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**INTERPRETIVE BULLETIN**

**Filing of Late Contribution Reports**

The Office of Campaign and Political Finance (OCPF) periodically issues interpretive bulletins regarding various aspects of M.G.L. c. 55, the Massachusetts campaign finance law. This bulletin is issued to provide guidance and direction to political committees and interested persons regarding the filing of late contribution reports.

The campaign finance law states, in relevant part, that “[e]very political committee organized on behalf of a candidate that files with the director, and every ballot question committee that files with the director, which receives *and deposits* a contribution in the amount of \$500 or more after the eighteenth day, but more than 72 hours, before the date of a special, preliminary, primary or general election [“the late contribution reporting period”], shall file a report to disclose the information required by [M.G.L. c. 55, §18], within 72 hours *of depositing such contribution.*” See M.G.L. c. 55, §§ 18 and 19 (emphasis added).

In addition, state party committees that receive and deposit contributions of \$500 or more within the eighteen days before an election must file late contribution reports within 72 hours of deposit, but the late contribution reporting period for such committees ends 24 hours, not 72 hours, prior to the special, preliminary, primary or general election. See M.G.L. c. 55, § 19(g). The late contribution report filing requirement does not apply to political action committees, independent expenditure PACs, people’s committees, local party committees, and candidates or committees that do not file with OCPF.

For all committees that file late contribution reports, except state party committees, late contribution reports are not required for deposits that are made during the three days before an election (e.g., if a primary takes place on September 14 and a general election takes place on November 2, reports are not required if the contribution is deposited on September 11, 12 or 13, the three days prior to the primary election, or on October 30, 31 or November 1, the three days prior to the general election). For state party committees, late contribution reports are not required for deposits that are made during the last day before an election.



The filing of a late contribution report by a non-depository candidate's committee or ballot question committee (or by a depository candidate's committee that reports the receipt of an in-kind contribution on a late contribution report) does not replace or affect the requirement that a committee also disclose all contributions in regularly filed campaign finance reports. For example, if a legislative candidate receives and deposits a contribution of \$500 six days before an election, the candidate must file a late contribution report within 72 hours of deposit, but must also disclose the contribution in the year-end report filed by the candidate's committee.

## **I. Who is required to file a late contribution report?**

### **A. Depository candidates**

Late contribution reports are filed using OCPF's Web-based filing system. Depository candidate committees,<sup>1</sup> except when they receive in-kind contributions, should file a regular Deposit Report within 72 hours of deposit to disclose late contributions. Depository candidate committees file a Late Contribution Report<sup>2</sup>, rather than a Deposit Report, to disclose in-kind contributions of \$500 or more received during the late reporting period.

### **B. Non-depository candidates**

Non-depository candidate committees<sup>3</sup> and ballot question committees that file with OCPF file a separate Late Contribution Report using OCPF's Web-based filing system.

Candidates on a state ballot who are not enrolled in a political party are not required to file late contribution reports for contributions deposited during the primary reporting period, but are required to file late contribution reports prior to the general election if the candidate is seeking election in the general election. Write-in candidates are also required to file late contribution reports. A non-depository candidate who loses in a preliminary or primary election, and who is not a write-in candidate for the general election, is not required to file late contribution reports for the general election, but must still file a pre-election report on the regular schedule.

The following table illustrates when enrolled and unenrolled non-depository candidates must file late contribution reports:

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<sup>1</sup> Depository committees include state party committees; candidate committees organized on behalf of candidates for governor, lieutenant governor, secretary of state, attorney general, treasurer/receiver general, auditor, and governor's council; committees organized on behalf of candidates for district attorney, clerk of court, register of probate, register of deeds, county commissioner, county treasurer and sheriff; and candidates for mayor and councilor in any city with a population of 65,000 or more. As of the date of this bulletin, these cities include the cities of Boston, Cambridge, Lowell, Springfield, Worcester, New Bedford, Brockton, Quincy, Lynn, Fall River, Newton, Lawrence, Somerville, and Framingham. Although PACs organized with OCPF (other than independent expenditure PACs) file reports in the depository system, they are not required to file late contribution reports.

<sup>2</sup> Late Contribution Reports are referred to as "Reports of Late Contributions Received" in OCPF's regulations.

<sup>3</sup> Non-depository candidate committees include committees organized on behalf of candidates for State legislative office, and also mayoral candidates in municipalities with a total population, as determined by the most recent federal decennial census, of less than 65,000 persons.

