (*i.e.*, an individual, corporation, partnership, association, or other organization) does not meet the PAC definition in 21-A M.R.S.A. § 1052(5), but receives or spends more than \$5,000 for the purpose of initiating or influencing a ballot question, then the group is considered a ballot question committee (BQC) and must register and file campaign finance reports with the Commission. Contributions and expenditures to influence a candidate election do not count toward the \$5,000 threshold to register as a BQC, but could count toward the requirement to register as a PAC.

If the organization's only financial activity is to make a contribution to a PAC or BQC registered with the Commission, the group does not have to register with the Commission. However, if the source of the funds for the contribution come from funds raised for the purpose of contributing to a PAC or BQC involved in a ballot question, rather than from the organization's general treasury, it could trigger the registration requirement.

IMPORTANT DEFINITIONS

Influence. To "influence" means to promote, support, oppose or defeat.

Initiate. To "initiate" includes the collection of signatures and related activities to qualify a state or local initiative or referendum for the ballot.

Campaign. For purposes of the PAC and BQC definition, the term "campaign" means any course of activities to influence the nomination or election of a candidate or to initiate or influence any of the following ballot measures:

- A people's veto referendum;
- A direct initiative of legislation;
- An amendment to the Constitution of Maine;
- A referendum vote on a measure enacted by the Legislature and expressly conditioned upon ratification by a referendum vote;
- The ratification of the issue of bonds by the State or any agency thereof; and
- Any county or municipal referendum. (See the Municipal Elections section later in this chapter.)



Contribution. The term “contribution” includes:

- A gift, subscription, loan, advance or deposit of money, or anything of value made to a PAC or BQC, except that a loan of money by a financial institution made in accordance with applicable banking laws and regulations and in the ordinary course of business is not included;
- A contract, promise, or agreement, expressed or implied, whether or not legally enforceable, to make a contribution to a PAC or BQC;
- Any funds received by a PAC or BQC that are to be transferred to any candidate, committee, campaign, or organization for the purpose of initiating or influencing a campaign; or
- The payment, by any person or organization, of compensation for the personal services of other persons provided to a PAC or BQC that is used by the PAC or BQC to initiate or influence a campaign.

In determining whether an organization is required to register as a BQC, the term “contribution” also includes:

- funds that the contributor were given in connection with a ballot question;
- funds provided in response to a solicitation that would lead the contributor to believe that the funds would be used for the purpose of initiating or influencing a ballot question;
- funds that can reasonably be determined to have been provided by the contributor for the purpose of initiating or influencing a ballot question when viewed in the context of the contribution and the recipient’s activities regarding a ballot question; and
- funds or transfers from the general treasury of an organization filing a ballot question report.

Funds provided in response to a solicitation by an organization that would lead the contributor to believe that the funds would be used to support an organization’s general activities, rather than activities relating to a candidate election or a ballot question, are not counted toward the \$5,000 for registering as a PAC or BQC.

Expenditure. The term “expenditure” includes:

- A purchase, payment, distribution, loan, advance, deposit or gift of money, or anything of value, made for the purpose of initiating or influencing a campaign;
- A contract, promise or agreement, expressed or implied, whether or not legally enforceable, to make an expenditure to influence or initiate a campaign; and
- The transfer of funds by a political action committee to another candidate or political committee (e.g., another PAC or BQC, a candidate committee, or a party committee).

If there are any questions about whether an organization qualifies as a PAC or BQC under these definitions, the Commission staff are available for assistance.



REGISTERING WITH THE ETHICS COMMISSION

Any organization that meets the criteria for being a PAC or BQC must register with the Commission no later than 7 calendar days after it meets the requirements to register as a PAC or BQC. It is important for an organization to keep track of its contributions and expenditures from the beginning of its campaign-related activities in order to know if and when it has to register with the Commission. An organization does not have to wait until it reaches the monetary threshold to register with the Commission. Many organizations register before they raise or spend any money because they know they will be politically active and will eventually qualify as a PAC or BQC. The organization must also file an initial campaign finance report at the same time it registers with the Commission (see next page). There is no fee to register a PAC or BQC.

A PAC or BQC that does not register with the Commission or that registers late may be subject to a \$2,500 fine and may be assessed additional penalties for a late-filed initial campaign finance report.

Registration Requirements. To register, a PAC or BQC must complete the following steps:

- Name a treasurer and a principal officer. Unless an individual is registering as a BQC, the treasurer and principal officer cannot be the same person.
- Identify all individuals who are primarily responsible for making decisions or raising funds for the committee.
- Identify the particular campaigns or candidates or categories of campaigns or candidates that the committee expects to support or oppose.
- PAC only: Indicate whether an officer, decision-maker or fundraiser of the PAC is a Legislator or a candidate for elected office.
- PAC only: If formed by one or more for-profit or non-profit corporations or other organizations, state the names and addresses of those corporations and organizations.
- BQC only: Identify the person (*i.e.*, individual, committee, firm, partnership, corporation, association, or organization) establishing the BQC.
- PAC only: Include the name of the campaign bank account and the name and address of the financial institution where the account is established (see “Campaign Bank Account”).
- PAC only: Submit a signed Acknowledgement of Responsibilities from the treasurer, principal officer, and any other decision-makers. All subsequent replacement officers must also sign an Acknowledgement of Responsibilities form within 10 days of joining the PAC.



If the PAC or BQC is involved in a specific ballot question, the ballot question should be identified by its popular name or the bill title as well as the question number, if there is one. If the purpose of the PAC is more general, the statement should be as descriptive as possible, *e.g.*, opposes statewide or local efforts to develop liquefied natural gas facilities in Maine. It is important that the committee fully complete the form, as missing or incomplete information can delay the registration process.

If at any time the information provided on the registration form changes, including contact information, treasurer information, statements of support and opposition, or principal officers, the committee must file an amended registration within 10 calendar days of the change.

Initial Campaign Finance Report. For both PACs and BQCs, the initial campaign finance report is due at the time of registration. PACs must report all contributions and expenditures made since January 1st of the reporting year. BQCs must report all contributions and expenditures made since the beginning of the campaign.

Commonly Overlooked Expenditures. All expenditures made in carrying out the committee's political activities and general operations must be tracked so that a committee can ensure that it registers in a timely fashion. Expenditures that are most commonly overlooked by committees include:

- Expenditures associated with the collection of signatures - this also applies to expenditures by the opponents of a citizen initiative or people's veto petition drive.
- Paid staff time or paid consultants and pollsters or other personal services costs.
- Travel reimbursements.
- Fundraising expenses.
- Website set-up, design, and maintenance costs.

