

970 CMR 2.00: POLITICAL EXPENDITURES

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2.01: Scope and Purpose

M.G.L. c. 55 is a comprehensive and specific statute which covers a variety of areas concerning the financing of political campaigns in the Commonwealth for state, county, city and town elections. It regulates the sources from, and manner in which, campaign funds may be raised and spent. It provides for the disclosure of all contributions received and expenditures made. The statute also regulates certain conduct surrounding the raising and spending of campaign funds, such as the activities of public employees.

970 CMR 2.00 governs all expenditures by political committees organized for the purpose of participation in Massachusetts campaign finance activity.

2.02: Definitions

Terms used in 970 CMR shall have the meanings provided in M.G.L. c. 55. In addition:

Ballot Question Committee means a political committee which receives or expends money or other things of value for the purpose of favoring or opposing the adoption or rejection of a specific question or questions submitted to the voters including, without limitation, a charter change, an initiative or referendum question or a constitutional amendment.

2.02: continued

Candidate Committee means the political committee organized on behalf of a candidate in accordance with M.G.L. c. 55, § 5, and shall also apply to the campaign fund or account of a candidate who has not organized a candidate committee or who receives contributions or makes expenditures independently of such a committee where the fund or account is used or intended to be used to support the candidate's campaign or enhance the candidate's political future.

Constitutional Candidate Committee means the political committee organized on behalf of a candidate for governor, lieutenant governor, secretary of state, attorney general, treasurer and receiver general or auditor in accordance with M.G.L. c. 55, § 5.

Duly Organized means a political committee which has filed a Statement of Organization with the Office of Campaign and Political Finance or, if active solely for the purpose of a city or town election, with the city, town or district clerk or election commission.

Independent Expenditure PAC. A political action committee that, pursuant to 970 CMR 2.17, receives contributions to make independent expenditures, and does not make contributions to candidates or political committees, other than to other independent expenditure PACs and ballot question committees, in accordance with 970 CMR 1.22(10). Independent expenditure PACs may receive contributions from individuals without limit, and from corporations and other entities that are otherwise prohibited from contributing to PACs pursuant to M.G.L.c. 55, § 8. Any entity that raises or solicits funds for the purpose of making a contribution to an independent expenditure PAC is an independent expenditure PAC subject to all requirements applicable to independent expenditure PACs.

Joint Fundraiser means an event sponsored by two or more candidates or political committees, pursuant to 970 CMR 2.12, which is intended to raise funds, through the device of tickets, advertisements, or otherwise, to further the political future of the sponsoring candidates or political committees.

Local Election Official means any city, town or district clerk or board of election commissioners.

Membership Organization means any organization which identifies the individuals within the organization as members, which:

- (a) expressly states the qualifications and requirements for membership in its articles, bylaws, constitution or other formal organizational documents;
- (b) makes its articles, bylaws, constitution or other formal organizational documents available to its members upon request;
- (c) expressly solicits persons to become members, and acknowledges the organization's acceptance of membership; and
- (d) is not organized primarily for the purpose of influencing the nomination for election, or election, of any individual to state or local office.

Such organizations include, but are not limited to, clubs, unions and associations. Political committees and corporations or other entities subject to M.G.L. c. 55, § 8 are not "membership organizations". A person may be considered a "member" if the organization requires some affirmative action by the person, such as payment of dues, in order to become a member.

For purposes of 970 CMR 2.02: Membership Organization, the term "members" includes all persons who are currently satisfying the requirements for membership in a membership organization, affirmatively accept the membership organization's invitation to become a member, and either:

1. pay membership dues at least annually;
2. have a significant organizational attachment to the membership organization which includes affirmation of membership on at least an annual basis and direct participatory rights in the governance of the organization; or
3. have some significant financial attachment to the membership organization.

Nonresident Fundraiser means an event sponsored by a candidate for public elected office in Massachusetts, within the scope of M.G.L. c. 55, § 18B, which is intended to raise funds for any person seeking nomination or election to state or federal office, including President or Vice President, in:

2.02: continued

- (a) any state other than the commonwealth;
- (b) the federal government; the District of Columbia, or any territory or possession of the United States.

People's Committee means any political committee which is not a candidate's committee, political party committee, or ballot question committee, which:

- (a) only receives contributions from individuals;
- (b) limits contributions received from any individual to the aggregate of \$100 (indexed biennially in accordance with M.G.L. c. 55, § 1) during a calendar year;
- (c) has been in existence for at least six months;
- (d) contributes to five or more candidates; and
- (e) files a Declaration of Status Form (CPF Form 101 DS-1) with OCPF.

Political Action Committee means any political committee which is not a candidate's committee, political party committee, ballot question committee, independent expenditure PAC, or people's committee.

Political Party Committee means a political committee organized in accordance with M.G.L. c. 52 on behalf of a political party, as defined in M.G.L. c. 55, § 1, whether elected or non-elected.

Primarily for the Candidate's or Any Other Person's Personal Use means an expenditure by the committee the purpose of which is primarily to benefit personally the candidate or any other person.

Reasonable and Necessary Expenses means those expenses which are not extreme or excessive and which are integral and central to the political campaign for that public office.

Residual Funds means any and all assets of the political committee which the committee has legal and rightful title to at the time of its dissolution, and any and all assets of a candidate's account at the time of its dissolution.

2.03: General Provisions

970 CMR 2.00 may be amended at any time, and such amendments shall take effect in accordance with M.G.L. c. 30A, § 6.

2.04: Advisory Opinions

(1) Any person may request in writing an advisory opinion or guidance letter concerning the specific application of M.G.L. c. 55, or any regulation contained in 970 CMR.

(2) The written advisory opinion or guidance letter request shall describe a specific activity or transaction and shall pose specific questions. The request may be accompanied by such data, views and arguments as the requesting person deems pertinent.

(3) The Director shall review all requests for Advisory Opinions or guidance letters. He may request that additional or more specific information or questions be submitted by the requesting person.

The Director may determine that:

- (a) a particular request for an advisory opinion or guidance letter poses issues which are not within his jurisdiction;
- (b) the questions posed are not appropriate to an advisory opinion or guidance letter;
- (c) sufficient information has not been provided by the requesting person.

The Director may, for these reasons, determine that an advisory opinion or guidance letter will not be rendered. If such a determination is made, he shall, within a reasonable time, notify the requesting person that the advisory opinion or guidance letter will not be rendered. If such a determination is not made the Director shall, within a reasonable time, issue to the requesting person a written advisory opinion or guidance letter.

2.04: continued

(4) All advisory opinion or guidance letters requests and all advisory opinions or guidance letters shall be public records, under M.G.L. c. 4, § 7, and shall be subject to public inspection as required by M.G.L. c. 66, § 10. Other requests for guidance shall be confidential.

(5) The Director may, in his or her discretion, issue Interpretive Bulletins and Memoranda which concern matters of general application of M.G.L. c. 55 and 970 CMR 2.00.

(2.05: Expenditures: Reserved)

2.06: Expenditures by Candidates and Political Committees

(1) Expenditures by all candidates and political committees shall be governed by 970 CMR 2.06.

(2) Candidates and political committees may pay and expend money or other things of value for the enhancement of the political future of the candidate or principle for which the committee was organized, subject to any other prohibitions and limitations contained in M.G.L. c. 55 and 970 CMR 2.00. Statewide candidates, however, who receive public financing pursuant to M.G.L. c. 55C are subject to the additional restrictions in 970 CMR 2.06(7).

(3) Expenditures which may be made for the enhancement of the political future of the candidate or principle for which that political committee was organized shall include the following expenditures, as well as any expenditures which are similar to the following and not inconsistent with 970 CMR 2.00, M.G.L. c. 55 or any other law:

- (a) Postage incurred for mailing campaign literature and for conducting relevant campaign business;
- (b) Television and radio advertising;
- (c) Newspaper, Internet, billboard and magazine advertising;
- (d) Printing;
- (e) Computer use;
- (f) Polling voters;
- (g) Reasonable public relations expenses;
- (h) Reasonable expenses in connection with the operation of a campaign office or offices, including:
  - 1. Telephones, the use of which is restricted to campaign purposes except for incidental activity;
  - 2. Furniture purchase or rental, the nature and use of which is consistent with use in a campaign office;
  - 3. Office rent, provided that a political committee which is paying less than the fair market value of the space it rents is receiving a contribution in-kind. Such a contribution in-kind is subject to all the provisions of M.G.L. c. 55 regarding disclosure, limitations and prohibitions on contributions;
  - 4. Office equipment, including computers, postage meters, printers and copying machines;
  - 5. Utilities.
- (i) Campaign staff and consultants;
- (j) Reasonable travel expenses for a candidate or agents of the committee for travel primarily relating to any of the following purposes:
  - 1. party politics;
  - 2. campaigning for votes;
  - 3. fundraising;
  - 4. substantive issues which are directly related to the campaign of the candidate;
  - 5. attending meetings, conferences or seminars for candidates or political campaigns;
  - 6. obtaining services for which the political committee is permitted to make expenditures under 970 CMR 2.00;
  - 7. attending events for the purpose of enhanced provision of legislative or constituent services;
  - 8. attending a state or national political party convention, including payment of delegate fees; or

## 2.06: continued

9. other travel undertaken primarily to enhance a candidate's political future or the principle for which the committee was organized.

Travel expenses of a family member of a candidate for travel are presumed to be for personal use and not allowed. A committee may, however, rebut the presumption by requesting and obtaining advance approval from OCPF.

- (k) Rental of halls and other space for political activities;
- (l) Expenses for fundraising, for obtaining votes and for other similar activities, which may include beverages, food, entertainment, decorations, bartenders, security officers and service and maintenance persons;
- (m) Bumper stickers, signs, placards, brochures, leaflets and other such campaign items;
- (n) Delivery services and express mail;
- (o) Paper supplies;
- (p) Newspaper and magazines, literature, clipping services;
- (q) Inaugural expenses, which may include room rental, printing, decorations, entertainment, food and beverages;
- (r) The repayment of loans, if such loans:
  1. were received by the political committee in accordance with the requirements of 970 CMR 1.00: *Campaign Finance Activity* and M.G.L. c. 55;
  2. were used to defray expenditures permitted by 970 CMR 2.00; and
  3. did not exceed the maximum amounts set forth in 970 CMR 1.05(2).
- (s) Taxes;
- (t) Charitable contributions, if all of the following requirements are met:
  1. The contribution is made to an entity which is subject to either M.G.L. c. 12, § 8(e), M.G.L. c. 67 or M.G.L. c. 180;
  2. Neither the candidate, treasurer, or any official of the political committee is a trustee, officer, principal or beneficiary or involved in any manner in the operations of said entity;
  3. Neither the candidate, treasurer, nor any official of the political committee is related by consanguinity or affinity to any trustee, officer, principal or beneficiary of said entity;
  4. The candidate or political committee will receive publicity and foster political goodwill as a result of making the contribution.
- (u) Gifts and Flowers, of reasonable value, if the purpose of the expenditure falls within one of the following categories:
  1. Gifts to campaign workers, if:
    - a. The gift accurately reflects the contribution made by those workers to the efforts of the political campaign of the committee;
    - b. the gift is made in a timely fashion as to clearly indicate its purpose is to express gratitude for work done on behalf of the campaign; and
    - c. no gifts may be made to campaign workers for any other purpose or for any other occasion.
  2. The political committee or candidate will receive publicity and foster political goodwill as a result of making the gift or contribution, if:
    - a. The candidate, treasurer, or other officers of the committee, and in the case of a local party committee, the members of the committee, have no personal relationship with the individual or his or her family;
    - b. the gift is appropriate to the occasion which has prompted the gift; and
    - c. the gift would not be made but for the interest in it enhancing the political future of the candidate or principle for which the committee was organized.
  3. No gifts may be made under 970 CMR 2.06(2)(u)1. or 2. unless all the provisions of each subdivision are satisfied.
- (v) Memberships for the candidate in organizations and associations, provided that the candidate would not be participating in the particular organization or association but for the candidate's interest in it enhancing the candidate's political stature. This shall not be construed to permit the payment of memberships in professional organizations other than those specifically designed for political candidates;
- (w) Gifts to Scholarships Funds are permitted, if:
  1. the candidate and officers of the committee, and their family members, are not involved in selecting recipients or otherwise administering the scholarship fund; and
  2. the gift would not be made but for the interest in it enhancing the political future of the candidate or the principle for which the committee was organized.