	<b>Seeking election in primary or preliminary?</b>	<b>Seeking election in general election?</b>
<b>Unenrolled legislative candidates</b>	N/A	Late Contribution Report must be filed
<b>Mayoral candidates in cities of less than 65,000 persons</b>	Late Contribution Report must be filed	Late Contribution Report must be filed
<b>Enrolled legislative candidates and mayoral candidates in cities of less than 65,000 persons</b>	Late Contribution Report must be filed	Late Contribution Report must be filed

### **C. Ballot question committees**

Ballot question committees are not required to file late contribution reports for contributions received and deposited before the primary election, but must do so prior to the general election.

### **II. Determining when a “deposit” occurs**

The statute describes when a contribution of \$500 or more that is received and deposited during the late contribution reporting period must be disclosed.<sup>4</sup> It does not address whether 72-hour disclosure is required for credit (or debit) card or in-kind contributions of \$500 or more received during the late contribution reporting period (See “A” below). Nor does it define whether such disclosure is required in instances where a non-depository candidate makes out of pocket expenditures for his or her campaign of at least \$500 during the late contribution reporting period (See “C” below).

#### **A. Credit or Debit Card Contributions**

A credit or debit card contribution is deemed “received” for purposes of disclosure and compliance with the limits of the campaign finance law on the day the contribution is actually received into the committee’s account either by check or electronic transfer. This is also the date the contribution is deposited for purposes of reporting a late contribution. The 72-hour disclosure clock begins at this point.

<sup>4</sup> The requirement to file a late contribution report is triggered when an individual contribution of \$500 or more is received and deposited during the late contribution reporting period. The only time contributions received are aggregated to determine if the \$500 threshold has been reached and a late contribution report is required is when two or more contributions totaling \$500 or more are received from the same contributor during the same 72-hour period.

## **B. In-kind Contributions**

An in-kind contribution that takes place during the late contribution reporting period should be deemed to involve a "deposit" for purposes of the late contribution reporting requirement, as of the date the in-kind contribution is received. When the in-kind contribution is received, it is appropriate to consider the "deposit" to be made at that point, and such interpretation is consistent with furthering enhanced disclosure of late contributions. The committee has 72 hours from the receipt of the in-kind contribution to file the report.

## **C. Expenditures by non-depository candidates**

When a non-depository candidate personally makes an out of pocket expenditure of \$500 or more on behalf of his or her committee, a "deposit" is deemed to take place when the expenditure is made.<sup>5</sup> Although no actual deposit of funds occurs, such an expenditure, made during the late contribution reporting period, should be deemed to involve a "deposit" for purposes of the late contribution reporting requirement, as of the date the expenditure is made.<sup>6</sup> The committee has 72 hours from the time the expenditure is made to file a Late Contribution Report.

## **D. Loans, including loans made by a candidate**

Loans are considered contributions<sup>7</sup> and the receipt and deposit of funds loaned to a committee must be included in late contribution reports. This requirement applies for loans from other persons to a candidate's committee or other committee required to file late contribution reports. In addition, a late contribution report must be filed if a candidate makes a loan to his or her own committee and the funds are available during the late contribution reporting period.

## **III. Regulations**

The office has issued a regulation, 970 CMR 1.18, regarding late contribution reports. The regulation defines when a credit card contribution made to a candidate's committee, or an expenditure made on behalf of such committee, results in a "deposit" requiring the filing of a report of late contributions. The regulation states as follows:

- (1) A ballot question committee or a non-depository candidate or committee that is required, pursuant to M.G.L. c. 55, § 18, to file a report of a contribution of \$500 or more received and deposited after the

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<sup>5</sup> Depository candidates may not make personal, out of pocket expenditures, that exceed \$100. See M.G.L. c. 55, § 19(c).

<sup>6</sup> OCPF's regulations state that non-depository candidates must file late contribution reports not only when a contribution of \$500 or more is received, but also when the candidate makes an expenditure of personal funds of \$500 or more on behalf of the committee. 970 CMR 1.18(4). If a late contribution report is not filed when candidate's personal funds are used, the public would not know how the candidate came to have funds that could affect campaign activities shortly before the election.

<sup>7</sup> Loans are subject to contribution limits, e.g., the \$ 1,000/year limit on contributions by individuals to candidates. See M.G.L. c. 55, § 7A.

eighteenth day but more than 72 hours before the date of a special, preliminary, primary or general election (“the late contribution reporting period”), may satisfy that requirement by filing a Report of Late Contributions Received. A depository candidate or committee required to file such a report by M.G.L. c. 55, § 19(g) may satisfy the requirement by filing either a Deposit Report for monetary contributions received or, if in-kind contributions have been received during the late contribution reporting period, a Report of Late Contributions Received.

