



THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF CAMPAIGN & POLITICAL FINANCE  
ONE ASHBURTON PLACE, ROOM 411  
BOSTON, MASSACHUSETTS 02108

TEL : (617) 979 - 8300  
(800) 462 - OCPF  
EMAIL : OCPF@CPF.STATE.MA.US

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**INTERPRETIVE BULLETIN**

**Use of the Internet and Email for Political Campaign Purposes**

This office is frequently asked about the extent to which the Internet and email may be utilized by candidates, political committees or other persons in connection with elections occurring in Massachusetts. The Internet and email allow candidates and committees, and others, to reach potential voters or contributors at relatively little expense, and in recent years there has been a surge in the political use of the Internet and email. A number of questions have arisen regarding expenditures that may be made for Internet access, the services that may be provided to candidates or committees to help them establish websites, the use of links to campaign websites, and access to government websites and email networks. This bulletin does not address the use of credit cards and the Internet to receive contributions. Candidates and committees that use the Internet to raise funds must obtain and report the same information regarding contributions that would be required for other methods of fundraising. For guidance regarding the receipt of credit card contributions made using the Internet, see OCPF Memorandum M-04-01 and 970 CMR 1.09.<sup>1</sup>

This bulletin does not, and could not, attempt to anticipate every question that may arise. **Candidates or other persons who have questions not specifically addressed by this bulletin should contact OCPF for advice.**

**THE INTERNET**

**I. Website Development and Maintenance**

OCPF has issued a number of opinions regarding the payment for and receipt of web development and maintenance services. Some of the issues addressed include whether campaign funds may be used to pay for website development, whether candidates and committees may contract with business corporations for web development or hosting, whether candidates or political committees must consider the receipt of personal services provided by individuals working on their

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<sup>1</sup> See also AO-10-03, in which the office stated that contributions may be received by text message, but only if the committee receiving the contributions ensures that the contributions comply with the limits of the campaign finance law and are properly disclosed.

own time to develop political or campaign websites as “contributions,” and whether public resources can be used to help a legislator update a private constituent services website.

**A. Committee Expenditures**

Candidates and committees may make expenditures from their political accounts to design, implement and/or maintain a website. A candidate may make such an expenditure whether a website is intended to keep constituents informed of legislative activities, or is intended to be used for campaign purposes, or both. See AO-97-06.

**B. Corporate Involvement**

Candidates and political committees (with the exception of ballot question committees and independent expenditure PACs) may not receive anything of value from a business or professional corporation, or LLC, LLP or partnership, including an in-kind contribution of web development or hosting services or a discount or rebate for such service that is not available to the general public. See M.G.L. c. 55, § 8. If a candidate or committee’s web site is developed or hosted by a business corporation, the candidate or committee must pay the fair market value for the provision of the corporation’s web services.

**C. Internet activity by individuals - Personal Services**

M.G.L. c. 55, § 1 defines the term “contribution” to exclude the uncompensated “rendering of personal services” to a candidate or committee, or payments incidental to providing personal services that are made by those rendering personal services. Therefore, candidates and committees may accept an individual’s voluntary “personal services” to administer a website. Such services and the incidental expenses related to the rendering of such services are not contributions within the meaning of the statute and, therefore, need not be listed on a campaign finance report.

For example, a person who uses his own computer to assist a campaign or who provides a personal service to a candidate by designing or administering a website, and is not otherwise compensated by another individual or entity<sup>2</sup> for the time spent while doing this activity, is providing a personal service, not a “contribution.” See M.G.L. c. 55, § 1. A freelance web developer, who owns a business that bought the computers and software used to design web pages, may volunteer time to a committee to design a website. The freelance web developer may use the computer and software owned by the business without this being considered a contribution from the business, since the computer and software would be considered incidental to the provision of personal services. An individual may also provide personal services to design a website that promotes a number of candidates or committees. See AO-04-11 and AO-04-14. Such a website may be developed after consultation with the candidates and committees being supported and may be used to facilitate the making of contributions to the candidates and committees.