Commonly Overlooked Contributions. Commonly overlooked contributions include:

- Contributions from the general treasury of the organization which founded the PAC or BQC;
- Contributions of paid staff time received by the PAC or BQC from the founding organization or others; and
- Other in-kind contributions of goods and services.

Biennial Re-Registration for PACs. All PACs registered with the Commission must file an updated registration every election (even-numbered) year, between January 1 and March 1. This biennial registration requirement applies even if there has been no change to the information provided on the previous registration. Unless the PAC's officers, decision-makers, and fundraisers have changed, new Acknowledgment of Responsibilities forms do not have to be filed.



RESPONSIBILITIES OF PAC OFFICERS

Treasurer

- Responsible for filing complete and accurate reports with the Commission and making amendments as necessary to ensure the same.
- Responsible for maintaining the PAC's records for four years following the election to which they pertain.
- Responsible for the PAC's performance of the above, regardless of whether the duty was delegated to another.

Treasurer & Principal Officer

- Jointly responsible for the PAC's compliance with election laws and rules.
- Jointly responsible for responding to notices and correspondences from the Commission on behalf of the PAC.
- Jointly responsible for ensuring all required records are kept.
- Jointly and severally liable, along with the PAC, for all penalties assessed for violations of reporting or record-keeping requirements. This is also applicable to BQCs and their founding organizations.

Treasurer, Principal Officer & Decision-Maker(s)

- Deemed to have participated in all spending decisions.

Agents and Former Officers

- Liable for all or part of a fine if the agent or former officer is directly responsible for the violation.

RESPONSIBILITIES OF BQC OFFICERS

The treasurer of a BQC is responsible for filing complete and accurate reports with the Commission and for maintaining the BQC's records for four years following the election to which they pertain. The Commission may hold the treasurer and principal officer of a BQC and the person who established the BQC jointly and severally liable, along with the BQC, for any fines assessed against the BQC.

CAMPAIGN BANK ACCOUNT

PACs must disclose the name of the account the PAC will use to deposit contributions and make expenditures. All contributions must be deposited into the account and all campaign payments must be made through the account. This requirement applies to all PACs. The treasurer is required to retain all receipts of expenditures made in support or in opposition to a campaign, political committee, political action committee,



referendum, or initiated petition in this State for a minimum of 4 years. Records that are required to be retained are:

- A detailed account (*i.e.*, payee, date, amount, and purpose) of all expenditures made to support or oppose a candidate, committee, or ballot question, including:
 - The name and address of each candidate or committee supported or opposed;
 - The office sought by the candidate and district the candidate seeks to represent; and
 - The title or question number of each ballot question, initiated petition, or referendum supported or opposed.
- Vendor invoices or receipts in excess of \$50, which must identify the particular good or service purchased.
- A record of all contributions from contributors who gave in excess of \$50. When any donor's contributions exceed the \$50 threshold, the record must include the aggregate amount of all contributions from that donor:
 - The name and mailing address of that contributor;
 - The amount given; and
 - The date of the contribution.

The committee is not required to submit bills or invoices to the Commission unless requested. For example, the Commission may request bills or invoices to verify the accuracy of reports.

MUNICIPAL ELECTIONS

The campaign finance laws regulating PACs and BQCs also apply to candidate or ballot question elections in towns and cities with a population of 15,000 or more. (Two towns with populations under 15,000 — Standish and Union — have adopted the campaign finance laws as they pertain to municipal referenda but not candidate elections.) When a PAC or BQC is formed solely to support or oppose municipal candidates, referenda, or ballot questions in these towns and cities, it is subject to the same requirements and responsibilities as PACs and BQCs involved in statewide elections. These municipal PACs and BQCs will register and file reports with the municipality in which it seeks to influence elections, not the Commission.

Town and Cities Subject to Campaign Finance Law	
Auburn	Portland
Augusta	Saco
Bangor	Sanford
Biddeford	Scarborough
Brunswick	South Portland
Gorham	Waterville
Lewiston	Westbrook
Windham	

Standish and Union have chosen to be subject to campaign finance laws for municipal referenda but not for candidate elections.



If a PAC or BQC that is registered with the Commission becomes involved in a municipal election, it must file copies of its state campaign finance reports with the clerk of the municipality.

COUNTY-WIDE REFERENDUMS

When a PAC or BQC is formed solely to support or oppose county candidates, referenda, or ballot questions in the county, it is subject to the same requirements and responsibilities as PACs and BQCs involved in state-wide elections. These PACs and BQCs register and report with the Commission.

OUT-OF-STATE PACS

A political action committee that was organized outside of the state may be subject to the same requirements as a PAC organized under Maine law if it becomes involved in elections in Maine. If an out-of-state PAC meets the qualifications for being a political action committee under Maine law, it is subject to the same registration and reporting requirements as PACs organized in-state.

An out-of-state PAC is not required to register and file reports with the Commission or municipality if the PAC's only financial activity in the state is making contributions to other PACs, party committees, ballot question committees, or candidates registered with the Commission or municipality and the PAC has not raised or accepted any contributions to influence an election or campaign in Maine.

An out-of-state PAC that has received contributions or made expenditures for the purpose of influencing an election in Maine, including the collection of signatures for a direct initiative or referendum, must register as a PAC in Maine and file campaign finance reports in accordance with the Commission's procedures.

RESTRICTIONS ON CONSTITUTIONAL OFFICERS AND STATE AUDITOR

Certain constitutional officers (the Secretary of State, the State Treasurer, and the Attorney General), the State Auditor, and any individual running for these offices, may not form a PAC or be involved in decision-making for or soliciting contributions to a political action committee.

All constitutional officers and their staff and agents are also prohibited from directly or indirectly soliciting or accepting contributions from lobbyists or their clients on behalf of a PAC or a BQC while the Legislature is in session (see Chapter 4).

CANDIDATES PARTICIPATING IN THE MAINE CLEAN ELECTION ACT

A Maine Clean Election Act candidate may not establish a PAC for which the candidate is a treasurer, principal officer, fundraiser, or decision-maker. This prohibition begins April 1st of a general election year and lasts through:

- The date the candidate withdraws from a race;
- The date of the primary or general election for a candidate who loses either election; or



- January 1st immediately preceding the next general election for a candidate who wins the general election.

This prohibition does not prohibit a candidate from engaging in fundraising or decision-making for a PAC organized by the candidate’s legislative caucus or a BQC or PAC formed for the purpose of promoting or opposing a ballot question.

CONTRIBUTIONS FROM FOREIGN NATIONALS

Foreign nationals are prohibited from making any contributions or expenditures in connection with any election in the U.S. for a federal, state, or local political office. In general, this prohibition does not apply to contributions and expenditures by foreign nationals to initiate or influence a ballot question. However, under certain circumstances, such contributions and expenditures may be prohibited. More information is available at: www.fec.gov.