(2) The filing of a Report of Late Contributions Received does not replace the requirements for the filing of other reports and statements specified in M.G.L. c. 55.

(3) For purposes of filing a Report of Late Contributions Received or a Deposit Report, a “deposit” of a contribution made by credit or debit card is deemed to take place when the contribution is received into the committee’s account.

(4) When a non-depository candidate makes an expenditure from personal funds of \$500 or more on behalf of his or her committee, or when a person or entity provides an in-kind contribution valued at \$500 or more to a political committee organized on behalf of a candidate that files with the director or to a ballot question committee that files with the director, during the late contribution reporting period, a “deposit,” for purposes of determining when a Report of Late Contributions Received must be filed, is deemed to occur on the date of the expenditure or as of the date the in-kind contribution is made.

## **V. Examples**

The following examples are based on a primary date of September 9 and an election date of November 4. Based on these dates, late contribution reports must be filed by candidate committees<sup>8</sup> within 72 hours for deposits made within these date parameters:

Pre-primary: Aug. 23 to Sept. 5

Pre-election: Oct. 18 to Oct. 31

### **A. Depository candidates**

(1) A candidate for governor receives a \$1,500 contribution from the state party committee on Oct. 22, which is 13 days before the Nov. 4 election. The candidate deposits the check on Oct. 23. The campaign has received and deposited a check for \$500 or more after 18 days before an election,

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<sup>8</sup> Ballot question committees file reports to disclose late contributions received and deposited during the pre-election period only.

but not within three days prior, and is now required to electronically file a Deposit Report with OCPF within 72 hours of the deposit. The campaign files a Deposit Report on Oct. 24 disclosing the receipt and deposit of the \$1,500 contribution. The committee has complied with the law.

(2) An individual makes a \$500 credit card contribution to a candidate for governor ten days before the general election and the contribution is received into the committee's account on October 22. The candidate is required to file a Deposit Report within 72 hours of that date.

(3) An individual provides a \$500 in-kind contribution to a candidate ten days before the election. The candidate is required to disclose the in-kind contribution by filing a Late Contribution Report, not a Deposit Report.

(4) A candidate receives a \$1,000 check four days before the election. The check (which must be deposited within seven days of receipt) is not deposited until the day after the election. The committee is not required to file a Late Contribution Report because the check was not deposited until the late contribution reporting period has expired.

#### **B. Non-depository candidates**

(1) A state representative candidate receives a \$1,500 contribution from the state party committee on Oct. 22, 13 days before the Nov. 4 election. The candidate deposits the check on Oct. 23. The committee has received and deposited a check for \$500 or more within 18 days of an election, but not within three days prior, and is now required to electronically file a late contribution report with OCPF within 72 hours of the deposit (i.e., by Oct. 26). The committee must also disclose the receipt in its year-end report.

(2) A Senate candidate receives three \$500 contributions from individuals five days before the primary election. She does not deposit the checks until Sept. 8, the day before the primary. She is not required to file a late contribution report because the deposit was made one day prior to the election, but must disclose the contribution on her pre-election report.

(3) A state representative candidate uses his personal credit card to purchase a \$2,000 campaign ad 15 days before the November 4 election. The candidate must file a late contribution report, within 72 hours, disclosing a \$2,000 contribution from himself to his committee. The committee must also disclose the receipt in its year-end report.


(4) An individual makes a \$500 credit card contribution to a state representative candidate ten days before the general election, and the contribution information is subsequently posted to the merchant provider's website, but the committee does not receive the funds until after the election. The candidate is not required to file a late contribution report.

**C. Ballot question committees**

(1) A ballot question committee receives a \$5,000 contribution from an individual on Oct. 22, 13 days before the Nov. 4 election. The committee deposits the check on Oct. 23. The committee has received and deposited a contribution for \$500 or more after 18 days before an election, but not within three days prior, and is now required to electronically file a late contribution report with OCPF within 72 hours of the deposit.

(2) An individual makes a \$1,000 credit card contribution to a ballot question committee ten days before the general election, and the contribution is received six days before the date of the election. The committee is required to file a late contribution report within 72 hours of the day the contribution was received into the committee account.

If you have questions regarding this interpretative bulletin or any other campaign finance matter please do not hesitate to contact OCPF at 1-800-462-OCPF or 617-979-8300.

 10/17/18  
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