2.06: continued

- (x) Scholarships may be awarded to an individual, if:
  - 1. the candidate, treasurer, or other officers of the committee, and in the case of a local party committee, the members of the committee, have no personal relationship with the individual or his or her family;
  - 2. the scholarship would not be awarded but for the interest in it enhancing the political future of the candidate or the principle for which the committee was organized; and
  - 3. except in the instance of a political party committee, which may select recipients of a scholarship award, the recipient of the scholarship award may not be selected by a candidate or political committee, but instead must be selected by a separate entity, not comprised of the candidate, or officers of the committee, or their family members.

(4) Any candidate or political committee subject to 970 CMR 2.06 may request an advisory opinion, pursuant to 970 CMR 2.04, to determine the permissibility of any other expenditure under 970 CMR 2.06.

(5) The contributions by a candidate committee to another candidate committee shall not exceed \$100 per calendar year;

(6) Prohibitions.

(a) Personal Use. Notwithstanding any of provisions in 970 CMR 2.06(1) through (5), no political committee may make an expenditure that is primarily for the candidate's or any other person's personal use. Expenditures prohibited under 970 CMR 2.06(6) shall include, but are not limited to the following:

- 1. The payment of fines, penalties, restitution or damages incurred for a violation of M.G.L. c. 268A or 268B. This prohibition shall apply to payments made pursuant to an agreement to resolve allegations of violations of M.G.L. c. 268A or 268B, but shall not apply to payments for legal services in relation to defending against allegations of violations of such chapters of the General Laws;
- 2. Any expenditure which acknowledges any guilt as to the violation of any law.
- 3. Any expenses relative to alleged violations of law, civil suits or administrative proceedings, other than those expenses relative to legal action undertaken primarily to protect or further the interests of the political committee. However, under no circumstances may funds of a political committee be used for any such expenses incurred after conviction of the incumbent office holder, candidate or treasurer has occurred;
- 4. Normal clothing attire which is usual to the ordinary course of everyday living. 970 CMR 2.06(6)(a)4. shall not apply to:
  - a. clothing items such as tuxedos or gowns rented or purchased by a candidate for the candidate's use exclusively at political or governmental functions; and
  - b. novelty clothing items and costumes which are worn primarily to advertise one's candidacy;

(b) No political committee subject to 970 CMR 2.06 may pay or expend money or any thing of value unless such transaction will enhance the political future of the candidate or principle on whose behalf the committee was organized and such transaction is not primarily for personal use.

(7) Candidate committees that receive public financing pursuant to M.G.L. c. 55C may not, during the calendar year the public financing is received, make any contributions to another political committee, except that the candidate's committee may pay a political party committee for goods or services provided by the party committee to the candidate committee.

2.07: Miscellaneous Provisions Applicable to all Political Committees

(1) Any expenditure made by a political action committee or a people's committee for the benefit of a clearly identified candidate must be disclosed as a contribution or contribution in-kind received by that candidate or his or her political committee. This requirement shall not apply to an expenditure which is made by such a political action committee or a people's committee without the cooperation or prior consent of, or without any consultation with the candidate or any authorized agent of his or her political committee.

2.07: continued

(2) Items acquired by a political committee must be primarily used by such political committee for the purposes permitted by 970 CMR 2.00. Under no circumstances may the use of an item in a manner other than that permitted by 970 CMR 2.00 be more than incidental to the overall use of the item. A political committee must be reimbursed for any such incidental use of an item. Reimbursement shall be made:

- (a) By the person or persons to whose benefit that incidental use is attributable;
- (b) By check payable to the political committee for the reasonable fair market value of that portion of the item's use for which the political committee is not benefiting.

(3) The use of anything of value by a political committee, other than of those things which are owned by the political committee or for which the political committee has paid the fair market value for the use thereof, shall constitute a contribution in-kind to that political committee by the person or entity which has ownership of the thing of value. Such contributions in-kind are subject to all limitation and disclosure requirements of M.G.L. c. 55. 970 CMR 2.07(3) shall include, but not be limited to the use of:

- (a) office equipment;
- (b) function rooms;
- (c) equipment;
- (d) transportation vehicles.

Notwithstanding the above, 970 CMR 2.07(3) shall not apply to the use of space provided free of charge or at less than a fair market value to a political committee when it is a usual and customary practice for the owner to provide such space in such a manner to the general public.

(4) No individual, candidate, political committee or person acting on behalf of such individual, candidate or political committee shall make an expenditure for an amount exceeding \$50 except by check, other than as provided for in M.G.L. c. 55, § 9 and 970 CMR 2.09.

(5) A political committee may invest its funds only in the following:

- (a) savings accounts, which shall include any interest bearing account or deposit in a bank or savings institution;
- (b) money market instruments, or in any fund which invests primarily in money market instruments, if such instruments are short term and may include the following:
  - 1. United States Government Obligations: Debt Securities issued by the United States Treasury or by an agency or instrumentality of the United States Government;
  - 2. Certificates of Deposit: Negotiable certificates issued by a savings bank and commercial bank which earn specified rates of interest over given periods;
  - 3. Banker's Acceptances: Negotiable obligations of a bank to pay a draft which has been drawn on it;
  - 4. Commercial Paper: Short term promissory notes of large corporations with high commercial paper ratings;
  - 5. Repurchase Agreements: The purchase of securities with the condition that the securities will be sold back to the original owner at the end of a specified term for a negotiated rate of interest which yields a higher price, provided however, that such repurchase agreements are limited to member banks of the Federal Reserve System or primary dealers in United States Government Securities.
- (c) All investments authorized under 970 CMR 2.07(5) shall be made in the exercise of the judgment and care consistent with the prudent man rule, so called.

(6) In the event of the dissolution of a political committee, any residual funds, which shall include all funds received as the result of the disposition of the assets of the political committee as provided in 970 CMR 2.08, must be donated in accordance with the provisions of the residual funds clause of M.G.L. c. 55, § 18, clause 18. In accordance with M.G.L. c. 55, § 18, clause 15 of the residual funds clause, residual funds may be donated to the General Fund of the Commonwealth, or to the entities specified in M.G.L. c. 55, § 18, clause 15, parts (ii) through (iv).

(7) The disposition of residual funds, as provided in 970 CMR 2.07(7), shall apply to all assets of a political committee organized on behalf of a candidate at the time of the death of said candidate, other than those funds which are necessary to pay the following expenses:

- (a) Obligations incurred by the committee prior to the candidate's death, provided that such expenditures are permitted by 970 CMR 2.06;

2.07: continued

- (b) Costs clearly associated with administering the termination of the committee;
  - (c) Obligations to employees which would be reasonable and payable as a usual and customary business practice;
  - (d) Federal and state taxes, such as employee taxes and interest income taxes.
- (8) Identification Numbers. The Director shall assign each candidate and political committee registered with this office a unique identification number.
- (a) Each political committee shall include, on any statement, affidavit or report filed with the Director:
    - 1. the political committee's identification number; and
    - 2. the identification number of any political action committee or people's committee from which it receives or to which it makes a contribution or transfer of funds.
  - (b) All political action committees and people's committees shall have the committee's identification number printed on all committee checks.
- (9) A person nominated by the governor for a position that requires confirmation by the executive council, if confirmed prior to January 1, 2010, is not required to dissolve any political committee organized on behalf of such person in accordance with M.G.L. c. 55, § 18.
- (10) In accordance with M.G.L. c. 55, § 5, a candidate who does not have a committee organized on the candidate's behalf may not sign campaign checks payable to himself or herself. A candidate without a committee must authorize another person to sign checks on the candidate's behalf if the candidate is to be reimbursed for any campaign expenditures.
- (11) Political committees, when filing statements of organization in accordance with M.G.L. c. 55, § 5, shall include the email address (if any) of the principal officers of the committee, and of the candidate, if the committee is organized on behalf of a candidate.
- (12) Treasurer Training. Each treasurer of a political committee that files reports with OCPF shall complete an online training program created by OCPF in accordance with 970 CMR 2.07(12).
- (a) Treasurers accepting the position of treasurer in accordance with M.G.L. c. 55, § 5 after January 1, 2015 shall complete the training program within 30 days after filing their acceptance.
  - (b) All other treasurers of committees that file reports with OCPF shall be responsible for completing the training program during the first six months of each odd-numbered year, starting in 2015.
  - (c) Failure to complete the training program may result in disqualification as treasurer.
- (13) Closure of Inactive Committees. A political committee, that files report with OCPF, that has an outstanding balance of \$250 or less, which has not received contributions or made expenditures, or incurred liabilities, in excess of \$250 during a period of 24 consecutive months, and does not have outstanding liabilities exceeding \$250, may be closed administratively by the Director. When a committee is closed, OCPF will notify the treasurer of the committee in writing, and if the committee is organized on behalf of a candidate, the candidate. After notification, a committee may be reopened upon written request from the committee to OCPF.
- (14) Disclosure of Candidate Address. For purposes of M.G.L. c. 55, § 18 (clause (8), 11<sup>th</sup> paragraph), a political party committee or political action committee complies with the requirement of disclosing "the name and address... [of] each candidate on whose behalf [an] expenditure was made," by disclosing either the residential, committee or other address of the candidate supported.

2.08: Disclosure and Disposition of Assets of Political Committees

- (1) For the purposes of 970 CMR 2.08, "assets" shall mean any one item that has a useful life of more than one year, would be depreciable in a normal business environment, and has a cost or value of \$1,000 or more at the time of its acquisition.



2.08: continued

- (2) Each political committee shall disclose, as receipts in the committee's campaign finance reports, funds received upon the disposition of its assets.
- (3) Assets of a political committee may not accrue to the personal benefit of a candidate or any other person.
- (4) Assets of a political committee may only be disposed of in a manner which conforms to the provisions of M.G.L. c. 55.

2.09: Expenditures by Debit Card, Credit Card, or Wire Transfer

- (1) Definitions. For the purposes of 970 CMR 2.09, the following words have the following meanings:

Credit Card shall mean a card or plate issued by a bank or other credit institution for the purpose of obtaining goods or services on credit.