TERMINATING A PAC OR BQC

Whenever a PAC or BQC determines that it will no longer accept any contributions or make any expenditures, the committee can file a final campaign finance report and a termination statement. The final report must cover the period from the close of the last reporting period to the date of termination. Prior to terminating, the PAC must dispose of any surplus and report how the funds were disposed of in the final report. The committee can do this by making contributions to other PACs, BQCs, party committees, candidates, non-profits, or by making a transfer back to the general treasury, if appropriate. The committee must also dispose of any loans, debts, or other obligations that are unpaid and outstanding at the time of the committee’s termination in the manner prescribed by the Commission. Until the termination statement is filed, the committee must continue to file campaign finance reports.

LEGAL REFERENCES	
Definitions	21-A MRSA §§ 1052 and 1056-B(2-A)
Registration	21-A MRSA § 1052-A
Treasurers	21-A MRSA § 1054
Record Retention	21-A MRSA § 1057
Municipal Elections	21-A MRSA § 1058; 30-A MRSA § 2502
PAC Termination	21-A MRSA § 1061
Out-of-State PACs	21-A MRSA §§ 1051 and 1058
Ballot Question Committees	21-A MRSA § 1056-B
Constitutional Officers and State Auditor	21-A MRSA § 1063
MCEA PAC Prohibition	21-A MRSA § 1125(6-F)



Chapter 2

Filing Campaign Finance Reports

HOW & WHEN TO FILE REPORTS

Electronic Filing. All political action committees and ballot question committees registered with the Commission are required to file their campaign finance reports electronically using the Commission's e-filing system. Usernames and passwords are assigned to the committee, Principal Officer, and Treasurer once the registration and initial campaign finance report are processed. All required reports for the year are listed on the committee's homepage on the e-filing system.

If a committee lacks the access to the technology or the technological ability to file the reports electronically, the committee may submit a request for a waiver from the requirement to file reports electronically within 30 days of registering. The Commission will grant all reasonable requests. However, it is strongly recommended that PACs and BQCs file reports through the e-filing system. If a waiver is granted, the Commission must still receive paper reports by 11:59 p.m. on the filing deadline. Reports may be faxed to the Commission (207-287-6775) as long as the signed original report is received within five days. A report that is sent by certified or registered mail and that is postmarked at least 2 days before the filing deadline will not be considered late, even if it is received after the deadline.

Filing Schedules. Once registered with the Commission, a PAC or BQC must file periodic campaign finance reports until the committee is terminated, even if the committee had no financial or campaign-related activity during the reporting period. The annual filing schedule, with exact deadlines, is available at: www.maine.gov/ethics. Committees are encouraged to keep track of these deadlines in a calendar or diary, because late reports are subject to a civil penalty.

REGULARLY SCHEDULED CAMPAIGN FINANCE REPORTS

PACs and BQCs file between four and eight campaign finance per year according to regular deadlines established in the Election Law. The exact number of reports depends on the year and the committee's election-related activity. All regularly scheduled campaign finance reports must be received by the Commission by 11:59 p.m. on the day of the deadline.



Quarterly Reports. Every year, each PAC and BQC must file four quarterly reports — even if the PAC or BQC had no financial activity for the reporting period.

TYPICAL QUARTERLY REPORT FILING SCHEDULE FOR POLITICAL ACTION COMMITTEES & BALLOT QUESTION COMMITTEES		
Type of Report	Deadline	Reporting Period
April Quarterly	April 10	January 1 - March 31
July Quarterly	July 15	April 1 - June 30
October Quarterly	October 5	July 1 - September 30
January Quarterly	January 15 (of the following year)	October 1 - December 31

Pre- and Post-Election Reports in a Candidate Election Year. During years in which a primary election and general election are held (even-numbered years), all PACs and BQCs must file campaign finance reports 11 days before and 42 days after the primary and general elections.

Pre- and Post-Election Reports in Other Years. In odd-numbered years, if a committee is making expenditures to influence a ballot question election or a special candidate election, in addition to regular quarterly reports, the committee is required to file an 11-day pre-election report and a 42-day post-election report.

PRE- AND POST-ELECTION CAMPAIGN FINANCE REPORTS: DEADLINES AND REPORTING PERIODS		
Report Name	Deadline	Reporting Period
11-Day Pre-Election Report	The 11 th day before the date of the election	End of the last reporting period through the 14 th day before the election
42-Day Post-Election Report	The 42 nd day after the date of the election	End of the last reporting period through the 35 th day after the election

24-Hour Reports

The purpose of 24-hour reports is to provide disclosure of campaign activity in the period before an election when there are no other reports due. If a committee is required to file an 11-day pre-election report, the committee must file a 24-hour report of any single contribution of \$5,000 or more received during the last 13 days before the election, and any single expenditure of \$1,000 or more made during that 13-day period. The report must be filed within 24 hours of receiving the contribution or making the expenditure, even if the filing deadline falls on a weekend or a holiday. Contributions received and expenditures made on the day before



an election must be reported on election day. Orders placed with or obligations made to vendors for goods or services are considered expenditures at the time the obligation is made, even if the payment has not been made.

These reports may be filed online, through the Commission’s e-filing system. The e-filing system will automatically add the transactions reported in a 24-hour report to the next regularly scheduled campaign finance report.

24-HOUR REPORTS:	24-HOUR REPORT PERIOD						
	Sun	Mon	Tue	Wed	Thu	Fri	Sat
<ul style="list-style-type: none"> • File within 24 hours of receiving the contribution or making the expenditure or obligation. • Must be filed on a weekend or holiday if that is when it is due – you cannot wait until the next business day. • File by online, fax, or in person. • Contributions and expenditures received or made on the day before an election must be reported on election day. 							
	 Indicates 24-Hour Report period						

AMENDMENTS

If the committee unintentionally makes an omission in a campaign finance report or includes incomplete or inaccurate information, it must promptly file an amendment to that report. All amended reports are reviewed by the Commission staff. If a report does not substantially conform to the disclosure requirements, the Commission may consider the report late, even if it was filed on time.

COMMISSION’S REVIEW OF REPORTS

The Commission staff reviews campaign finance reports for completeness and compliance with the Election Law. The Commission staff may contact the committee if it believes that a report is incomplete or requires additional information. If necessary, the staff will request that the committee amend the report.

REMINDERS BY THE COMMISSION

PACs and BQCs are responsible for knowing their reporting obligations and the due dates for reports. The Commission staff publishes the filing schedule on its website at the beginning of the year and the required reports and their due dates are listed on the committee’s e-filing homepage. While it is the custom of the Commission staff to send out reminders before each filing, failure to receive such a reminder is no excuse for a late filing, as PACs and BQCs are ultimately responsible for filing their reports on time.