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<sup>2</sup> If the person receives compensation from a third party for the time spent developing or administering the website, i.e. the person does the work at his or her place of employment during working hours or is otherwise paid by another to do this work, the individual or entity compensating such individual would be making a contribution to the campaign. Such an entity may not be a corporation, LLC, LLP or partnership; as noted in Section I. B., as such entities are prohibited from contributing any money or other thing of value to any candidate or political committee other than a ballot question committee. See M.G.L. c. 55, §§ 8 and 22.

Certain costs incurred by an individual to engage in political speech on the Internet may be considered incidental to providing personal services. Such costs are not considered “contributions” or “expenditures” within the scope of the campaign finance law. Internet activities by individuals on their own time intended to influence a Massachusetts election with incidental use of equipment and software already owned by the individual should therefore generally not be considered to give rise to “contributions” or expenditures” for the purposes of the Massachusetts campaign finance law.

Out-of-pocket expenses by an individual for web hosting fees, for expenditures for obtaining a domain name, or for placing communications on another person or entity’s website for a fee, however, should be considered in-kind contributions. In contrast, the cost of ink and paper for flyers printed at home would be incidental and would not need to be reported: the person providing services will have ink and paper, or internet service, at home anyway.

A blogger’s costs for carrying news stories, commentary and editorials are not considered “contributions” or “expenditures” subject to the campaign finance law. The costs for publishing news stories on the Internet do not have to be disclosed on campaign finance reports, and bloggers who communicate on the Internet are entitled to the same exemption as traditional media entities.

#### **D. Use of Public Resources**

The campaign finance law prohibits the use of public resources for a political purpose. See Anderson v. City of Boston, 376 Mass. 178 (1978), appeal dismissed, 439 U.S. 1069 (1979). Public resources include the time of public employees during the workday. A legislator’s State House staff may, however, update information regarding the legislator’s State House activities, bills filed, and issues of interest to the legislator, on a legislator’s private constituent service website. This activity serves a governmental purpose and the participation of public employees during the workday in updating such a website to include this information would be consistent with the campaign finance law and the Anderson decision. See GL-04-07.

## **II. Web Page Links**

OCPF has considered questions regarding whether a governmental entity such as a municipality may post links on its website to candidate or committee websites. In addition, questions have arisen regarding whether corporations, federal committees or other groups or associations may post links on their websites to candidate or committee websites.

#### **A. Candidate or Committee Links on Government Sites**

In Anderson, the Supreme Judicial Court concluded that a municipality could not appropriate or use municipal funds or use other municipal resources to influence an election. The court concluded, however, that a municipality or other governmental entity could, under limited circumstances, make certain public resources available to private groups for election-related activities, such as a meeting room at town hall provided that “equal access,” upon request, must be afforded to any other group on the same terms regardless of the group’s point of view.

Consequently, a governmental entity may, for the purpose of enhancing voter education and participation, provide links on its website to candidate or committee websites (or to candidate's social media sites) if equal access is provided for all other candidates or committees. OCPF has advised, however, that a disclaimer should be included on the governmental website stating that: (1) the links to candidate sites are provided by the candidates and that neither the URL (Web address) nor the site have been reviewed for content or accuracy; (2) the links are displayed for voter information purposes and the municipality, by posting the links, is not attempting to influence the nomination or election of any candidate or committee; (3) the candidate or committee websites are not monitored or regulated by the municipality; and (4) the opportunity to post a link is available to any candidate or committee. See AO-96-04, AO-99-14, and AO-01-29. A governmental website, other than a restricted website as discussed below, may provide a link to a candidate or committee website even if the candidate or committee website contains campaign material, i.e., it solicits contributions, votes or volunteers.

A governmental entity may also refuse to post a link or may remove a link once it is posted if it is done in accordance with an approved policy that ensures that all persons and groups, regardless of political view, have equal access (or equal lack of access) to the website and are treated uniformly. See AO-00-15.

**B. Incumbents' Links on Restricted Government Sites**

Alternatively, a governmental entity may decide to limit the provision of links on an official website to incumbent candidate's websites (or social media sites). Under these circumstances, since equal access is not provided to other candidates for the same offices, the content of the links and linked websites is restricted, as noted in the next paragraph. Where there is a link from the governmental site to an incumbent candidate's website, there should be a disclaimer advising readers that they will be leaving the official website if they click the link. See AO-01-05.