Debit Card shall mean a card or plate issued by a bank or other credit institution for the purpose of obtaining goods or services by using funds in the cardholder's account.

Wire Transfer (also referred to as an Electronic Expenditure) shall mean a payment by a political committee from its campaign account, initiated by telephone or electronically not using a credit or debit card.

- (2) Debit Card Expenditures. A political committee may apply for and receive a debit card linked to the committee's account, for the purposes of making expenditures.

- (a) Any debit card maintained and used by a political committee must bear the name of the political committee on the face of the card. The card may also bear the name of the candidate, treasurer or other agent of the political committee, who has been authorized as a card holder by the political committee.

- (b) A candidate or political committee may not use a debit card for the purpose of obtaining any cash advance or loan of money. Such debit cards may only be used for the purpose of obtaining goods and services.

- (c) Candidates and committees not required to appoint a depository in accordance with M.G.L. c. 55, § 19 may make electronic expenditures linked to the committee account provided that the bank statement for the account provides sufficient information to document the name and address of the vendor/payee for any debit card transaction. Debit card expenditures shall be reported in accordance with M.G.L. c. 55, § 18 or 19 if made by a committee required to appoint a depository.

- (d) Candidates and committees required to appoint a depository, in accordance with M.G.L. c. 55, § 19, shall review the expenditure reports filed by their depository bank and must, within seven days of the date its bank files a report disclosing an expenditure made by debit card, append the bank's report to disclose the specific purpose of the expenditure.

- (3) Credit Card Expenditures. A political committee may apply for and receive a credit card for the purpose of making expenditures, which are permitted by and subject to all provisions of 970 CMR 2.00. Alternatively, a candidate may personally apply for a credit card to be dedicated in its entirety for use solely by that candidate's political committee, subject to the following:

- (a) The committee makes all payments directly to the credit card company;

- (b) The credit card bears the name of the committee on its face, or if the financial institution issuing the card will not allow the committee's name to be placed on the card, the card may bear the name of the candidate, provided that the candidate obtaining the card agrees with the committee, in writing, that the card will be maintained and used exclusively by the committee and that the committee will comply with the requirements of 970 CMR 2.09. The card may also bear the name of the treasurer or other agent of the political committee, who has been authorized as a card holder by the political committee.

- (c) Only the candidate or the candidate committee may provide collateral or funds to guaranty payment for purposes of obtaining the credit card.

## 2.09: continued

- (d) Any application for a credit card to be maintained and used by a political committee must be considered and processed by the bank or other lending institution in accordance with applicable banking laws and in the ordinary course of business. This means that the determination of the credit worthiness of the committee applicant or candidate must be subject to the same criteria as other similar applicants in a like financial position.
- (e) Any extension of credit, and the terms of the credit, must be commercially reasonable.
- (f) Any individual guarantees which are provided to the lending institution considering a credit card application, whether voluntarily or at the request of the lending institution, are subject to all contribution limitations of M.G.L. c. 55. Therefore, no individual, other than the candidate, may be a guarantor on a credit card for any amount which, together with all other contributions by that individual to that political committee, results in a contribution in excess of the amount permitted by statute.
- (g) A candidate or political committee may not use a credit card for the purpose of obtaining any cash advance or loan of money. Such credit cards may only be used for the purpose of obtaining goods and services.
- (h) Any political committee which maintains and uses a credit card shall file reports disclosing all campaign finance activity. Such reports shall be filed as follows:
1. For all candidates and political committees required to designate a depository account under M.G.L. c. 55, § 19, on or before the 15<sup>th</sup> day of each month covering the entire statement period of the most recent credit card statement received prior to the date of filing.
  2. For city or town ballot question committees, the credit card disclosure must be filed on the same schedule and accompany the campaign finance reports required to be filed on or before the eighth day preceding a city or town preliminary or primary, the eighth day preceding a city or town election, and if a city election, the 20<sup>th</sup> day of January in the following year complete as to the 31<sup>st</sup> day of December of the prior year, and if a town election, the 30<sup>th</sup> day following said election. All such reports shall be complete as of the final day of the most recent credit card statement received prior to the date of filing.
  3. For all other political committees and candidates relative to city or town elections requiring filing of campaign finance reports with the city or town clerk, the credit card disclosure shall accompany the campaign finance report required to be filed the eighth day preceding the primary; the eighth day preceding the election; in a town election the 30<sup>th</sup> day following said election; and the 20<sup>th</sup> day of January. All such reports shall be complete as of the most recent credit card statement received prior to the date of the filing.
  4. For state ballot question committees the credit card disclosure must be filed on the same schedule and accompany the campaign finance reports required to be filed the 60<sup>th</sup> day prior to the election, the subsequent campaign finance reports required to be filed on the 20<sup>th</sup> day of each month until the election; the campaign finance reports (if any) required to be filed the fifth day of each month thereafter and the campaign finance reports required on or before the 20<sup>th</sup> of January. All such reports shall be complete as of the final day of the most recent credit card statement received prior to the date of the filing.
  5. For all other candidates and political committees, the credit card disclosure shall accompany the campaign finance report required to be filed on or before the eighth day preceding the primary; on or before the eighth day preceding the election and on or before the 20<sup>th</sup> day of January. All such reports shall be complete as of the final day of the most recent credit card statement received prior to the date of the filing.
  6. A separate report shall be filed for each credit card account of the political committee.
  7. For the purposes of 970 CMR 2.09, the date of each expenditure made with a credit card shall be the transaction date shown on the credit card statement.
- (4) Expenditures by Electronic Means.
- (a) An electronic payment of a committee's credit card bill or other invoice (*e.g.*, a payment online, by phone, or by other electronic means) by a candidate or committee shall be considered a transaction by check for purposes of M.G.L. c. 55, § 9.

2.09: continued

(b) Candidates and committees required to appoint a depository in accordance with M.G.L. c. 55, § 19 shall review the expenditure reports filed by their depository bank and must, within seven business days of the date its bank files a report disclosing an expenditure made by electronic means, append the bank's report to accurately disclose the recipient and the specific purpose of each individual charge comprising the expenditure.

(5) Recordkeeping Requirements. Records of all electronic expenditures including all payments made by credit and debit card shall be maintained pursuant to M.G.L. c. 55, §§ 2 and 5 and 970 CMR 1.10: *Record Keeping*.

2.10: Reimbursements to Candidates and Other Individuals

(1) The provisions of 970 CMR 2.10 shall apply to all expenditures made by a political committee for the purpose of reimbursing a candidate or any other individual.

(2) A candidate or other individual may be reimbursed for expenses paid out by that individual or candidate if:

- (a) The expenditures made by said individual or candidate, for which he or she is being reimbursed, is permitted by, and entirely consistent with, M.G.L. c. 55 and 970 CMR; and
- (b) The individual or candidate receiving such reimbursement has made the expenditure out of his or her own personal funds and is the true source of those funds;
- (c) The individual or candidate has not been reimbursed for said expenditure, by any other individual or entity; and
- (d) The reimbursement is made promptly. If a committee does not reimburse an individual for goods or services purchased by that individual for the committee within 30 days of the purchase, the committee should consider the individual's expenditure as an in-kind contribution or a loan.

(3) A candidate or individual which has been reimbursed by a political committee, under 970 CMR 2.10 may not be reimbursed, at any time, for said expense by any other individual or entity.

(4) A political committee may not make an expenditure where the expenditure has already been paid directly or indirectly, by the candidate, other individual or any other entity, other than in accordance with 970 CMR 2.10.

(5) Any reimbursement to the candidate or any other individual may not result in any payment of funds greater than the amount expended by the candidate or individual.

(6) A political committee which is not required to designate a depository in accordance with M.G.L. c. 55, § 19, which reimburses any person more than \$50 in any reporting period shall disclose such reimbursement on a form provided by the Director. The form shall be filed with the campaign finance report prepared for the period during which the reimbursement is made and shall itemize, for each such expenditure, the date and amount of the expenditure, the name and address of the vendor, the purpose of the expenditure, the amount of the expenditure, the name of the person being reimbursed, and the date and amount of the reimbursement.

(7) Candidates and political committees required to designate a depository by M.G.L. c. 55, § 19 may not make reimbursements in excess of \$100 except as specified by M.G.L. c. 55, §§ 9 and 19(c). Such candidates and committees, however, which reimburse any person more than \$50 shall disclose such reimbursement, on a form provided by the Director, within 30 days of making the expenditure and shall itemize, for each such expenditure, the date and amount of the expenditure, the name and address of the vendor, the purpose of the expenditure, the amount of the expenditure, the name of the person being reimbursed, and the date and amount of the reimbursement.

(8) Any reimbursement that is not documented as required by 970 CMR 2.10(6) or (7) creates a presumption that the expenditure was made for the personal use of the person receiving the funds. The presumption may be rebutted if a committee files the required disclosure with OCPF and submits sufficient evidence demonstrating that the expenditure was made for purposes consistent with M.G.L. c. 55, § 6.

2.11: Joint Campaign Activities

Two or more Massachusetts candidate committees or political party committees may jointly make expenditures including, but not necessarily limited to, expenditures for a joint fundraising event in accordance with 970 CMR 2.12, or the purchase of campaign materials, media services or political flyers for a joint campaign event. The expenditures defined in 970 CMR 2.11, as well as any expenditure which is similar to the following and not inconsistent with M.G.L. c. 55 and 970 CMR, shall be permitted:

(1) Definitions. For the purposes of 970 CMR 2.11, the following phrases shall have the following meanings:

Campaign Material means any materials used in political campaigns including, but not limited to, buttons, bumper stickers, signs, balloons, hats, or T-shirts.

Media Services means a media service including, but not limited to, advertisements or announcements in newspapers, radio, broadcast or cable television, video, or billboards.

Political Flyer means any written material used in political campaigns including, but not limited to, a flyer, pamphlet, booklet, brochure, or slate card prepared by a candidate or political committee.

(2) Primary Purpose of Expenditure. An expenditure by a candidate committee or political party committee for the purpose of making a joint expenditure with another candidate or political party committee is permitted only if the primary purpose of the expenditure is the promotion of the nomination or election of the candidate whose committee makes the expenditure, or the promotion of the political party for which the committee was organized.

(3) Resulting Contribution. An expenditure by any political committee made in connection with another political committee which is not expressly authorized by 970 CMR 2.11 or does not comply with the requirements of 970 CMR 2.11, shall be considered a contribution as defined by M.G.L. c. 55, § 1 from the committee making the expenditure to the other committee(s) involved in and benefitting from the expenditure, and will be subject to the contribution limitations of M.G.L. c. 55, §§ 6, 6A and 6B.

(4) Cost Allocation. Costs incurred pursuant to 970 CMR 2.11 shall be allocated between the participating committees according to the benefit reasonably expected to be derived by each committee based upon factors that include, but are not limited to, the amount of print space, airtime, consultant or staff time, or office space allocated to each committee, or the comparative benefit or use of goods or services received by each committee. The relative prominence or popularity of the participating candidates are not appropriate factors to consider when allocating costs for joint expenditures.