PENALTIES FOR LATE-FILED CAMPAIGN FINANCE REPORTS & FAILURE TO FILE REPORTS

Penalties are assessed for late campaign finance reports using a formula established by statute. The formula takes into account the number of days the report was filed late, any previous violations by the committee during a two-year period, and the amount of financial activity that took place during the reporting period. The table below illustrates how late-filing penalties are calculated. The two-year period begins on January 1 of each even-numbered year.

The maximum penalty that can be assessed against a PAC or BQC for a late-filed quarterly, pre- or post-election report, or a late-filed 24-hour report is \$10,000 or, if the amount of the financial activity reported late exceeds \$50,000, the maximum penalty is the amount reported late.

A person who fails to file a required report within 30 days of the filing deadline may also be charged with Class E crime.

Example: The treasurer files the report two (2) calendar days late. The committee has not had any previous late filings in the past two years. The PAC reports a total of \$2,500 in contributions and \$1,500 in expenditures for the filing period. The penalty is calculated as follows:

\$2,500	Greater of the amount of total contributions received or expenditures made during the filing period
<u>X .02</u>	Percent prescribed for first violation
\$50.00	Two percent of total contributions
<u>X 2</u>	Number of calendar days late
\$100.00	Total penalty Commission may assess

REQUESTING A WAIVER OF A LATE-FILING PENALTY

If a committee files a report late, the Commission will send a letter informing the treasurer of the preliminary amount of the penalty and requesting that the committee pay the penalty or seek a waiver. If the committee does not request a waiver by the Commission within 14 days, the staff will send a final notice of the penalty to the treasurer.

Generally, the committee treasurer or other representative of the committee requests a waiver of the preliminary penalty by submitting a letter within 14 days of receiving the Commission’s penalty notice. Requests for waivers are considered by members of the Commission at a public meeting — not by the staff of the Commission. Although not required, the committee’s treasurer or representative is encouraged to attend



the Commission meeting. After the Commission meets, notice of its final determination and the penalty imposed, if any, is sent by U.S. mail to the treasurer or other committee representative.

The Commission may waive a penalty in whole or in part if there are mitigating circumstances such as a valid emergency, an error by Commission or municipal staff, or any other circumstances that the Commission determines warrant mitigation of a penalty. Other factors the Commission may consider are the level or experience of the committee officers and treasurer, or the harm suffered by the public from the late disclosure. A penalty of less than \$10 is automatically waived. However, the late-filed report will still be considered a violation and will count toward the calculation of the penalty rate in the future.

The penalty must be paid in full within 30 days of the date of the Commission's final penalty notice, unless other payment arrangements are made. If the penalty is not paid within 30 days, the Commission may refer the matter to the Attorney General's office for collection in a civil action.

APPEALING A PENALTY DETERMINATION

A committee may appeal the Commission's final determination by filing a petition for review with the Superior Court within 30 days of receiving the notice of the final determination. The Maine Administrative Procedures Act (5 M.R.S.A § 11001 *et seq.*) and Rule 80C of the Maine Rules of Civil Procedure govern the process for an appeal to the Superior Court.

LEGAL REFERENCES

Electronic Filing	21-A MRSA § 1059(5)
Filing Dates	21-A MRSA § 1059
24-Hour Reporting Requirement	21-A MRSA § 1059(2)(E)
Penalties	21-A MRSA § 1062-A
Penalty Waivers	21-A MRSA § 1062-A(2)
Appealing Penalty Determinations	21-A MRSA § 1062-A(5)



Chapter 3

What to Report on Campaign Finance Reports

Each campaign finance report covers a specific period of time. This overview will give you a summary of the information required to be included in the reports. The e-filing system also has instructions for entering each type of transaction.

CONTRIBUTIONS RECEIVED BY A “MAJOR PURPOSE” PAC

- For cash contributions of more than \$50, the committee must report the date and amount of the contribution, the name and mailing address of the contributor, and the contributor’s occupation and employer, if the contributor is an individual. If the PAC is unable to obtain the occupation and employer information from the contributor, the PAC should enter “information requested” on the campaign finance report. The Commission staff may ask the committee to make additional efforts to obtain the occupation and employer information if the information is lacking for a significant number of contributors.
- Cash contributions of \$50 or less do not have to be itemized and may be reported as a lump sum for the reporting period.
- All in-kind contributions of goods or services with a value of more than \$50 received by the committee must be reported and must include the contributor’s name and address, occupation and employer for individuals, a description of the goods or services, the fair market value, and date of the contribution. If another organization, such as another PAC, party committee, or other type of organization or business, makes an in-kind contribution in the form of paid staff time, the recipient PAC should include a description of those staff activities and the number of hours of staff time contributed. Contributed staff time and coordinated expenditures should not be lumped together as a single contribution for the reporting period, but should be itemized as separate contributions.

Who may contribute to a PAC or BQC?

Maine Election Law does not place any restrictions on who may contribute to a PAC or BQC.

The only exception is that, during a legislative session, lobbyists and their clients may not contribute to a PAC or BQC in which certain governmental officials are involved.

Are there any limits on contributions to a PAC or BQC?

No. Maine law does not place any limit on the amount of a contribution to a PAC or BQC.



- In-kind contributions of \$50 or less do not have to be itemized and may be reported as a lump sum for the reporting period.
- The committee must report all loans from commercial or noncommercial sources, loan repayments and forgiven amounts.

EXPENDITURES MADE BY A “MAJOR PURPOSE” PAC

- All expenditures to influence a candidate election or ballot question by a committee must be reported.
- All operational expenses and other cash expenditures not made on behalf of a candidate, committee, or campaign, must be reported.
- All cash contributions that the committee makes to candidates, party committees, political action committees, and ballot question committees must be reported.
- All expenditures to purchase goods, services, materials, and supplies given by the committee to candidates, party committees, other political action committees, or ballot question committees.
- If an expenditure was made to support or oppose a candidate or ballot question, the name of the candidate, committee, or ballot question supported or opposed must be reported as well as whether the expenditure was made to support or oppose the candidate or ballot question.
- All expenditures made by the committee to qualify a proposed initiative or referendum for the ballot, including expenditures to collect signatures, must be reported. If the committee makes expenditures to oppose a proposed initiative or referendum from getting on the ballot, those expenditure must also be reported.
- The Election Law requires that the date, amount, payee, and the purpose of the expenditure be reported. The “payee” refers to the vendor that provided the goods and services. The committee should not report “cash” or “disbursement” as the payee. If someone is reimbursed for an expenditure, the committee must report the name of the vendor as the payee and report to whom the reimbursement is made, as well as, a description of the expenditure.
- To report the purpose of the expenditure, the committee must select an expenditure type for each expenditure (see chart on next page). If a remark is required, the committee must enter as much information as possible to describe the expenditure. For instance, if the expenditure is for professional services, the committee should identify the specific type of service performed.