In AO-01-05, this office advised that a link from a legislator's web page on the General Court website to the legislator's private website is permissible only if the text of the link and the web address do not advocate a particular vote for or against a candidate *and* the content of the private website is limited to providing information for constituents, not campaign related material. In plain terms, the legislator's private site cannot solicit political contributions, votes or volunteers, or contain any express advocacy supporting or opposing any candidate, party or ballot question if it will be linked to the General Court's official website. Nor would it be appropriate for the legislator to provide a *further* link from a constituent information page that can be accessed from the legislator's official site, to a page that solicits such contributions, votes or campaign volunteers. See AO-01-05.

**C. Candidate or Committee Links on Corporate Sites**

Candidates and political committees (with the exception of ballot question committees) may not receive anything of value, including an in-kind contribution of services, from a business or professional corporation, or from a LLC or LLP. See M.G.L. c. 55, § 8. A link to a candidate or political committee's website (and the staff time to insert the link) would not be considered an in-kind contribution (unless links are customarily sold by the corporation).

Alternatively, a corporation or other commercial entity that normally sells space on its website, website banners, or links for a market rate fee may provide space, a banner, or a link to a candidate or committee, provided the candidate or committee pays the fair market value for the space, banner or link.

#### **D. Candidate or Committee Links on Other Sites**

##### **1. Federal Political Action Committee (PAC) Sites**

A federal PAC may post a link to a state candidate or committee's website or social media site on its website. The inclusion of such a link does not constitute a "thing of value," within the meaning of M.G.L. c. 55, § 1.

##### **2. State or Local Political Action Committee (PAC) Sites**

A state or local PAC may post a link to a state candidate or committee's website or social media site on its website. The inclusion of such a link does not constitute a "thing of value," within the meaning of M.G.L. c. 55, § 1. The candidate or committee is, therefore, not required to report the link as a contribution from the state or local PAC.

Contributions made to a candidate or committee through a link from a state or local PAC may be subject to the bundling provisions of the campaign finance law if the PAC either physically receives contributions that are then forwarded to a candidate, or provides information to a candidate indicating that the PAC arranged for the making of the contributions. See M.G.L. c. 55, § 10A, which states, in part, that such bundled contributions made to a candidate count toward the PAC's annual campaign contribution limit of \$500 to a candidate in addition to counting toward the actual contributor's limit.

##### **3. Individuals' Sites**

A person who provides a link from his personal website to a candidate or committee website or social media site is providing a personal service, not a "contribution." Consequently, there is no reporting requirement for the link provided.

### **III. Endorsements**

Whether an endorsement on a website or email involves the making of a "contribution" or "expenditure" depends on a consideration of several factors. An endorsement that is restricted to the members of a membership organization, and the families of members, is not a "contribution" or "expenditure." See M.G.L. c. 55, § 1. If the making of endorsements on an organization's website involves only *de minimis* expenditures (such as the minimal use of staff time or the payment of a small web hosting fee), the endorsements would not involve the making of contributions or expenditures.

If, however, a separate "endorsement" page is created and involves the making of more than *de minimis* expenditures, then the endorsements would involve either an independent expenditure

or, if there is coordination with the candidate(s) being endorsed, an in-kind contribution.<sup>3</sup> If endorsements are not coordinated and cost more than \$250, the organization would be required to file a report of independent expenditures in accordance with M.G.L. c. 55, § 18A. If there is an in-kind contribution, the recipient committee would be required to disclose the receipt of the contribution.

A corporation or other business entity prohibited by Section 8 from contributing to candidates may endorse candidates on its website, subject to the disclosure requirements of Section 18A, if the endorsements are made independently of the candidates.

#### **IV. Use of Social Media**

Candidates and committees, and persons interested in becoming involved in the political process, are increasingly using social media to communicate with supporters. Candidates can tweet, post campaign messages and photos to Facebook, and allow supporters to see rallies or other events on YouTube. Social media includes Twitter, Facebook, Instagram, YouTube, and other sites. These are generally free networking sites. To the extent the activity, like the activity involved in posting endorsements on a website, involves some use of compensated staff time, it would generally involve only a *de minimis* expenditure, or would involve the provision of a “personal service.” As such, it is generally exempt from campaign finance limitations or disclosure requirements. See M.G.L. c. 55, § 1 (which excludes “personal services” and expenditures made incidental to the provision of personal services from the definitions of “contribution” and “expenditure.”) In addition, posting about a candidate on social media would generally be *de minimis*. An exception would be if the corporation boosts, sponsors or otherwise makes similar expenditures, or hires photographers, web designers, or others to create a campaign on social media, in which case that additional cost would be subject to the campaign finance law.