(5) Distribution of Joint Campaign Materials. Candidate committees or political party committees making expenditures to purchase joint campaign materials shall distribute such materials in a manner which benefits each candidate or committee.

(6) Reporting.

(a) Each candidate or committee making joint expenditures must disclose the expenditures to the Director, or with the local election official, if applicable, in campaign finance reports as required by M.G.L. c. 55, §§ 18 and 19. Each participating candidate or committee's report must identify the other candidate(s) or committee(s) participating in the joint expenditure.

(b) Reports shall be filed according to the schedule provided in M.G.L. c. 55, §§ 18 and 19.

(7) Maintenance of Records. Each candidate committee or political party committee making joint expenditures must maintain complete records, consistent with M.G.L. c. 55, §§ 2 and 5, reflecting all expenditures made.

2.11: continued

(8) Exemptions for Certain Committees. Through the 30<sup>th</sup> day after the relevant general election, 970 CMR 2.11(2) and (4) shall not apply to joint expenditures by committees organized to promote candidates for Governor and Lieutenant Governor once they are deemed to be running as a ticket in the general election if the primary purpose of the expenditure is the promotion of the election of the candidates' ticket. For the purposes of 970 CMR 2.11(8), the following candidates are deemed to be running as a ticket in the general election:

- (a) party candidates who have been nominated at a primary election; or
- (b) designation and unenrolled candidates who have been jointly nominated pursuant to M.G.L. c. 53.

(9) Joint Campaign Events. Two or more Massachusetts candidate committees or political party committees may sponsor a joint campaign event if they allocate costs according to the benefit reasonably expected to be derived by each committee, and they each pay vendors directly. Each candidate or committee participating in a joint campaign event must maintain complete records, consistent with M.G.L. c. 55, §§ 2 and 5, regarding the event.

2.12: Joint Fundraising Events

(1) Joint fundraising events may take place as provided in 970 CMR 2.12.

(a) One or more candidates or candidate committees may sponsor a joint fundraising event with other candidates or candidate committees.

(b) One or more political party committees may sponsor a joint fundraising event with other political party committees.

(c) Committees participating in a joint fundraising event, except for an event held in accordance with 970 CMR 2.12(1)(e), may designate an individual or entity to be a "joint fundraising agent" to make expenditures, accept contributions, allocate proceeds and maintain records in accordance with 970 CMR 2.12. If a joint fundraising agent is not used, each participating committee and candidate must:

- 1. allocate costs according to the percent of total contributions expected to be received by each candidate or committee;
- 2. pay vendors directly;
- 3. ensure that contributors write checks directly to the participating committees; and
- 4. maintain complete records, consistent with M.G.L. c. 55, §§ 2 and 5, regarding the event.

(d) If a joint fundraising agent is used, contributors may contribute by check made payable to the joint fundraising agent. All funds received by a joint fundraising agent, for an event held in accordance with 970 CMR 2.12(1)(a) or (b), must be deposited in a separate, segregated account designated for that purpose.

(e) Where joint fundraising events are held by candidates or candidate committees and political party committees, joint fundraising agents may not be used. One or more state or local committees of a political party may sponsor a joint fundraising event with one or more candidates or candidate committees only if each participating committee and candidate:

- 1. allocates costs according to the percent of total contributions expected to be received by each candidate or committee;
- 2. pays vendors directly;
- 3. ensures that contributors write checks directly to the participating committees; and
- 4. maintains complete records, consistent with M.G.L. c. 55, §§ 2 and 5, regarding the event.

(f) Political action committees and people's committees may not sponsor joint fundraising events with any candidate or committee.

(g) Ballot question committees may not sponsor joint fundraising events with candidates or candidate committees.

(2) Expenditures incurred and contributions received by candidates and committees participating in joint fundraising events held in accordance with 970 CMR 2.12(1)(a) or (b), and using a designated joint fundraising agent are subject to the following restrictions.

2.12: continued

- (a) Primary Purpose of Expenditure.
1. An expenditure by a participating committee in connection with a fundraising event is permitted only if the primary purpose of the expenditure is the enhancement of the political future of the candidate or the enhancement of the political party for which the committee was organized.
  2. An expenditure by a participating committee in connection with a joint fundraiser which does not comply with the requirements of 970 CMR 2.12(2)(a)1., shall be considered a contribution as defined by M.G.L. c. 55, § 1 from the committee making the expenditure to the committee benefiting from the expenditure and will be subject to the contribution limitations of M.G.L. c. 55, § 6.
- (b) Allocation of Expenditures and Liabilities.
1. Funding of Joint Fundraising Agent. To the extent the committees participating in an event held in accordance with 970 CMR 2.12(1)(a) or (b) provides funds to a joint fundraising agent to allow the joint fundraising agent to make expenditures in connection with the event, each participating committee must provide funds and incur liabilities equally.
  2. Expenditures by Joint Fundraising Agent. A joint fundraising agent may make expenditures only to defray the costs of a joint fundraising event held in accordance with 970 CMR 2.12(1)(a) or (b). Such expenditures may be made from funds provided by sponsoring participating committees or from proceeds received from contributors.
- (c) Attribution and Distribution of Contributions. Contributions received at or in connection with a joint fundraising event held, in accordance with 970 CMR 2.12(1)(a) or (b), must be “attributed” to each participating committee in accordance with one of the alternatives defined in 970 CMR 2.12(2)(c). Attribution is based on gross proceeds received, *i.e.*, no deduction is made to reflect expenditures by a joint fundraising agent. After attribution, net proceeds must be distributed, in accordance with 970 CMR 2.12(2)(c), to each participating committee.
1. Pro Rata Attribution and Distribution. Unless participating committees agree otherwise, and such agreement complies with 970 CMR 2.12(2)(c)2. or 3., contributions will be attributed equally to each participating committee and each committee will receive equal shares of net proceeds. Prior to purchasing a ticket or making a contribution, contributors must be informed that contributions are understood to be made to each participating committee in equal shares.
    - a. Attribution. Each contributor shall be understood to be a contributor to each participating committee, and the *pro rata* portion of an individual’s contribution, shall be attributed to each participating committee. For example, if a person contributes \$60, and three candidate committees participate in an event, \$20 is attributed to each committee, which amount is applied to the maximum contribution allowed by M.G.L. c. 55, § 7A.
    - b. Distribution. Net proceeds shall be distributed to each participating committee in equal shares. For example, if three candidate committees participate in a joint fundraising event which receives \$3,500 in contributions, but the joint fundraising agent spends \$500 in connection with the event, each committee is entitled to a 1/3 share (\$1,000) of the \$3,000 in net proceeds.
  2. Attribution and Distribution Based on Committee Selling Ticket or Arranging for Contribution. Prior to the event, participating committees may agree, in writing, to allocate contributions and distribute net proceeds based on which committee sells a particular ticket or arranges for a particular contribution. Contributors must be informed, prior to making a contribution or buying a ticket, that the contribution will be reported as a contribution to the committee which sold the ticket and the proceeds will be given to that committee.
    - a. Attribution. Each contributor shall be understood to be a contributor to the committee which sells the contributor a ticket or arranges for the contributor’s contribution. For example, if three committees hold a joint fundraising event and one committee sells tickets to six individuals, but the other two committees do not sell any tickets, the contributions would be attributed, in their entirety, to the first committee.

## 2.12: continued

b. Distribution. Net proceeds shall be distributed to each participating committee in proportion to the total amount of contributions arranged by each committee. For example, if three candidate committees participate in a joint fundraising event which receives \$3,000 in contributions, but the joint fundraising agent spends \$1,000 in connection with the event, distribution of the \$2,000 in net proceeds will be determined by the total contributions arranged by each participating committee. If one of the three committees arranged for \$1,500 ( $\frac{1}{2}$  of the total contributions received by the joint fundraising agent), that committee would receive a distribution of  $\frac{1}{2}$  of the net proceeds, or \$1,000. The remaining \$1,000 of net proceeds would be distributed to the other two committees based on the percentage of contributions arranged by each.

3. Distribution Based on Agreement of Participating Party Committees. Prior to the event, if all participating committees are committees organized on behalf of state, city, ward, or town political party committees, the participating committees may agree in writing to distribute net proceeds and allocate contributions based on various objective factors, including factors which objectively measure the relative benefit which should be applied to each participant.

a. Attribution. Attribution of contributions shall be determined in accordance with the committees' agreement. For example, if three town committees agree to attribute contributions based on a contributor's residence, and 50% of the total of \$3,000 in contributions is from one town, 50% of total contributions (\$1,500) would be attributed to that town's committee.

b. Distribution. Distribution of net proceeds shall be determined in accordance with the committees' agreement. In the above example, if \$500 of the \$3,000 total contributed is used to pay expenses, the town committee, which is attributed 50% of the contributions, would receive \$1,250 (the attributable amount less the event's expenses multiplied by 50%).

(d) Limitation on Contributions to Joint Fundraising Agents. Fundraising agents managing joint fundraising events in accordance with 970 CMR 2.12(1)(a) or (b) must ensure that contributions received on behalf of candidates and political committees comply with M.G.L. c. 55's limitations on contributions.

1. Contributions Received by Joint Fundraising Agents. Such contributions are subject to the combined limitation of those participating in the joint fundraising event. For example, if three candidates hold an event, and they choose to attribute and distribute contributions on a *pro rata* basis, *i.e.*, as defined in 970 CMR 2.12(2)(c)1., an individual could contribute up to \$3,000, assuming:

- a. the proceeds are divided equally among the candidates; and
- b. the individual has given no other contributions to any of the three candidates during the calendar year.

On the other hand, if the participating candidates choose to attribute and distribute contributions based on which committee sells the tickets, *i.e.*, as defined in 970 CMR 2.12(2)(c)2., an individual could contribute up to \$1,000 to any one committee selling tickets, assuming no other contributions are made to that committee during a calendar year.

2. Treatment of Excess Contributions. A contribution may not be accepted by a joint fundraising agent to the extent the contribution exceeds the limits imposed by M.G.L. c. 55. If a contribution is accepted by a fundraising agent and then later determined to be, in whole or in part, in excess of the amount permitted by M.G.L. c. 55, the excess amount must immediately be refunded by the fundraising agent to the contributor.

(e) Identification and Distribution of Contributions Received at Joint Fundraising Events.  
1. Contributions over \$50.00 must be by check made payable to the joint fundraising agent.

2. All expenditures shall be paid and all proceeds of an event shall be distributed to participating committees within 30 days of the event, pursuant to 970 CMR 2.12(2)(c), to each sponsor.

2.12: continued

(3) Reporting.