EXPENDITURE TYPES			
CON	Contribution to candidate, party or committee	POL	Polling and survey research
CNS	Campaign consultants	POS	Postage for U.S. Mail and mail box fees
EQP	Equipment (office machines, furniture, cell phones)	PRO	Professional services
FND	Fundraising events	PRT	Print media ads only (newspapers, magazines, etc.)
FOD	Food for campaign events, volunteers	RAD	Radio ads, production costs
LIT	Printing and graphics (flyers, signs, palmcards, t-shirts, etc.)	SAL	Campaign workers' salaries and personnel costs
MHS	Mail house (all services purchased)	TRV	Travel (fuel, mileage, lodging, etc.)
OFF	Office rent, utilities, phone, internet & website services, supplies	TVN	TV or cable ads, production costs
OTH	Other	WEB	Internet and social media advertising, production costs
PHO	Phone banks, automated telephone calls		
<i>All expenditure types require a remark</i>			

CONTRIBUTIONS RECEIVED BY A “NON-MAJOR PURPOSE” PAC & BQC

“Non-Major Purpose” PACs and BQCs must report contributions received as above, except that such organizations are required to report only those contributions made to the organization for the purpose of influencing a ballot question or the nomination or election of a candidate and all transfers to or funds used to support the PAC or BQC from the general treasury of its founding organization.

In addition, for BQCs the term “contribution” also includes money or anything of value received for the purpose of initiating a referendum or people’s veto or influencing a ballot question election. This includes:

- funds that the contributor specified were given in connection with a ballot question;
- funds provided in response to a solicitation that would lead the contributor to believe that the funds would be used specifically for the purpose of initiating or influencing a ballot question;
- funds that can reasonably be determined to have been provided by the contributor for the purpose of initiating or influencing a ballot question when viewed in the context of the contribution and the recipient’s activities regarding a ballot question; and
- funds or transfers from the general treasury of an organization filing a ballot question report.

For example, a labor union has a separate fund registered as a PAC to influence campaigns and transfers union dues from the union to that fund. The PAC reports a general treasury transfer from the union, but does not report the individual union members whose dues funded the transfer as contributors. Similarly, when a corporation which generates its income through sales of goods or services and then transfers some of that



money to its PAC, the PAC reports a general treasury transfer from the corporation, not the individual customers of the corporation.

“Non-Major Purpose” PACs and BQCs should contact the Commission staff if they have questions about whether or how to report funds received.

EXPENDITURES MADE BY A “NON-MAJOR PURPOSE” PAC & BQC

“Non-Major Purpose” PACs and BQCs must report expenditures made as above, except that such organizations are required to report only those expenditures made for the purpose of influencing a campaign.

OTHER TRANSACTIONS TO BE REPORTED BY ALL COMMITTEES

LOANS & LOAN REPAYMENTS

- Loans are a form of contribution and whether they should be reported by a committee is based on whether the committee is a “major purpose” or “non-major purpose” PAC or a BQC.
- The committee must report all loans from commercial or noncommercial sources, loan repayments and forgiven amounts.

UNPAID DEBTS & OBLIGATIONS (other than loans)

- Debts are a form of expenditure and whether they should be reported by a committee is based on whether the committee is a “major purpose” or “non-major purpose” PAC or a BQC.
- The committee must report all unpaid debts and obligations for goods and services and all existing unpaid bills. Debts must be disclosed in each report until payment is made to the vendor. If an order has been placed for goods and services but the exact amount is not known, the committee should obtain an estimate from the vendor for reporting purposes.

EXPENDITURES MADE BY A CONSULTANT

If a PAC or BQC hires a consultant or consulting firm to assist the committee, and the consultant makes expenditures on behalf of the committee, those expenditures must be reported as though the committee made them directly. The report must include the name of the third party vendor or payee to whom the expenditure was made, and the date, the purpose, and amount of the expenditure. It is not sufficient to report only the total retainer or fee paid to the consultant, if the consultant used the fee to pay others for campaign-related goods or services. If the committee reported a lump sum payment to a consultant in a previously filed report, the committee may need to amend that report to deduct from that amount any expenditures made by the consultant, so that the expenditures are not double-reported. The Commission also recommends that the committee note in the remarks section for the expenditure that the payment was made by the consultant.



However, if the committee has paid a media buyer, advertising consultant, or similar contractor to purchase advertising time or for the production of television or radio advertising, the committee does not have to report the individual stations the consultant purchased advertising on. Instead, the committee should simply report the advertising time and production costs separately.

The committee's treasurer should also obtain receipts or paid invoices from the consultant for the goods and services purchased from sub-vendors by the consultant on behalf of the committee.

REPORTING INTEREST EARNED ON BANK ACCOUNTS

Interest earned on bank accounts during the reporting period is reported using the "Other Receipts" contribution type in the Commission's e-filing system.

INVESTIGATIONS & AUDITS

The Commission is authorized to undertake investigations or audits of the financial reporting of political action committees or ballot question committees. The Commission may initiate an investigation on its own or in response to a request submitted to the Commission. Any person may make a request for an investigation. The request must be in writing and must set forth facts in sufficient detail to specify the alleged violation. The statements made in the request must be based on the personal knowledge of the person making the request. If not, the identity of the source of the information must be explained in the request. The Commission will review the request to determine whether the allegations set forth sufficient grounds for believing that a violation may have occurred.

LEGAL REFERENCES

Contributions Received by the Committee	21-A MRSA §§ 1056-B(2) and 1060(6)
Expenditures to Support or Oppose	21-A MRSA §§ 1056-B(2) and 1060(4)
Operating Expenditures	21-A MRSA § 1060(7)
Expenditures Made by a Consultant	Rules, Chapter 1, § 7(1)
Audits and Investigations	21-A MRSA § 1003; Rules, Chapter 1, § 4(2)



Chapter 4

Supporting Candidates & Causes

MAKING CONTRIBUTIONS

Contribution Limits. In general, there are no restrictions in the Election Law on the types of entities to which a political action committee or ballot question committee may contribute. However, PACs and BQCs may only contribute to traditionally financed candidates, not to candidates using the Maine Clean Election Act program. PACs and BQCs can contribute to other political action committees, ballot question committees, and state and local party committees as well as other organizations and groups. These contributions can be in cash or in-kind. There is, however, a limit on the amount a PAC, or anyone else, may contribute to traditionally funded political candidates. Pursuant to 21-A M.R.S.A. § 1015(2), the contribution limits per election (the primary and general elections are separate elections) are as follows:

Contributions to:	Limits per election
Privately Financed Candidates for the Legislature	\$400
Privately Financed Candidates for Governor	\$1,600
Candidates for County and Municipal Offices	\$800
Party Committees	Unlimited
Political Action Committees	Unlimited
Ballot Question Committees	Unlimited

Candidates who are not enrolled in a political party are only eligible to receive contributions for the general election.