A candidate or committee may also have a Facebook page or use another social media network to solicit contributions. When candidates and committees use social media to raise money, however, such activity is subject to the same restrictions that apply when a campaign website is used to raise money. If social media is used to raise funds, the recordkeeping requirements and limits of the campaign finance law apply in the same manner as when funds are raised using a website. This means, for example, that a committee receiving funds must ensure that none of the funds are received from a corporation or other entity that is prohibited from contributing by M.G.L. c. 55, § 8. In addition, a committee receiving contributions made through social media must keep records of the name and residential address of all persons contributing, regardless of amount, and also must keep information regarding the occupation and employer of contributors.

As noted in AO-10-05, Facebook (or other social media) may be used to direct persons interested in making contributions to a candidate’s website. It is important, however, to note that public employees may not solicit or receive contributions, either directly or indirectly, or at any time or in any location, and no person may solicit or receive contributions in any governmental building. See M.G.L. c. 55, §§ 13 and 14, and 970 CMR 1.24, and Section VII of this Bulletin.

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<sup>3</sup> There may be instances where substantial expenditures are required to design an endorsement page or social media endorsement campaign. An organization anticipating making such expenditures should disclose the expenditure, or if the expenditure is coordinated with a candidate or committee, the candidate or committee should disclose the receipt of an in-kind contribution.

## V. Attribution/Disclaimer Requirements

Section 18G of the campaign finance law contains several requirements for disclaimers on Internet advertisements. When a political committee, an individual, or an entity pays for Internet advertising (not including social media advertising) by making an independent expenditure or electioneering communication, the advertisement must include a statement disclosing the identity of the committee, individual, or entity paying for the advertisement.

In addition, when a committee, individual, or entity pays for an Internet ad by making an independent expenditure or electioneering communication, or purchases an Internet ad to influence a ballot question, the ad must include a statement disclosing the names of the top five donors to the entity who provided in excess of \$5,000, for any purpose, during the 12-month period before the advertisement. The disclaimer must also identify the individual or entity paying for the ad and refer viewers to OCPF's website for more information on contributors.

These requirements apply to paid Internet advertising on an organization's website, if the advertisement exceeds 15% of a display screen using standard resolution. OCPF has issued regulations regarding these disclaimer requirements. See 970 CMR 2.20.

The campaign finance law does not require attribution on uncompensated Internet communications made by individuals or by groups that do not pay for such communications, or on social media posts that have been boosted or sponsored.

## VI. Email

OCPF has responded to numerous inquiries regarding the use of email for political purposes. Generally, the concerns addressed involve whether a political committee has received a "contribution" as a result of emailed correspondence, or, if public resources are involved, whether such activity is inconsistent with the Anderson opinion, or M.G.L. c. 55, §§13 or 14. As discussed above, an email sent only to members of a membership organization, or the families of members, does not involve the making of a contribution or expenditure.

### A. Contribution Issues

1. May a person use his or her own computer to send emails endorsing a candidate?

Yes. If a person, on his own time and using his own personal computer, volunteers to send emails supporting a candidate or ballot question, he is providing a personal service. As such, he is not making a contribution to a candidate or committee. See AO-01-07.

2. If a candidate receives an email list from a supporter, has the candidate received a contribution?

It depends. Lists of email addresses may be considered items of value depending on the source of the list. If a committee or candidate purchases or otherwise receives a mailing list or membership list from a person or entity that ordinarily receives compensation for the preparation or

sale of such lists, the committee or candidate must report an expenditure or the receipt of an in-kind contribution. See AO-01-07. If, however, an individual who is not in the business of compiling such lists creates an email list using his own contacts (personal email address book), and provides the list to a candidate or committee, such activity would involve the provision of a personal service. Therefore, it would not be considered a contribution, unless an entity other than the candidate or committee compensates the person for the preparation and use of the list.