(a) Each joint fundraising agent managing a joint fundraising event in accordance with 970 CMR 2.12(1)(a) or (b) must disclose to the participating candidates and committees, on a form prescribed by the Director:

1. the date of the event;
2. the total contributions received by the joint fundraising agent;
3. the amount paid to the joint fundraising agent by each participating committee (these amounts will also be reflected, as expenditures, in the campaign finance report filed by a participating committee);
4. the name and address of each contributor, regardless of the amount contributed;
5. the amount contributed by each contributor;
6. the attribution method used and the amount attributable to each participating committee;
7. the occupation and employer of each contributor making a contribution if a participating committee would receive, in connection with the event, \$200 or more;
8. a listing of all in-kind contributions received by the joint fundraising agent reflecting the date received, the contributor, the residential address of the contributor, the occupation and employer of the contributor (if the value of the contribution, together with any other contribution received from the contributor, would result in a participating committee receiving \$200 or more in connection with the event), and a description of the contribution and its total value (which will be allocated *pro rata* or as agreed prior to the event, among each participating committee);
9. the full name and address of each person to whom an expenditure is made by the joint fundraising agent, the amount, date and purpose of each expenditure, and a total of all such expenditures, whether from funds received from participating committees or from proceeds of the event;
10. the date proceeds are distributed; and
11. the share of proceeds received by each committee (which will also appear as a receipt in a participating committee's campaign finance report).

(b) The report shall be duplicated by the joint fundraising agent who shall provide a copy of the report to each participating committee. The report shall be provided to each sponsoring committee within 30 days of the event.

(c) Participating committees not required to designate a depository by M.G.L. c. 55, § 19 shall file, in paper format, the joint fundraising report on the same day the committee files the campaign finance report which reflects the distribution of proceeds from the joint fundraising agent.

(d) Participating committees required to designate a depository pursuant to M.G.L. c. 55, § 19 shall deposit all funds received from the joint fundraising agent within seven days of receipt from the joint fundraising agent. Thereafter, such committees shall file the joint fundraising report with the Director on or before the fifth day of the month following the deposit of the proceeds.

(e) Participating candidates and treasurers of participating committees shall review the joint fundraising report, verify the determination of the share of contributions and expenditures attributable to the sponsoring committee.

(f) Participating candidates and treasurers of participating committees and joint fundraising agents are responsible for ensuring the accuracy of the information contained in the joint fundraising report.

(g) Participating candidates and treasurers shall refund any contribution or portion thereof, of contributions attributed to the candidate, or portion thereof, which, when considered together with other contributions received from a contributor, exceed the limitations of the campaign finance law, including the limitations established in M.G.L. c. 55, § 7A, or is otherwise not consistent with the requirements established by the campaign finance law.

(4) Maintenance of Records.

(a) A joint fundraising agent managing a joint fundraising event, in accordance with 970 CMR 2.12(1)(b) or (c), must make copies of all records pursuant to M.G.L. c. 55, §§ 2 and 5 reflecting contributions received and expenditures made in connection with the event and provide a set of copied records to each participating committee.

(b) Each committee participating in a joint fundraising event must maintain complete records reflecting expenditures made and contributions received in connection with the activity.



2.12: continued

(c) A committee participating in a joint fundraising event must donate funds received to a charitable or other entity specified in the residual funds clause of M.G.L. c. 55, § 18, if the joint fundraising agent or participating committee has failed to maintain records reflecting the allocation of contributions and expenditures.

2.13: Nonresident Fundraising Events

(1) Sponsorship of Event. A candidate or elected official will be deemed to “sponsor” a fundraising event on behalf of a nonresident candidate, and will be subject to the reporting requirements defined in M.G.L. c. 55, § 18B, if the Massachusetts candidate or elected official is primarily responsible for taking any one or more of the following actions:

- (a) Arranging for fundraising events or endorsing fundraising events; or
- (b) Taking action to encourage attendance at the event.

(2) A sponsor of a nonresident fundraising event must file the report required by M.G.L. c. 55, § 18B with the Director within 30 days of the event. Where an event is sponsored by more than one person, sponsors may file one joint report.

2.14: Failure to File Reports, Penalties

(1) Campaign Finance Reports, Generally. Failure to file any of the following campaign finance reports required to be filed with the Director, in accordance with the schedule specified in M.G.L. c. 55, will result in the immediate assessment of a civil penalty, pursuant to M.G.L. c. 55, § 3: independent expenditure reports (Form 18A), Independent Expenditure PAC reports (Form 102 IEPC), reports of electioneering communication expenditures (CPF Form 18F), periodic reports for non-depository candidates and committees (Form 102 ND), periodic reports for depository candidates and committees (Form D102), periodic reports for political action committees (Form 102PC), and periodic reports for ballot question committees (Form 102BQ).

(2) Ward, Town and City Committee Reports. Failure to file a campaign finance report that is required to be filed by a ward, town or city committee with the Director in accordance with M.G.L. c. 55, § 18 on the date that it is due will result in the immediate assessment of a civil penalty pursuant to M.G.L. c. 55, § 3 if the committee has received contributions, made expenditures, incurred liabilities, or acquired or disposed of assets in excess of \$2,500 during the relevant reporting period or during the calendar year.

(3) Deposit Reports. Deposit Reports are due, in accordance with M.G.L. c. 55, § 19(b), by the 5<sup>th</sup> and 20<sup>th</sup> of each month in which deposits are made by candidates and committees required to designate a depository by M.G.L. c. 55, § 19(a). Failure to file a Deposit Report on or before the date the report is due may result in the assessment of a civil penalty of \$25 for each day the report is late, pursuant to M.G.L. c. 55, § 19 and 970 CMR 2.14(4).

(4) Miscellaneous Reports. Failure to file Deposit Reports or any of the following reports or affidavits required to be filed with the Director or local election official, within 14 days after notification by the Director or his or her designee that filing in accordance with M.G.L. c. 55 has not taken place, will result in the assessment of a civil penalty pursuant to M.G.L. c. 55:

- (a) Reports of independent expenditures promoting the election or defeat of municipal candidates (Form M18A);
- (b) Reports of corporate treasurers or other persons reflecting expenditures made to influence or affect the vote on any question submitted to the voters (Form 22);
- (c) Reports of governmental treasurers reflecting expenditures made to influence or affect the vote on any question submitted to the voters (Forms 22A and M22A);
- (d) Affidavit reflecting change of treasurer and acceptance of office by new treasurer (Forms T101 and M-T101);
- (e) Change of purpose of candidate’s political committee (Form 101P);
- (f) Disclosures of committee credit card activity (Forms 9 and M9);
- (g) Certificate of appointment of depository (Form D103);
- (h) Report of fundraising event for nonresident candidate (Form 102NR);

2.14: continued

- (i) Reports of treasurers of ward, town and city committees not subject to the provisions of 970 CMR 2.14(2); and
  - (j) Any other report, statement or affidavit required to be filed by M.G.L. c. 55 or 970 CMR including, but not limited to, subvendor reports (Form 18D), and Reports of Donations to inauguration, recount or legal defense funds (Form 18E),
- (5) Failure to File Timely Campaign Finance Reports with Local Election Officials.
- (a) Local election officials shall inspect campaign finance reports (CPF Form M102) within 30 days of the reporting dates required by M.G.L. c. 55 and other reports or statements within 60 days of the date such reports or statements are due.
  - (b) If a person fails to file a required report or statement in a timely manner, the election official must provide written notification to the person(s) required to file that the report or statement must be filed within ten days to avoid the assessment of penalties.
  - (c) If a person who receives notification from the local election official fails to respond within ten days of receiving notice, the election official shall notify the Director and furnish the Director with a copy of the notification letter required by 970 CMR 2.00 and M.G.L. c. 55, § 28, together with any other information which may be relevant to the referral, such as correspondence from the election official notifying the candidate or treasurer of the due-date of a report or statement, the portion of the ballot containing the candidate's name, if applicable, the statement of organization of the political committee and the last report filed by the candidate.
  - (d) Upon receiving notification from the local election official, the Director shall assess a penalty, pursuant to M.G.L. c. 55, § 3, against the person responsible for filing the late report or statement, and may refer the candidate or treasurer to the attorney general pursuant to M.G.L. c. 55, § 3.
- (6) Requests for Waiver of Penalty.
- (a) Candidates, treasurers, and other persons who have been assessed a penalty may submit a request for a waiver of part or all of any such penalty to the Director in accordance with M.G.L. c. 55, § 3.
  - (b) Requests for waiver must be in writing and signed by the person who has been assessed a penalty. Such requests may be accompanied by documentation, if any, demonstrating the cause of a delay.
  - (c) The filing of a request for waiver does not suspend the due date of a report, statement or affidavit and does not suspend the assessment of the \$25 per day penalty specified in M.G.L. c. 55, § 3.
  - (d) The determination of whether "good cause" exists to waive a penalty or portion thereof depends on a number of factual circumstances and shall be made by the Director or his designee based upon the specific facts of each case. Examples of "good cause" may include, but are not necessarily limited to:
    - 1. A death, incapacitating illness, or hospitalization of the candidate, treasurer, or other person who has been assessed a penalty, or in the immediate family of such person.
      - a. Requests submitted due to illness or hospitalization must be accompanied by sufficient documentation, which would consist of a doctor's statement noting the name of the patient, the incapacitating illness or hospitalization, and the date(s) of the illness or hospitalization.
      - b. In the case of death, a death certificate or obituary notice would constitute adequate documentation.
    - 2. Serious accident involving the candidate or treasurer or other person who has been assessed a penalty. Requests for waiver for this reason must be accompanied by a copy of the hospital bill, a doctor's statement, or other adequate documentation.
    - 3. Unforeseen severe weather conditions, *e.g.*, hurricane or major snowstorm at the time of filing.
    - 4. Other good cause.
  - (e) The following circumstances generally do not constitute "good cause":
    - 1. Postal delay;
    - 2. Change of treasurer;
    - 3. Relocation of campaign office;
    - 4. Forms not received by committee;

2.14: continued

5. Ignorance of requirement to file form;
  6. Candidate or treasurer moved without notifying OCPF;
  7. Lack of access to campaign records.
- (f) The Director or his or her designee shall issue a written determination for each waiver request within 30 days. The request may be approved or denied in whole or in part.
- (g) Within 30 days of receiving the Director's decision regarding a waiver request, a candidate or treasurer may submit a written request for a hearing to appeal the decision.
1. Within 30 days of receipt of such request, a hearing shall be scheduled before the Director or his or her designee.
  2. Hearings shall be brief and informal; rules of evidence shall not apply.
  3. At the request of the Director, his or her designee or a person requesting a hearing, such hearing shall be tape recorded and testimony shall be taken under oath administered by the person conducting the hearing.
  4. The person requesting the hearing must, unless excused in accordance with 970 CMR 2.14(6)(g)4., be present at the hearing. If the person requesting the hearing is unable to attend due to unforeseen circumstances, that person may request that the hearing proceed in his or her absence. If the Director approves the request, the hearing may proceed notwithstanding that person's absence.
  5. Within 30 days of the hearing, the Director or his or her designee shall issue a written decision approving or denying, in whole or in part, the waiver request. The decision is subject to judicial review in accordance with M.G.L. c. 55, § 3 and c. 30A.
- (6) All reports, statements and affidavits referenced in M.G.L. c. 55 or 970 CMR shall be signed under the penalties of perjury.

2.15: Constituent and Legislative Services

An elected officer's political committee may pay or expend money or other things of value for the provision of constituent or legislative services, including the opening and maintaining of a district office.