Prohibited Contributions From Lobbyists. While the Legislature is in session, lobbyists, lobbyist associates, and their employers (clients) are prohibited from making campaign contributions to the Governor, a Legislator, a constitutional officer (the Secretary of State, the State Treasurer, and the Attorney General), and their staff and agents (“covered officials”). They are also prohibited from making campaign contributions during the legislative session to any PAC (such as a legislative caucus PAC or leadership PAC), BQC, or party committee of which a covered official is a treasurer, officer, or primary fundraiser or decision-maker. If a committee in which a covered official holds a position receives a contribution from a lobbyist, lobbyist



associate, or their employers (clients) during the session it must be returned. It does not matter when the check is dated: if it is received at any time when the Legislature is in session it must be returned.

A PAC, BQC, or party committee of which a covered official is a treasurer, principal officer, or primary fundraiser or decision-maker may accept contributions from lobbyists and their clients during legislative session if the contribution relates to a special election to fill a vacancy in an office and the contribution is used for that special election.

The first regular session of a Legislature begins on the first Wednesday in December following a general election. The second regular session begins on the first Wednesday in January following the first Tuesday in even-numbered years. A session ends when the Legislature adjourns *sine die*. The prohibition also applies during any special session of the Legislature.

In-Kind Contributions. A committee can provide goods and services (anything of value) to a candidate but if the candidate has not reimbursed the committee for the full value of the goods and services, the committee has made an in-kind contribution to the candidate. The amount of the contribution is the value of the goods and services minus any payment the candidate has made to your committee. In-kind contributions are subject to the contribution limits for privately financed candidates. MCEA candidates cannot accept any cash or in-kind contributions from PACs or BQCs.

INDEPENDENT EXPENDITURES

What Is an Independent Expenditure? The term “independent expenditure” applies only to expenditures for communications made to influence a candidate election. Independent expenditures are payments or obligations made by individuals and organizations, acting independently of candidate campaigns, for communications that expressly advocate the election or defeat of a candidate. Communications include but are not limited to: print media and online advertisements, radio and television ads, live calls and robocalls, direct mail and e-mail communications, and campaign signs, palmcards, and other campaign literature.

What is an expenditure?

- any obligation to pay for a good or service
- 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
- the payment for a good or service

When is an expenditure made?

The earliest of the following events:

- the placement of an order for a good or service
- the signing of a contract for a good or service
- the delivery of a good or service
- a promise or an agreement to pay
- the making of a payment for a good or service



In addition, a communication that only names or depicts a “clearly identified” candidate — without any expressed advocacy — is presumed to be an “independent expenditure” if the communication is made within a certain period before an election (the “presumption period”). The presumption period for an election is:

- the 28 days, including election day, before a primary election;
- the period from Labor Day to the day of the general election; and
- the 35 days, including election day, before a special election.

Some communications are exempt from the presumption, such as membership communications (see “Membership Communications” in this chapter) and communications that are not made for the purpose of influencing a candidate election.

If a communication is presumed to be an independent expenditure, the spender may submit a signed written statement rebutting the presumption with the Commission within 48 hours of making the expenditure. The Commission considers each rebuttal statement on a case-by-case basis.

Independent expenditures must be independent of the candidate. The term “candidate” includes the candidate, the candidate’s authorized committee, and agents of the candidate or authorized committee. If an expenditure is made to promote or support the nomination or election of a candidate, or oppose or defeat the candidate’s opponent(s), and the expenditure is made in cooperation, consultation or concert with, or at the request or suggestion of, the candidate, the expenditure is considered to be a contribution from the spender to the candidate. For example, if a PAC runs an ad supporting a candidate in the newspaper and obtained the candidate’s photograph from the candidate for the ad, that is enough to make the entire cost of the ad a contribution to the candidate. An independent expenditure must be done completely without cooperation from, consultation, or acting in concert with the candidate or the candidate’s committee or agents.

What does “cooperation, consultation or in concert with mean?” The Commission’s Rules state that that “in cooperation, consultation or in concert with” includes, but is not limited to:

- Discussion between the candidate and the creator, producer or distributor of a communication, or the person paying for that communication regarding the content, timing, location, mode, intended audience, volume of distribution, or frequency of placement of that communication; and
- Participation by the candidate in making any decision regarding the content, timing, location, mode, intended audience, volume of distribution, or frequency of placement of the communication.

“Clearly identified” means:

- The name of the candidate appears; or
- A photograph or drawing of the candidate appears; or
- The candidate’s identity is apparent by unambiguous reference.



An expenditure is presumed to be made in cooperation, consultation, or concert with, or at the request or suggestion of a candidate, when:

- The expenditure is made in cooperation, consultation, or in concert with any person who, during the twelve months preceding the expenditure, has been the candidate's treasurer or an officer of the candidate's authorized committee, has had a paid or unpaid position managing the candidate's campaign, or has received any campaign-related compensation or reimbursement from the candidate;
- The candidate has directly shared the candidate's campaign plans, activities, or needs with the spender for the purpose of facilitating a payment by the spender on a communication to voters to promote or support the candidate; or
- The communication replicates, reproduces, republishes, or disseminates, in whole or in substantial part, a communication designed, produced, paid for, or distributed by the candidate.

If a candidate requests that a party committee, political action committee, or other potential spender not make any expenditures to promote or support that candidate, or oppose or defeat the candidate's opponent, the request does not constitute cooperation or coordination.

An expenditure will not be presumed to have been made in cooperation, consultation or concert with, or request or suggestion of a candidate, solely because:

- The spender has obtained a photograph, biography, position paper, press release, logo, or similar material about the candidate from a publically available source;
- The person making the expenditure has previously provided advice to the candidate on suggested communication strategies, budgets, issues of public policy, or other campaign plans or activities;
- The person makes an expenditure in response to a general, non-specific request for support by a candidate, provided that there is no discussion, cooperation or consultation with the candidate prior to the expenditure relating to the details of the expenditure;
- The spender has also made a contribution to the candidate, or has discussed with the candidate his or her campaign plans or activities as part of the candidate's solicitation for a donation;
- The expenditure is made by a for-profit or non-profit organization for invitations, announcements, food and beverages, and similar costs associated with an event to which the candidate has been invited by the organization to make an appearance before the organization's members, employees, shareholders, and families thereof; or



- The expenditure is made by an individual who spends \$100 or less for costs associated with a sign that is lettered or printed individually by hand and that reproduces or replicates a candidate's campaign-related design or graphic.

