

Political Action Committee Campaign Finance Guidebook





IMPORTANT NOTICE

The Commission has taken care to make this guide concise and accurate; however, do not substitute the information presented here for the applicable provisions of Maine law and the Commission's rules. The statutory and regulatory requirements are controlling in the event of any omission or error in this publication.

NOTE FROM THE COMMISSION STAFF

The Ethics Commission advises all campaigns that our main priority is helping you. Maine's campaign finance laws are complicated and they cannot all be summarized in a guidebook. We have a dedicated employee for PACs, so please contact us with your questions in an effort to get compliance right the first time and you can focus on spreading your committee's message with Maine voters!



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CHAPTER 1

Introduction

Organizations and groups that raise or spend money to influence candidate elections in Maine may be required to register as a political action committee (PAC) and file campaign finance reports with the Commission. There are three different types of PACs and each have specific restrictions and requirements. Different reporting requirements apply to Maine's political party committees and organizations formed to influence initiatives and referenda, referred to as ballot question committees (BQCs). Please see the other guidebooks published by the Commission for more information on those committees.)

What is a Political Action Committee?

Maine Election Law defines a PAC as any of the following:

Traditional PAC. Any person, including any corporation or association, other than an individual, that receives contributions or makes expenditures aggregating more than **\$2,500** in a calendar year for the purpose of influencing the nomination or election of any candidate to political office.

Leadership PAC. A PAC that is directly or indirectly established, maintained or controlled by a current member of the Legislature.

Caucus PAC. Each Senate and House caucus leader may designate one caucus PAC to promote the election of their party's nominees to the body of the Legislature of which the caucus leader is a member. The designation must be made in writing to the Commission and remains effective until a new designation is made to the Commission.

Important Definitions

Campaign. Any course of activities to influence the nomination or election of a state or county candidate.

Contribution. Is defined as:

A. A gift, subscription, loan, advance or deposit of money or anything of value made to or received by a committee for the purpose of initiating or influencing a campaign, including but not limited to:

1. Funds that the contributor specified were given, in whole or in part, in connection with a campaign;



2. Funds provided in response to a solicitation that would lead the contributor to believe that the funds would be used specifically, in whole or in part, for the purpose of initiating or influencing a campaign; and
 3. Funds that can reasonably be determined to have been provided by the contributor for the purpose of initiating or influencing a campaign when viewed in the context of the contribution and the recipient committee's activities regarding a campaign;
- B. Any funds deposited or transferred into the campaign bank account;
 - C. A contract, promise or agreement, expressed or implied, whether or not legally enforceable, to make a contribution to a committee;
 - D. Any funds received by a committee that are to be transferred to any candidate, committee, campaign or organization for the purpose of initiating or influencing a campaign; or
 - E. The payment, by any person or organization, of compensation for the personal services of other persons provided to a committee that is used by the committee to initiate or influence a campaign.

"Contribution" does not include a loan of money by a financial institution made in accordance with applicable banking laws and regulations and in the ordinary course of business.

Summarized Definition of Contribution. A contribution is essentially anything of value given or promised and received by the PAC with the intent on it affecting or influencing candidate elections. It is important to remember pledges and loans are considered reportable contributions at the time the pledge or loan is made.

Expenditure. Is defined as:

- A. A purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value, made for the purpose of initiating or influencing a campaign;
- B. Any purchase, payment, distribution, loan, advance, deposit or gift of money made from the campaign bank account;
- C. A contract, promise or agreement, expressed or implied, whether or not legally enforceable, to make any expenditure for the purposes set forth in this paragraph; and
- D. The transfer of funds by a political action committee to another candidate or committee.

Summarized Definition of Expenditure. Any purchase, payment, or promise or agreement to pay for anything that could affect a candidate



election campaign is a reportable expenditure. It is important to remember unpaid obligations are reportable at time the obligation is made.

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

Exempt Donor. "Exempt donor" means a person that has not received contributions for the purpose of influencing a campaign in the prior two (2) years and whose only payments of money to influence a campaign in the prior two (2) years are:

- Contributions of money to candidates, party committees, PACs or BQCs registered with the commission or a municipality; or
- Payments for goods or services with an aggregate value of no more than \$100,000 contributed to candidates, party committees, PACs or BQCs registered with the commission or a municipality.

LEGAL REFERENCES

Traditional PAC	21-A M.R.S. § 1052(5)(A)(2)
Leadership PAC	21-A M.R.S. § 10523-D
Caucus PAC	21-A M.R.S. § 1053-C
Important Definitions	21-A M.R.S. § 1052



CHAPTER 2

Registration

Registering with the Ethics Commission

Any organization that meets the criteria for being a PAC must register with the Commission no later than seven (7) calendar days after it meets the \$2,500 threshold. It is important for an organization to keep track of its contributions and expenditures from the beginning of its campaign-related activities in order to know if and when it must register. An organization does not have to wait until it reaches the \$2,500 threshold to register, especially when they know they will eventually qualify as a PAC.

As part of registration, the organization must file an initial campaign finance report within seven (7) days after registering, or within 14 days of being required to register, whichever comes first. There is no fee to register.

Selecting a PAC Type. At registration, the PAC selects its PAC type, with most being Traditional PACs. If a current member of the Legislature is directly or indirectly involved in decision making for a PAC (that is not a caucus PAC), then it must be registered as a Leadership PAC. The Caucus PACs are set up exclusively by the political party caucuses of the legislative chambers.