- (1) General Expenditures. The following expenditures, as well as any expenditure which is similar to the following and not inconsistent with M.G.L. c. 55 and 970 CMR, shall be permitted by an elected officer's political committee:
- (a) The reasonable costs of providing services to constituents, including requests for information, assistance in gaining access to governmental services, and responding to district issues and concerns by an elected officer if each of the following requirements are met:
    1. the service is provided to a member of the public who is not a family member of the elected officer;
    2. the service is provided by an elected officer or an officer's aide in the officer's or aide's official capacity; and
    3. the provision of said service is not otherwise prohibited by M.G.L. c. 55 or 970 CMR.
  - (b) The reasonable and necessary costs associated with carrying out the customary or official duties or responsibilities of a legislator which otherwise comply with M.G.L. c. 55 and 970 CMR including, but not limited to, payments for the use of meeting rooms, food and beverages provided that such costs are not:
    1. usual costs associated with the ordinary course of everyday living or recreational activities; or
    2. made primarily for the elected officer's or any other person's personal use.
- (2) District Offices.
- (a) Political committees organized on behalf of legislators may pay the reasonable costs of opening and maintaining a district office.
    1. Examples of such costs may include:
      - a. the purchase, lease and use of telephones, office furniture, office equipment including computers, copying machines, fax machines, typewriters and postage meters and utilities;
      - b. the cost of leasing or renting but not purchasing office space; and

2.15: continued

- c. all other necessary and reasonable costs associated with the opening and maintenance of a district office.
  2. All expenditures authorized by 970 CMR 2.15 shall be reasonable and consistent with the use and purpose of a district office.
  3. No district office, nor any of the district office's equipment, shall be used for the personal use of a candidate or any other person.
- (b) Campaign activities may be undertaken in a district office provided each of the following requirements are satisfied and such activity is otherwise permitted by law:
1. Public resources may not be used to support the candidate's campaign. Such resources include, but are not limited to, legislative aides during their work hours, stationery, and other materials or services provided by or paid for by the state or other public entity.
  2. Campaign activities may not be performed during the hours the office is open for constituent services, unless campaign and constituent service functions are physically separated and the candidate clearly delineates that part of the office used for constituent services from that part used for campaign purposes.
  3. Such use of a district office for campaign purposes must comply with M.G.L. c. 55, § 14.

(3) Campaign Finance Reports. A political committee may file a constituent and legislative services report as an attachment to any campaign finance report in order to identify the purpose of each constituent and legislative expenditure or portion thereof and the total of all such expenditures or portions thereof reported on a political committee's campaign finance report which were made for the purposes set forth in 970 CMR 2.15. The attachment authorized by 970 CMR 2.15 shall be voluntary and does not supersede a political committee's obligation to provide the information regarding expenditures required by M.G.L. c. 55, § 18.

(4) Nothing in 970 CMR 2.15 shall be construed to authorize a political committee to pay for any district office expense which is otherwise paid or reimbursed by the Commonwealth.

2.16: State Party Expenditures

(1) Definitions. For the purpose of 970 CMR 2.16, the following terms shall have the following meanings:

Allocable Expense means any expense that may be allocated between the non-federal and federal accounts of a state committee in accordance with regulations promulgated by the Federal Election Commission.

Federal Account means the separate federal account of a state committee established under regulations promulgated by the Federal Election Commission.

State Account means the separate state or any non-federal account of a state committee established under regulations promulgated by the Federal Election Commission, and in accordance with M.G.L. c. 55, § 19.

State Committee means the state committee of a political party, as defined in M.G.L. c. 50, § 1, organized in accordance with M.G.L. c. 52.

(2) All state committee expenditures made primarily for the purpose of aiding, promoting or preventing the nomination or election of any person to a state or local public office must be made from the state account, unless such expenditure may be made out of the federal account of the state committee in accordance with the Federal Election Campaign Act or regulations promulgated under its authority.

(3) Monetary contributions by state committees to any political committee organized pursuant to M.G.L. c. 55, § 5 must be made from the state committee's state account.

(4) A state committee may transfer, from its state account to its federal account, the full amount of the state share of any allocable expense in accordance with regulations promulgated by the Federal Election Commission.

2.17: Independent Expenditures

(1) Persons and Entities Required to File Reports of Independent Expenditures. The following persons and entities are required to file reports of independent expenditures in accordance with M.G.L. c. 55, § 18A(a), (b), and (c):

- (a) Any individual, group or association (including, but not limited to corporations, partnerships, limited liability companies and limited liability partnerships) that makes an independent expenditure exceeding \$250 or independent expenditures exceeding \$250 in the aggregate during a calendar year for the express purpose of promoting the election or defeat of one or more clearly identified candidate(s);
- (b) Any independent expenditure PAC that makes an expenditure described in 970 CMR 2.17(1)(a), in accordance with 970 CMR 2.17(4); or
- (c) Any other political committee, other than a ballot question committee, in accordance with 970 CMR 2.17(5) through (7).

(2) Definitions. For purposes of 970 CMR 2.17, a “traditional PAC” is a PAC that is not an IE PAC.

(3) Timing of Reports. Reports of independent expenditures shall be filed within seven business days of when goods or services are utilized. The report discloses the date of the expenditure, the amount paid, the vendor, a description of the expenditure, *e.g.*, “TV ad” or “mailing,” and the name of the candidate(s) supported or opposed. If an independent expenditure exceeds \$250 and is made within ten days of any election, but more than 24 hours before an election, a report disclosing the expenditure must be filed within 24 hours. The term “any election” as used in 970 CMR 2.17, shall mean any preliminary, primary, special or general election. All reports filed with the Director must be filed electronically, in accordance with M.G.L. c. 55, § 18C. Reports filed to disclose expenditures made to support or oppose municipal candidates who do not file with OCPF shall be filed in paper form with the city or town clerk.

(4) Independent Expenditure PACs. A political action committee that receives contributions to make independent expenditures is an “independent expenditure PAC”. Independent expenditure PACs may receive contributions from individuals without limit, and from corporations and other entities that are otherwise prohibited from contributing to PACs pursuant to M.G.L. c. 55, § 8. Any entity that raises or solicits funds for the purpose of making a contribution to an independent expenditure PAC is an independent expenditure PAC subject to all requirements applicable to independent expenditure PACs.

- (a) The required content and timing of reports filed by independent expenditure PACs is defined in 970 CMR 2.17(5). Except as indicated in 970 CMR 2.17, independent expenditure PACs are subject to all other requirements that apply to other PACs.
- (b) An independent expenditure PAC makes all of its expenditures without cooperating or consulting with any political committee other than another independent expenditure PAC. If an independent expenditure PAC makes coordinated expenditures with a candidate or candidate’s committee, a PAC that is not another independent expenditure PAC, or a political party committee, the independent expenditure PAC immediately becomes a traditional PAC subject to the limits on contributions that may be received or made by other PACs.
- (c) An independent expenditure PAC must include the words “independent expenditure political action committee” in its name.

(5) Content and Timing of Reports Filed by Independent Expenditure PACs.

- (a) 1. 18A IE PAC “Seven Business Day” Reports. Within seven business days after the goods or services obtained by the first independent expenditure exceeding \$250 in the aggregate are utilized, an independent expenditure PAC shall file an independent expenditure report (“IE PAC seven business day report”) disclosing the date of the expenditure, the amount paid, the vendor, a description of the expenditure, *e.g.*, “TV ad” or “mailing,” the name of the candidate(s) supported or opposed, and the office sought by the candidate(s) including the legislative district of the office sought, if applicable. The report shall also itemize the names and address of persons or entities contributing more than \$50 to the IE PAC, whether in money or in-kind, and shall also disclose liabilities incurred by the IE PAC during the reporting period. The date parameter for the report starts on the day the committee was organized (or January 1<sup>st</sup> if the IE PAC was organized in a preceding year) and is complete through the date the goods or services are utilized.

2.17: continued

2. Subsequent “Seven Business Day” Reports. After the Initial IE PAC seven business day report is filed, additional seven business day reports shall be filed each time goods or services obtained through independent expenditure(s) aggregating more than \$250 are utilized, unless such independent expenditures are disclosed in a 24-hour report in accordance with 970 CMR 2.17(5)(b). The reporting period for each IE report shall commence on the date following the last date included in the previous seven business day report and be complete through the date of the independent expenditure(s) disclosed.

(b) “24-Hour” Reports. If goods or services obtained by independent expenditure(s) exceeding \$250 are utilized after the tenth day, but more than 24 hours before an election, a report disclosing the independent expenditure(s) must be filed within 24 hours of when the goods or services are utilized. The report shall disclose the information required by 970 CMR 2.17(5)(a). Additional 24-hour reports shall be filed when additional expenditures exceeding \$250 are made within the ten-day period before an election, in accordance with M.G.L. c. 55, § 18A(b).

(c) Year-end Reports. Independent expenditure PACs shall, in addition to reports required by 970 CMR 2.17(a) and (b), file year-end reports on or before the 20<sup>th</sup> day of January each year the committee remains in existence. The reporting period for the year-end report shall be cumulative for the calendar year, commencing on January 1<sup>st</sup> and ending on December 31<sup>st</sup> of each calendar year, and shall include all campaign finance information previously disclosed in the reports filed by the committee during the calendar year, and shall, to the extent such information has not been included in seven business day or 24-hour Reports that have been filed, itemize all contributions received, expenditures made, including expenditures not made to support or oppose candidates, and liabilities incurred, of more than \$50 during the calendar year. An independent expenditure PAC that make expenditures requiring the filing of a subvendor report under M.G.L. c. 55, § 18D shall electronically file a subvendor report as part of its year-end report.

(d) Dissolution Reports. Independent expenditure PACs shall file a final report on dissolution. The dissolution report shall also include a statement detailing the disposition of any residual funds, which may be disposed of only as provided in the residual funds clause of M.G.L. c. 55, § 18.

(e) Electronic Filing. The reports required to be filed by 970 CMR 2.17, if filed with the Director, shall be filed electronically.

(f) Contributions from One Independent Expenditure PAC to Another IE PAC. If an IE PAC makes a contribution to another IE PAC, the first IE PAC files its IE reports based on the date it makes the contribution to the other IE PAC. The recipient IE PAC, however, files reports based on the date the goods and services it purchases are utilized, even if the purchase is made with funds received from the contributing IE PAC.

(6) Content and Timing of Reports Filed by Political Committees That Are not IE PACs. Political committees other than ballot question committees may make independent expenditures if making the independent expenditures is consistent with the principle for which the committee was organized. If such independent expenditures are made and the aggregate amount of the independent expenditures exceeds \$250 during any calendar year, the committee must, in addition to disclosing the expenditures in the committee’s periodic campaign finance reports filed with the Director (or local election official, if organized to support or oppose candidates who file with the local election official), also file Reports of Independent Expenditures according to the following schedule:

(a) 1. 18A “Seven Business Day” IE Reports. Within seven business days after the goods or services obtained from the first independent expenditure exceeding \$250 in the aggregate are utilized, an independent expenditure report disclosing all financial activity required by M.G.L. c. 55, § 18, including the date of the expenditure, the amount paid, the vendor, and a description of the expenditure, *e.g.*, “TV ad” or “mailing.” The report shall also disclose the name of the candidate(s) supported or opposed and the office sought by the candidate(s) including the legislative district of the office sought, if applicable, that the expenditure is an independent expenditure, and whether the expenditure promoted or opposed the named candidate(s).