Communications That Contain Express Advocacy. “Expressly advocate” means that a communication uses phrases such as “vote for the Governor,” “reelect your Representative,” “support the Democratic nominee,” “cast your ballot for the Republican challenger for Senate District 1,” “Jones for House of Representatives,” “Jean Smith in 2016,” “vote Pro-Life” or “vote Pro-Choice” accompanied by a listing of clearly identified candidates described as pro-life or pro-choice, “vote against Old Woody,” “defeat” accompanied by a picture of one or more candidates, “reject the incumbent,” or communications of campaign slogans or individual words, which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidates, such as posters, bumper stickers, advertisements, etc. which say “Pick Berry!”

A communication also contains express advocacy if it is susceptible of no reasonable interpretation other than as an appeal to vote for or against a clearly identified candidate.

Rebutting the Presumption. The presumption that a communication is an independent expenditure may be rebutted. The person making the expenditure must submit a signed written statement to the Commission, within 48 hours of making the expenditure, stating the reasons why the communication was not intended to influence the election of a candidate. The Commission must determine by a preponderance of the evidence whether the communication was made to influence an election.

Prior to disseminating a communication, a committee may submit a rebuttal statement to the Commission and request an early determination. The request must include the complete communication and be specific as to when and to whom the communication will be disseminated.

While there is no penalty for failing to file a rebuttal statement within 48 hours, if the Commission determines that the communication was not covered by the presumption and an independent expenditure report was not filed on time, the person making the expenditure could be assessed a penalty for the late-filed report.

Exclusions. An independent expenditure does not include:

- An expenditure made by a person in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a candidate's political committee, or their agents;
- A telephone survey that meets generally accepted standards for polling research and that is not conducted for the purpose of changing the voting position of the call recipients or discouraging them from voting;



- A telephone call naming a clearly identified candidate that identifies an individual's position on a candidate, ballot question, or political party for the purpose of encouraging the individual to vote, as long as the call contains no advocacy for or against any candidate; and
- A voter guide that consists primarily of candidates' responses to surveys and questionnaires and that contains no advocacy for or against any candidate.

When To File an Independent Expenditure Report. Whether an expenditure on a communication has to be reported in an independent expenditure report depends on two factors:

- The amount spent on the communication per candidate; and
- When the expenditure was made.

The schedule below shows the reporting periods and the applicable thresholds and deadlines for reporting independent expenditures.

Reporting Period	Threshold for Reporting Expenditure	Report and Due Date
Anytime on or before the 61st day before an election	Any expenditures over \$250 per candidate	60-Day Pre-Election Report due by 5:00 p.m. on the 60th day before an election
From the 60th day to the 14th day before an election	Any expenditures over \$250 per candidate	Within 2 calendar days of making the expenditure
From the 13th day before the election to and including election day	Any expenditures over \$250 per candidate	Within 1 calendar day of making the expenditure

Filing Independent Expenditure Reports. If the deadline for an independent expenditure report falls on a weekend or holiday, the report must be filed on that day, not the next business day. The report may be filed online or by fax or scan, provided that the Commission receives a copy of the report including the original, notarized statement that the expenditure was made independently of the candidate. Any expenditure reported in an independent expenditure report must also be reported in the committee's regular campaign finance report for the reporting period in which the expenditure was made.

Independent Expenditures in Municipal Elections. If the committee is involved in a municipal election in a town or city with a population of 15,000 or more, the committee will need to file the independent expenditure report with the town or city.



Late Independent Expenditure Reports. If a committee files an independent expenditure report late or fails to file a report, the maximum penalty that may be imposed is \$5,000 except if the financial activity reported late exceeds \$50,000, the maximum penalty is 100% of the amount reported late.

MEMBERSHIP COMMUNICATIONS

The cost of communications by membership organizations and corporations expressly advocating for or against the nomination or election of a clearly identified candidate are not considered expenditures under Election Law. Therefore, those costs do not count toward the threshold amount for registering a PAC with the Commission. However, the organization or corporation must file a report with the Commission if the cost of the communication in any one candidate’s race exceeds \$50. The report form is available on the Commission’s website.

For the purposes of Election Law, an organization is a membership organization if its members currently satisfy the requirements for membership in the organization and have affirmatively accepted the organization’s invitation to become a member, and either:

- Pay membership dues, at least annually, of a specific amount set by the organization;
- Have some other significant financial attachment to the organization; or
- Have a significant organizational attachment to the organization that includes direct participatory rights in the governance of the organization, such as the right to vote on the organization’s board, budget, or policies.

Members of a local union are considered to be members of any national or international union of which the local union is a part, of any federation with which the local, national, or international union is affiliated and of any other unions which are members or affiliates of the federation.

If a communication by a membership organization or corporation is disseminated to a larger audience than just members or shareholders, the communication may forfeit its status as a membership communication and may be considered an independent expenditure or an in-kind contribution to a candidate or candidates mentioned in the communication. In addition, the cost may count toward the threshold amount for registering a PAC with the Commission.

LEGAL REFERENCES

Independent Expenditures	21-A MRSA § 1019-B; Rules, Chapter 1, § 10
Contributions Limits	21-A MRSA § 1015(2)
Contributions During the Legislative Session	1 MRSA § 1015; Rules, Chapter 1, § 12
Membership Communications	21-A MRSA § 1019-A; Rules, Chapter 1, § 13



Chapter 5

Disclosure Statements on Campaign Communications

CAMPAIGN COMMUNICATIONS REGARDING CANDIDATE ELECTIONS

Political action committees will often use campaign ads to support or oppose candidates. Anytime a committee makes an expenditure for a communication that expressly advocates for the election or defeat of a candidate, the communication must clearly and conspicuously state the name and address of the committee that paid for or financed the communication. This requirement also applies to any communication that names or depicts a clearly identified candidate and that is distributed to voters during the 21 days before the primary election or the 35 days before the general election, even if it does not contain express advocacy. This includes communications made through broadcasting stations, cable television systems, newspapers, magazines, outdoor advertising facilities (including yard signs), websites, direct mails, and other types of political advertising or through flyers, handbills, bumper stickers, and other non-periodical publications. If the communication has been authorized by the candidate, the disclosure statement on the communication must also state that the candidate authorized the communication.