If a committee shares its list with another committee, the resulting in-kind contribution may raise issues under the campaign finance law. For example, if the list is provided by a candidate's committee to another candidate's committee, the value of the list, considered with other contributions, must comply with the \$100 annual contribution limit from one candidate committee to another. See M.G.L. c. 55, § 6.

In the context of municipal campaigns, it is not unusual for individuals to buy a voter list at town hall and then provide the list to a political committee. The list is an in-kind contribution which must be disclosed in the committee's campaign finance reports.

3. May an organization send an email endorsing a candidate to its members?

If a group, other than a corporation subject to the restrictions in M.G.L. c. 55, § 8, qualifies as a "membership organization" within the meaning of M.G.L. c. 55, § 1, communications via email from the membership organization to its members and their families on any subject shall not be deemed to be a contribution or expenditure as defined in M.G.L. c. 55, § 1. See AO-00-05 and OCPF Memorandum M-98-04.

4. May an organization pay for the posting of an Internet communication or email?

Yes. If the communication endorses a candidate, paying for the communication will result in either an expenditure or contribution subject to the campaign finance law. An email communication by a membership organization solely to the organization's membership is not, however, a "communication" subject to the campaign finance law, but a communication beyond the membership of the organization *would* be a contribution.

A corporation or entity that may not, consistent with M.G.L. c. 55, § 8, contribute to a candidate, PAC or political party, may not pay for such a communication if the corporation is coordinating the activity with a candidate or committee. A corporation may, however, have its in-house web designer post a simple link to a candidate's website and such link would not be a "contribution" due to its *de minimis* nature. In contrast, the entity's expenditure to pay a vendor for the design of an endorsement, would be a contribution.

## **B. Disclaimers**

Disclaimers are not required in email communications unless the email contains, in addition to the email text itself, a paid advertisement purchased through an independent expenditure, and the advertisement meets or exceeds 15% of a standard display resolution computer screen. If the advertisement displayed meets or exceeds this size, then the disclaimers required by Section 18G must be included in the email.



## **VII. Public Resource and M.G.L. c. 55, §§ 13 and 14 Issues**<sup>4</sup>

### **A. Public Resources**

#### 1. Use of Internet or email by public entities

Although a governmental entity may post information regarding a ballot question on its website, it may not use email to proactively distribute such information to voters or a subset of voters except in response to a specific request for information. See IB-92-02 and AO-99-06. Similarly, access to an email network or list created or provided by a governmental entity is a public resource. For example, a principal or teacher may generally not use a school's email list or account to send emails supporting or opposing a particular candidate or ballot question.

#### 2. Use of Internet or email by public employees

While public employees may be involved in non-fundraising political campaign activity such as sending political emails during their own time, they should avoid such activity during their workday. Therefore, if a legislator maintains a campaign website or a campaign social media site, State House staff members may not, during their workday, be involved in maintaining such sites. They may, however, update constituent services sites that provide information to the public of legislative activities. As discussed below, however, non-elected public employees may not be involved in maintaining the political fundraising portion of such sites, even on their own time.

### **B. Solicitations by email in Public Buildings**

Section 14 states that “no person shall in any building or part thereof occupied for state, county or municipal purposes demand, solicit or receive any payment or gift of money or other thing of value for [political campaign purposes].”

If a person sends or forwards a solicitation via email to a public employee at the employee's place of work, e.g., by an email sent to an email account provided by a governmental entity in conjunction with that individual's employment and which is generally accessed from a computer located in a government building, such action is not consistent with Section 14. See AO-01-20. Consequently, a campaign may not keep any contributions received as a result of such an email. See M-10-01.

If a solicitation is improperly sent to a public employee at the employee's place of work in a government building, the recipient may, however, advise the sender of a private email address or other address to which the solicitation may be sent instead.

### **C. Solicitations by Public Employees – Use of Email**

Section 13 states that “[n]o person employed for compensation, other than an elected officer; by the commonwealth or any county, city or town shall directly or indirectly solicit or receive any

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<sup>4</sup> This bulletin addresses issues within the scope of the campaign finance law. A separate statute, the Massachusetts conflict of interest law, M.G.L. c. 268A, also restricts public employees' use of public resources and their political activities. Public employees should contact the State Ethics Commission before becoming involved in political activity, to ensure compliance with that statute.

gift, payment, contribution, assessment, subscription or promise of money or other thing of value for the political campaign purposes of any candidate for public office or of any political committee, or for any political purpose whatever...”