2.17: continued

2. Subsequent “Seven Business Day” Reports. After the initial seven business day report is filed, additional seven business day reports shall be filed each time goods or services obtained through independent expenditure(s) aggregating more than \$250 are utilized, unless such independent expenditures are disclosed in a 24-hour report in accordance with 970 CMR 2.17(6)(b). The reporting period for each IE report shall commence on the date following the last date included in the previous seven business day report and be complete through the date of the expenditure(s) disclosed.

(b) “24-Hour” Reports. If goods or services obtained by independent expenditure(s) exceeding \$250 are utilized within ten days before an election, but more than 24 hours before an election, a report disclosing the independent expenditure(s) must be filed within 24 hours of when the goods or services are utilized. The report shall disclose the information required by 970 CMR 2.17(6)(a). Additional 24-hour reports shall be filed when additional expenditures exceeding \$250 are made within the ten-day period before an election, in accordance with M.G.L. c. 55, § 18A(b).

(c) Traditional political action committees that make independent expenditures remain subject to limits on contributions that may be received and made, that are applicable to traditional political action committees when raising funds.

(7) Disclosure of Independent Expenditures Made by Political Committees Other than Independent Expenditure PACs, or Ballot Question Committees, That File with the Director to Support or Oppose Local Candidates. Political committees other than independent expenditure PACs or ballot question committees, which file reports with the Director, may, in addition to making independent expenditures to support or oppose candidates who file with the Director, make independent expenditures to promote the election or defeat of one or more candidates who file with a city or town clerk.

(a) If such independent expenditures are made and the aggregate amount of the independent expenditures exceeds \$250 during any calendar year, the committee must, in addition to disclosing the expenditures in the committee’s periodic campaign finance report that is filed with the Director, also file a report of independent expenditures with the city or town clerk in the city or town in which the candidate is on the ballot.

(b) The independent expenditure reports filed with the city or town clerk must be filed in accordance with the schedule in 970 CMR 2.17(6).

(c) Traditional political action committees that make independent expenditures remain subject to limits on contributions that may be received and made, that are applicable to traditional political action committees.

(8) Disclosure of Independent Expenditures Made by Traditional PACs That File with a City or Town Clerk. A traditional PAC, which files reports with a city or town clerk, may, in addition to making expenditures to support or oppose candidates who file with the clerk, make independent expenditures to promote the election or defeat of one or more candidates who file with the Director.

(a) If such independent expenditures are made and the aggregate amount of the independent expenditures exceeds \$250 during any calendar year, the committee must, in addition to disclosing the expenditures in the committee’s periodic campaign finance report that is filed with the city or town clerk, also file a report of independent expenditures with the Director.

(b) The independent expenditure reports filed with the Director must be filed electronically, in accordance with M.G.L. c. 55, § 18C, in accordance with the schedule in 970 CMR 2.17(6).

(c) Traditional political action committees that make independent expenditures remain subject to contribution limits applicable to traditional political action committees when raising funds.

(9) Disclosure of Independent Expenditures Relating to Multiple Candidates. Reports of independent expenditures and IE PAC reports reflecting expenditures that support or oppose multiple candidates must identify each candidate referenced in a communication, and the proportionate value of the expenditure attributable to each candidate referenced in the communication.

(10) No candidate or individual holding elective public office shall establish, finance, maintain, control, or serve as a principal officer of an IE PAC.

2.18: Subvendor Reporting

(1) Location for Filing of Reports. Reports required to be filed by M.G.L. c. 55, § 18D are electronically filed with the Director, or if the expenditure concerns a local candidate who does not file with the Director, or a local ballot question, with the clerk.

(2) Vendor Accounting of Expenditures. A vendor that makes an expenditure on behalf of a political committee or on behalf of an individual or group required to file a report of ballot question expenditures under M.G.L. c. 55, § 22, shall, once the vendor has made expenditures to a particular subvendor that aggregate \$500 during a calendar year, provide the political committee, individual or group with a detailed account of the expenditures within five days, in accordance with M.G.L. c. 55, § 18D(b). Vendors are not required to provide this information to the committee, individual or group, prior to reaching the \$500 threshold. Upon reaching the \$500 threshold, the detailed account provided to the committee, individual or group shall describe all expenditures made, including those made prior to reaching the threshold.

(3) Definition of Subvendor. A Subvendor is any individual who provides goods or services to a vendor or who contracts with a vendor to provide goods or services to a committee, or to an individual or group required to file a report of ballot question expenditures under M.G.L. c. 55, § 22, except the following persons or businesses are not considered subvendors under M.G.L. c. 55, § 18D.

(a) A person who is an employee of a vendor, and has been an employee of the vendor for a period of at least three consecutive months prior to any month in which a committee, individual or group is required to file a subvendor report.

(b) An individual or business that provides goods or services to another business or individual in the usual course of business. For example, a business that has an existing agreement to provide a printing company with paper and ink is not a subvendor.

(c) An individual or business that provides goods or services to a subvendor.

(4) Obligation of Political Committee, Individual or Group to Obtain Subvendor Information.

(a) A political committee, or an individual or group required to file a report of ballot question expenditures under M.G.L. c. 55, § 22, which makes a payment to a vendor of \$5,000 or more in the aggregate during a calendar year, or which incurs liabilities to a vendor in that amount, must make inquiry, in writing, to the vendor regarding whether subvendors were paid by the vendor. A committee, individual or group satisfies this requirement by asking at least once for subvendor information.

(b) A political committee, or an individual or group required to file a report of ballot question expenditures under M.G.L. c. 55, § 22, which does not receive an account of subvendor expenditures from a vendor shall keep a copy of any written correspondence it sends to the vendor seeking such information.

(c) A vendor is not required to provide subvendor information to a committee if the vendor provides a statement to OCPF annually certifying that the vendor does not use subvendors. Vendors that provide this statement to OCPF must notify OCPF if circumstances change.

(5) Provision of In-kind Contributions. An individual or entity that provides an in-kind contribution to a political committee of \$5,000 or more in the aggregate during a calendar year is a “vendor” for purposes of M.G.L. c. 55, § 18D and must provide the political committee with the full name and address of any subvendors who received payments from the vendor of more than \$500 in connection with the in-kind contribution during the calendar year.

(6) Subvendor Reporting by Independent Expenditure PACs. An independent expenditure PAC that makes expenditures requiring the filing of a subvendor report under M.G.L. c. 55, § 18D, shall electronically file a subvendor report disclosing the expenditures as part of the independent expenditure PAC’s year-end report filed in accordance with 970 CMR 2.17(4)(c).

2.19: Reporting of Ballot Question Expenditures by Individuals, or by Corporations, Associations, Organizations or Other Groups of Persons

(1) A corporation, association, organization or other group of persons, other than a political committee, or an individual which makes an expenditure to influence or affect the vote on a ballot question must file a report disclosing the expenditure, pursuant to M.G.L. c. 55, § 22 unless such expenditures:



2.19: continued

- (a) are made for campaign materials such as signs or literature, and the materials are not distributed prior to the relevant election;
  - (b) are made for campaign materials and the purchase takes place more than six months prior to distribution, in which event the disclosure may take place at the time of distribution, rather than at the time the expenditure was made; or
  - (c) are contributions to a ballot question committee.
- (2) For purposes of completing a report of expenditures pursuant to M.G.L. c. 55, § 22, an expenditure must be disclosed when a promise to pay is made or a liability is incurred. Subsequent expenditures made to retire the liability do not also have to be disclosed unless paid by a person other than the person or entity that filed the report that initially disclosed the promise to pay or liability.
- (3) For purposes of filing the reports required by M.G.L. c. 55, § 22, the ending date for a report required to be filed 60 days before an election to disclose expenditures made in connection with a question that appears on ballots at a state election shall be the preceding fifth day from the date the report is due.
- (4) A political committee, other than a ballot question committee, which files reports with the Director, may make expenditures to influence or affect a ballot question that appears on the ballot at a city or town election or that appears on the ballot for use in a city or town at a state election.
- (a) If the amount of any such expenditure equals or exceeds \$250, the committee must, in addition to disclosing the expenditure in the committee's campaign finance report filed with the Director, also file a report of the expenditure with the city or town clerk in the city or town in which the question is on the ballot.
  - (b) The report of ballot question expenditures filed with the city or town clerk must be filed according to the schedule applicable for reporting of expenditures relating to questions appearing on the ballot for use in a city or town at a state election, as specified in M.G.L. c. 55, § 22.
- (5) A political committee, other than a ballot question committee, which files reports with a city or town clerk, may make expenditures to influence or affect a ballot question that appears on the ballot at a state election.
- (a) If the amount of any such expenditure equals or exceeds \$250, the committee must, in addition to disclosing the expenditure in the committee's campaign finance report filed with the city or town clerk, also file a report of the expenditure with the Director.
  - (b) The report of ballot question expenditures filed with the Director must be filed according to the schedule applicable for questions that appear on ballots at a state election, as specified in M.G.L. c. 55, § 22 and must be filed electronically, in accordance with M.G.L. c. 55, § 18C.

2.20: Independent Expenditure, Electioneering Communication, Ballot Question Disclaimers

- (1) Scope of 970 CMR 2.20. In accordance with M.G.L. c. 55, § 18G, disclaimers are required on certain independent expenditure, electioneering communication, and ballot question communications and advertisements. 970 CMR 2.20 is issued to provide guidance regarding these requirements.
- (2) Advertisements Requiring a Statement of Responsibility Disclaimer in Accordance with the First Paragraph of M.G.L. c. 55, § 18G. Persons and entities, including political committees, that make independent expenditures or electioneering communications, are required to include the Statement of Responsibility disclaimer in:
- (a) Paid Radio Advertising.
  - (b) Paid Television Advertising.
  - (c) Paid Internet Advertising, except for social media advertising, is subject to the disclaimer requirement if the advertisement, when received by a user viewing the message using a standard display resolution (1366x768) screen, would use 15% or more of the computer screen.

2.20: continued

(d) Paid Electronic Ads Sent in Video Format. A video advertisement of any duration is subject to the disclaimer requirement if the advertisement uses 15% or more of a standard display resolution (1366x768) screen for any duration, including “pop up ads” that use 15% or more of the computer screen.

(3) Advertisements and Communications Requiring a Top Contributor Disclaimer in Accordance with the Second Paragraph of M.G.L. c. 55, § 18G. A Top Contributor Disclaimer must be included in an advertisement or communication that is used to make an electioneering communication or independent expenditure communication if the advertisement or communication is paid for by any individual or entity (including a political committee) that has raised more than \$5,000 in the aggregate from any contributor during the 12-month period before the date of the advertisement or communication. In addition, the disclaimer is required on advertisements or communications made to influence or affect ballot questions, to disclose contributors providing more than \$5,000 during the 12-month period before the date of the advertisement or communication. In addition to the Top Contributor disclaimer, the advertisement or communication must identify the entity paying for the advertisement or communication. Top Contributor Disclaimers are required in:

- (a) Paid Print Advertising. An advertisement or insert in a newspaper, magazine, or other printed publication in which the advertisement or insert is larger than 15 square inches;
- (b) Paid Television Advertising;
- (c) Paid Internet Advertising is subject to the disclaimer requirement if the advertisement, when received by a user viewing the message using a standard display resolution (1366x768) screen, would use 15% or more of the computer screen;
- (d) Paid Electronic Advertising Sent in Video Format. A video advertisement of any duration is subject to the disclaimer requirement if the advertisement uses 15% or more of a standard display resolution (1366x768) computer screen for any duration, including “pop up ads” that use 15% or more of the computer screen;
- (e) Direct mail, including mail soliciting contributions; and
- (f) Billboards.