If the communication has not been authorized by a candidate, a candidate's authorized political committee, or the candidate's agents, the communication must clearly and conspicuously state that the communication is not authorized by any candidate and state the name and address of the person who made or financed the expenditure for the communication. If the communication is in written form, it must contain at the bottom in 12-point bold print, Times New Roman Font the words "**NOT PAID FOR OR AUTHORIZED BY ANY CANDIDATE.**" If a committee has made an independent expenditure for a communication regarding a candidate, it must have this disclosure statement.

Paid for by the Smallville People's PAC, 2 Twin Street, Augusta, ME
NOT PAID FOR OR AUTHORIZED BY ANY CANDIDATE

TOP-3 FUNDERS DISCLOSURE ON INDEPENDENT EXPENDITURES

When an organization makes an independent expenditure to support or oppose a candidate, the organization is required to name its three largest funders in the communication. This disclosure statement is in addition to the "paid for" disclosure requirements discussed in the previous section. This requirement was a part of the citizen initiative approved by Maine voters on November 3, 2015.



What communications require a top 3 funders disclosure statement? A communication is required to include the disclosure statement if the communication is:

- An independent expenditure;
- In excess of \$250 per candidate; and
- Made over broadcast or cable television, broadcast radio, or Internet audio programming, or through direct mail, newspaper or other periodical publications.

The following are examples of communications not requiring the top 3 funders disclosure statement:

- Telephone calls;
- Websites and internet ads;
- Videos on the internet; and
- Outdoor advertising (campaign signs, banners, etc.).

What is required for a top 3 funders disclosure statement? The communication must conspicuously include the following statement: “The top 3 funders of (Name of the organization making the independent expenditure) are: (Names of the top 3 funders).”

- Audio and visual communications (e.g., broadcast or cable television ads) require both an audio and visual statement.
- The visual portion of a top 3 funders disclosure statement in a cable television or broadcast television communication must conform to federal regulations which regulate text size and duration of sponsorship information, specifically:
 - be equal to or greater than four percent of the vertical picture height, and
 - appear for not less than four seconds.
- For communications with a visual aspect other than television or video communications (e.g., mailers, palmcards), the top 3 funders disclosure statement must appear in a font size that is 12-point or larger.

The following is an example of a top 3 funders disclosure statement, coupled with the “paid for” disclosure statement:

Paid for by the Committee for a Better Maine, 2 Oak Street, Bangor, Maine. The top 3 funders of Committee for a Better Maine are Americans for a Fair Workplace, the National Business-Labor Council, and Get America Moving. **Not paid for or authorized by any candidate.**



The law contains some exceptions for small or short-duration communications:

- If a communication is made by broadcast or cable television and is 30 seconds or less in duration, the audible portion of the disclosure statement is only required to include the organization's top funder. The visual portion must still include the top three funders.
- If a communication is made by print and is 20 square inches or less, the disclosure statement is only required to include the organization's top funder.
- If a communication is made in an audio-only format and is 30 seconds or less in duration, the disclosure statement is only required to include the organization's top funder.

Who are an organization's top funders?

- A funder is any entity (a business, political committee, individual, etc.) that has given a cash or in-kind contribution to the organization since the day after the last general election.
- If the communication is paid for by a PAC that is a separate or segregated fund established by an organization to engage in political activity, the top 3 funders of the organization that established the PAC must be named in the disclosure statement.
- If the communication is paid for by a PAC fully funded or controlled by another PAC or other organization, the disclosure statement must contain the top 3 funders of the PAC or organization funding or controlling the PAC making the expenditure.
- If two or more funders are tied, the tie is broken by naming the funders in chronological order (oldest first). If the tie cannot be broken, the organization can choose which of the tied funders to include in the disclosure statement.
- If an organization's top funders change, the disclosure statement for any communication paid for after the change must be updated appropriately.
- An organization does not have to name funders giving less than \$1,000 or whose funds can be shown to have been used for purposes other than the communication because the funds were already spent in the order received or were strictly segregated in other accounts.
- If there is only one or two top funders, the disclosure statement should be "The top funder of (the organization) ..." or "The top 2 funders of (the organization) ..."
- If none of an organization's funders meets the criteria for the disclosure statement, the disclosure statement is not required.



CAMPAIGN COMMUNICATIONS REGARDING BALLOT QUESTIONS

Maine Election Law also requires disclosure statements to be on communications expressly advocating for or against a ballot question. This requirement applies to communications that cost more than \$500. These disclosure statements must clearly and conspicuously state the name and address of the person (including organizations) who made or financed the expenditure for the communication.

FEDERAL DISCLOSURE STATEMENT REQUIREMENTS

In addition to state requirements, the Federal Communications Commission (FCC) does require sponsorship identification to be on political advertisements on broadcast stations or cable television systems, and to be included in pre-recorded automated voice messages and auto-dialed calls (“robocalls”). For more information on federal sponsorship identification regulations, contact the FCC at the number listed at the end of this guidebook.

“ROBOCALLS”

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 cell 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. Committees are urged to read the FCC Enforcement Advisory at the end of this guidebook to understand and comply with the federal disclosure requirements for robocalls.

LEGAL REFERENCES

Disclosure on Candidate-related Communications	21-A MRSA § 1014
Disclosure of Top 3 Funders on Independent Expenditures	21-A M.R.S.A. § 1014(2-B); Rules, Chapter 1, § 7(12)
Disclosure on Ballot Question Committee Communications	21-A MRSA § 1055-A



Appendix

Other Terms & Definitions

Association: “Association” means a group of two or more persons, who are not all members of the same immediate family, acting in concert.

Candidate: “Candidate” means any person who has filed a petition under either sections 335 and 336 or sections 354 and 355 and has qualified as a candidate by either procedure, or any person who has received contributions or made expenditures or has given his consent for any other person to receive contributions or make expenditures with the intent of qualifying as a candidate.

Date of Contribution: “Date of Contribution” is the date it is received by a candidate, an agent of the candidate, a candidate’s committee, a party committee and its agents, or a political action committee or ballot question committee and its agents.

Form of Organization: The form or structure of an organization, including cooperatives, corporations, voluntary associations, partnerships or any other structure by which the committee functions. If a PAC or BQC is not a formal organization such as a non-profit, partnership, corporation or LLC then list the form of the organization as voluntary association. The date of origin is the incorporation or inception date if a voluntary association.

Influence: “Influence” means to promote, support, oppose or defeat.

Initiate: “Initiate” includes the collection of signatures and related activities to qualify a state or local initiative or referendum for the ballot.

Person: “Person” means an individual, committee, firm, partnership, corporation, association or organization.

Political Committee: “Political Committee” means 2 or more persons associated for the purpose of promoting or defeating a candidate, party or principle.

Statement of Support or Opposition. A statement indicating the positions of the committee, support or opposition with respect to a candidate, political committee, or campaign.



PUBLIC NOTICE

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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

"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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