Public employees may not, consistent with Section 13, be involved in any way in directly or indirectly soliciting campaign contributions. Public employees must, to ensure compliance with Section 13, refrain from any activity that indicates support for the fundraising efforts of a candidate or political committee or for other political purposes. See IB-92-01. In the context of email communications, a public employee may not send or forward any email, whether from a personal or governmental account, that contains political solicitations, i.e. requests for campaign contributions.

In addition, a public employee should refrain from providing a political committee with an email list, i.e. his personal email address book or an email list compiled at his workplace, or, in any other way, from assisting a political committee in determining who would receive a fundraising email solicitation from the political committee, since such activity would be considered an indirect solicitation from the public employee. See AO-02-29.

#### **D. Questions and Answers Relating to Public Employees’ Use of Social Media**

If a candidate is also an appointed public employee and uses social media, e.g., a Facebook page, to campaign, care must be taken to ensure compliance with M.G.L. c. 55, § 13. OCPF has issued regulations specifically to provide guidance regarding such use. See 970 CMR 1.24(2), which states that a public employee **may not intentionally**:

- (a) Solicit or receive political contributions using a website or a social media account, post or site;
- (b) Share, retweet or “tag” other individuals or entities, or otherwise distribute, a social media post that directly solicits political contributions;
- (c) Invite persons to events publicized using social media or a website, if the event is advertised as a political fundraising event;
- (d) Send or provide a link to a social media post or to the part of a website that solicits political contributions (i.e., a link directly to the “donate” section of a social media page or a website);
- (e) Design or administer the portion of any social media account or website that is used to solicit or receive political contributions;
- (f) Allow his or her name to be used, or provide a message supporting a candidate or committee, that will appear on the portion of a website or social media page that solicits political contributions; or
- (g) Post political fundraising solicitations on a candidate’s or political committee’s website or social media page.

In addition, 970 CMR 1.24(3) states that **it is not a violation** of M.G.L. c. 55, § 13 for a public employee to do the following...:

- (a) If the public employee is also a candidate, the public employee/candidate may have a political committee which uses a website or social media account to solicit political contributions, although the communication in such instances must clearly be from the committee rather than personally from the public employee, and the name of the page/social media account must use the political committee's name;
- (b) If asked for information regarding fundraising, a public employee who is also a candidate may refer persons to the candidate's political committee website or social media account;
- (c) "Like" a political fundraising event posted on a social media site;
- (d) "Like," "follow" or become a "friend" of a political candidate or political committee (even if the website of the candidate or committee solicits contributions);
- (e) Attend an event in response to a website or social media post;
- (f) Indicate on a personal website or on a social media page that he or she will be attending a political fundraising event, even if the response, or planned attendance, is ultimately posted on the public employee's social media account, on the website, or on the social media page of the candidate or committee holding the event (but without additional language soliciting contributions);
- (g) Contribute to a candidate or committee in response to a social media post;
- (h) Post non-fundraising information regarding a candidate or political committee, on a website or social media page;
- (i) Share, retweet, tag other individuals or entities, or otherwise distribute a link to a social media post or any part of a candidate or committee's website, if the part of the social media post or website reached through the link is not primarily the "donate" page of the social media post or website, e.g., a link to the front page of a candidate's campaign website is permitted, even if the page contains a small "donate" button; or
- (j) Share, retweet, tag other individuals or entities, or otherwise distribute notice of a political event if at the time of distribution, the event is not advertised as a fundraising event, e.g., it is advertised as a "meet and greet" or "stand out" event.

Further, 970 CMR 1.24(4) states that " a public employee who is tagged or otherwise referenced in a social media post distributed by a non-public employee advertising a political fundraising event does not result in a solicitation by the public employee in violation of M.G.L. c. 55, § 13."

If you have any questions or need further information regarding the application of the campaign finance law to Internet or email issues please do not hesitate to contact OCPF. This is a developing area and it is expected that additional guidance will be issued to respond to new questions as they arise.