(4) Communications not Covered by Either Paragraph of M.G.L. c. 55, § 18G. The following communications are not subject to the disclosure requirements of M.G.L. c. 55, § 18G:

- (a) Yard signs;
- (b) Door hangers, flyers, posters, buttons and bumper stickers;
- (c) SMS texts;
- (d) Emails, unless the email contains a paid advertisement that exceeds 15% of the computer screen (based on the standard display resolution of 1366x768);
- (e) Internet ads of limited size;
- (f) Social media posts, including boosted, promoted or sponsored posts;
- (g) Telephone messages or electronic ads sent in audio format; and
- (h) Membership communications.

(5) Determination of Which Contributors to List. The “Top Contributors” to be listed in the advertisement or communication subject to the second paragraph of M.G.L. c. 55, § 18G must include the following persons:

- (a) The five persons or entities making the largest contributions received for any purpose in excess of \$5,000 during the 12-month period before the date of the advertisement or communication must be listed. Contributions received by the entity for purposes other than the making of the advertisement or communication are included. The terms “contributors” and “contribution,” as used in M.G.L. c. 55, § 18G and 970 CMR 2.20, refer to donors who provide funds to an entity for any purpose.
- (b) If no person or entity has contributed more than \$5,000 to the entity during the 12 months prior to the date of the advertisement or communication, no top contributors need be listed. If fewer than five persons or entities made contributions of more than \$5,000 during the 12 months prior to the date of the advertisement or communication, only those persons or entities contributing more than \$5,000 must be listed.

2.20: continued

- (c) If more than five persons or entities contribute the same amount, only the last five to give that amount must be listed. (For example, if seven persons give \$10,000 each, with two giving in February but the other five giving in July, only the five who gave in July need to be listed.)
  - (d) The contributors may be listed in any order, and do not have to be listed in ascending or descending order based upon the amount contributed.
  - (e) Contributions from multiple affiliated organizations are not aggregated. For example, if a union local gives \$2,000 and another local, affiliated with the same international union, gives \$3,500, the union is not required to be listed, since the local, not the international union, is the contributor.
- (6) Manner of Disclosure.
- (a) The required disclaimers must be of a size and contrasting color that will be legible to the average viewer.
  - (b) The requirement to provide the disclaimers under M.G.L. c. 55, § 18G does not affect other disclaimer requirements, including the requirement under M.G.L. c. 56, § 39, for a disclaimer in print advertisements.
  - (c) A PAC may refer to itself as a “PAC” rather than a “political action committee” in the disclaimers.
- (7) Reference to OCPF Website. All independent expenditure, electioneering communication, or ballot question advertisements or communications transmitted through paid television or internet advertising requiring a top contributor disclaimer must include a written statement directing viewers to the official web address of the Office of Campaign and Political Finance, by stating “for more information regarding contributors, go to [www.ocpf.us](http://www.ocpf.us).” This requirement applies even if no “top contributors” must be listed.

2.21: Independent Versus Coordinated Expenditures

- (1) The definition of “independent expenditure” in M.G.L. c. 55, § 1 includes expenditures made “without cooperation or consultation with any candidate or a nonelected political committee organized on behalf of the candidate or an agent of the candidate” and specifies that the expenditures may not be made “in concert with or at the request or suggestion of the candidate” or a committee organized on behalf of the candidate.
- (2) The definition of an “electioneering communication” in M.G.L. c. 55, § 1 includes issue-oriented communications aired or published within 90 days of a general or special election.
- (3) Throughout 970 CMR 2.21, the terms “candidate” and “committee” include their agents, when the agent is acting within the scope of his or her authority. For the purposes of 970 CMR 2.21, an “agent” of a candidate or committee is any person or entity who has actual authority, either express or implied, to engage in activities on behalf of the candidate or committee. An “entity” is any group including, but not limited to, an Independent Expenditure PAC, that either makes an independent expenditure or electioneering communication expenditure, as those terms are defined in M.G.L. c. 55, § 1. The “current campaign” means the year beginning January 1<sup>st</sup> of the calendar year which has a primary, preliminary or general election for an elective office, and also means for any special election for an elective office, the period beginning on the date a special election is scheduled by the speaker of the house of representatives in accordance with M.G.L. c. 54, § 141 or by the senate in accordance with the Amendments, Article XXIV, of the State Constitution. The ending date of the current campaign means the date of the election.
- (4) Coordinated Expenditures are Treated as Contributions. For purposes of 970 CMR 2.21, any expenditure is considered a contribution if it is coordinated and funds a communication that:
- (a) expressly advocates the nomination, election or defeat of a clearly identified candidate or candidates; or
  - (b) is an electioneering communication, *i.e.*, a communication that names a clearly identified candidate or candidates and is distributed within 90 days of an election; or
  - (c) taken as a whole, unambiguously urges a particular result in an election, unless otherwise exempted from the definition of “contribution” by any other provision of 970 CMR 2.00 or the “membership communications” exemption in M.G.L. c. 55, § 1.

2.21: continued

- (5) Conduct Constituting Coordination. A communication is coordinated if made under any of the following circumstances:
- (a) General Coordination Prior to Communication. The expenditure is made at the request, suggestion, or direction of, or in cooperation, arrangement, consultation, concert or coordination with the candidate or committee on whose behalf, or for whose benefit the expenditure is made. Such contact must occur prior to the publication or airing of the communication.
  - (b) Involvement in the Specifics of the Communication. The communication is created, produced, or disseminated after discussion or consultation between the creator, producer, or distributor of the communication, or the person or entity paying for that communication, and the candidate or committee benefited by the communication, regarding the content, timing, location, mode, intended audience, volume of distribution, or frequency of the communication.
- (6) Expenditures Presumed to be Coordinated. In addition to the conduct constituting coordination described in 970 CMR 2.21(5), there is a presumption that an expenditure funding a communication subject to 970 CMR 2.21 would be a coordinated communication and a contribution under any of the following circumstances:
- (a) Expenditures Made Through an Agent. The expenditure is made by or through an agent of the candidate or committee in the course of the agent's involvement in the current campaign.
  - (b) Common Consultants. The person or entity making the expenditure retains the services of a person or entity such as a political, media or legal consultant, or polling firm, who concurrently provides either the candidate or the committee with professional services related to strategy for the current campaign. This presumption does not apply, however, to an attorney providing professional services to a candidate or committee solely on compliance or reporting requirements of the campaign finance law. The presumption may be rebutted, in accordance with 970 CMR 2.21(7), by evidence demonstrating that that the services were provided consistent with a previously established written firewall policy that prohibits the flow of strategic non-public information to the person or entity making the expenditure.
  - (c) Former Staff. The person or entity making the expenditure employs a staff member who previously worked in a senior position or advisory capacity on the candidate's or officeholder's staff within 90 days prior to the date of the election in which the expenditure is made. The presumption may be rebutted, in accordance with 970 CMR 2.21(7), by evidence demonstrating that that the services were provided consistent with a written firewall policy that prohibits the flow of strategic non-public information to the person or entity making the expenditure.
  - (d) Campaign Needs. The expenditure is based on information about the candidate's or committee's campaign needs or plans that the candidate or committee provided to the person or entity making the expenditure, such as information concerning campaign messaging, planned expenditures or polling data during the current campaign.
  - (e) Fundraising. In the course of the current campaign, the candidate who benefits from the expenditure solicits funds for or appears as a speaker or draw at a fundraiser held by the person or entity making the expenditure.
  - (f) Candidate's Family. The person making the expenditure is a member of the candidate's immediate family, or if the expenditure is made by an entity, the entity making the expenditure is established, run, staffed in a leadership role, or principally funded by an individual who is an immediate family member of the candidate.
  - (g) Republication. A communication relating to a candidate republishes, in whole or in part, a communication that is posted on the candidate's Internet or social media site. This presumption shall not apply, however, to the use of photographs taken from the candidate's Internet or social media site, provided there is no discussion with the candidate or committee prior to the expenditure relating to the details of the expenditure.
  - (h) Advance Notification. The person or entity making a communication provides advance notification to the candidate or committee of the planned expenditure.

2.21: continued

(7) Rebuttal of Presumption and Expenditures not Presumed to Be Coordinated. An expenditure is not considered to be coordinated if made consistent with a firewall policy described in 970 CMR 2.21(7)(a). In addition, a person or entity that has made an expenditure that is presumptively coordinated may seek to rebut the presumption by submitting evidence to OCPF demonstrating that the expenditure was independent. Relevant facts that may be submitted include the expenditure maker's history of making independent expenditures or electioneering communications, as well as facts relating to the timing, content and geographic distribution of a communication. In addition, expenditures that take place solely under the circumstances described in 970 CMR 2.21(7)(b) through (e) are also not, absent other factors indicating coordination, presumed to be coordinated:

(a) Written Firewall Policy. A person or entity that provides a candidate or committee with professional services related to campaign or fundraising strategy implements a firewall policy that meets the criteria in 970 CMR 2.21(7)(a) to prohibit the flow of strategic non-public information between the individual or entity and the campaign.

1. The firewall policy must designate specific staff that will solely service the candidate, and specific staff that will solely service persons making independent expenditures or electioneering communications;
2. The firewall policy must provide for physical and technological separations to ensure that strategic non-public information does not flow between the person or entity and the candidate or committee; and
3. The firewall policy must be written, and distributed to all relevant employees, consultants, and clients affected by the policy.

(b) Photographs. The person or entity making the expenditure uses a photograph of the candidate, provided there is no discussion with the candidate or committee prior to the expenditure relating to the details of the expenditure.

(c) Prior Contribution. The person or entity making the expenditure has previously made a contribution to the candidate or committee.

(d) Informed After the Fact. A person or entity informs a candidate or committee after the publication or airing of a communication that the person or entity has paid for the communication, if there is no other exchange of information, not otherwise available to the public, relating to the details of the expenditure and no discussion or exchange of information relating to any future expenditure that may be made by the person or entity.

(e) Candidate or Committee Forwards the Communication After the Fact. The candidate or committee learn of the communication after the fact and then forwards the communication to potential supporters.

(f) Hyperlink. The communication includes a hyperlink to the Internet website or a social media page of a candidate or committee, provided there is no discussion with the candidate or committee regarding the planned use of the hyperlink.

(8) Ballot Question Related Expenditures. 970 CMR 2.21(4) through (7) apply to communications made to support or oppose a ballot question. For example, a communication made to influence a ballot question must be disclosed by a ballot question committee organized to influence the question as an in-kind contribution to the ballot question committee from the individual or entity paying for the communication if the individual or entity coordinated the communication with the ballot question committee.

#### REGULATORY AUTHORITY

970 CMR 2.00: M.G.L. c. 55, §§ 3 and 6.

NON-TEXT PAGE