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

1. Select two individuals to serve as treasurer and principal officer. It is recommended the PAC select a treasurer that has bookkeeping or campaign finance experience.
2. Identify all individuals who are primarily responsible for making decisions or raising funds for the committee. A PAC is not required to have officers beyond the treasurer and principal officer, but if it does they must be disclosed.
3. Identify the particular candidates or categories of candidates the PAC expects to support or oppose. If the purpose of the PAC is more general, the statement should be as descriptive as possible.
4. Indicate whether an officer, decision-maker or fundraiser of the PAC is a Legislator or a candidate for elected office. The PAC must also certify whether it is directly or indirectly maintained or controlled by a current member of the Legislature. If a current member of the Legislature is an officer, the PAC must indicate that on the registration.



5. State the names and addresses of the corporations and organizations, if formed by one or more for-profit or non-profit corporations or other organizations.
6. Provide the name of the account the committee will use to deposit contributions and make expenditures, and the name and address of the financial institution where the account is established.

Amendments. When any information provided on the registration form changes, the PAC must file an amended registration within 10 calendar days of the change.

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

Responsibilities of PAC Officers

Treasurer. A PAC treasurer is responsible for:

- Filing complete and accurate reports and amendments.
- Maintaining the PAC's records for four years following the election to which they pertain.
- Making sure these duties are performed, even

if they have been delegated to another.

Treasurer & Principal Officer . The treasurer and principal officer of a PAC are jointly responsible for:

- Compliance with election laws and rules.
- Responding to notices and correspondence from the Commission.
- Ensuring all required records are kept.

Treasurer, Principal Officer & Decision-Maker(s). All of these individuals are assumed to have participated in all spending decisions.

Agents and Former Officers. These individuals may be liable for all or part of a fine if the agent or former officer is directly responsible for the violation.

Campaign Bank Account

A PAC must establish a separate account in a bank or other financial institution and must deposit and spend all money received and spent for the purpose of influencing an election from that account. Any other money deposited or spent from that account must be reported, regardless of its purpose. The funds in that account may not be commingled with the personal funds of individuals or the general treasury funds of a business or nonprofit.

A PAC may request a waiver of this requirement if establishing a separate account would be



administratively burdensome. Additionally, the founding organization of a PAC may pay its own employees out of its general treasury for campaign-related activities they perform.

Initial Campaign Finance Report

The initial campaign finance report must disclose all financial activity made since the opening of the campaign bank account, the first receipt of contributions, or the first made expenditure, whichever comes first. The report is due within seven (7) days of registration.

Penalties for Late Registration

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

Exceptions to Registration

Out-of-State PACs. A PAC organized outside of the state may be required to register as a PAC under Maine law if it becomes involved in Maine elections. If an out-of-state PAC has received contributions or made expenditures for the purpose of influencing candidate elections in Maine, it must register as a PAC and file campaign finance reports.

An out-of-state PAC is not required to register and file reports if its *only* financial activity in Maine is making contributions to other PACs, party committees, BQCs, or candidates registered with

the Commission or a Maine municipality, and the PAC has not specifically raised or accepted any contributions to influence an election or campaign in Maine.

Donor Exception. An exempt donor is excused from registration requirements if they have not received contributions for the purpose of influencing a campaign in the prior two (2) years, and whose *only* payments of money to influence a campaign in the prior two (2) years are cash contributions, or in-kind contributions of no more than \$100,000 to candidates, party committees, PACs, or BQCs.

Cross Purpose Expenditures. A PAC may spend up to \$10,000 to influence a referenda election without having to register as a BQC. A PAC that solicits contributions to influence a referenda election is unable to claim this exception. If the PAC exceeds the \$10,000 threshold in a calendar year, it must register a BQC, thus the founding organization will be operating two separate committees.



LEGAL REFERENCES

Selecting a PAC	21-A M.R.S. § 1052(5)
Registering with the Ethics Commission	21-A M.R.S. § 1052-A(1)
Registration Requirements	21-A M.R.S. §§ 1052-A(2) & (3)
Amendments	21-A M.R.S. § 1052-A(1)(B)
Biennial Re-registration of PACs	21-A M.R.S. § 1052-A(1)(C)
Responsibilities of Officers	21-A M.R.S. § 1054-A
Campaign Bank Account	21-A M.R.S. § 1054
Initial Campaign Finance Report	21-A M.R.S. § 1059
Penalties for Late Registration	21-A M.R.S. § 1062-A(1)
Out-of-State PACs	21-A M.R.S. § 1053-B
Donor Exception	21-A M.R.S. § 1052(3-A)
Cross Purpose Expenditures	21-A M.R.S. § 1052-A(1-A)



CHAPTER 3

Restrictions & Prohibitions

Prohibited Activity for All Committees

Restrictions on Constitutional Officers. The Secretary of State, State Treasurer, State Auditor, and Attorney General, and any individual running for these offices, may not form a PAC or be involved in the decision-making or fundraising for a PAC. All constitutional officers, their staff, and/or their agents, are prohibited from directly or indirectly soliciting or accepting contributions from lobbyists or their clients on behalf of a PAC while the Legislature is in session.

Candidates Participating in the Maine Clean Election Act (MCEA). An MCEA candidate may not serve as treasurer, principal officer, fundraiser, or decision-maker for a PAC (other than a Caucus PAC). This prohibition begins April 1st of a general election year and lasts through:

- The date the candidate withdraws from a race;
- The date of the primary or general election (for a candidate who loses either election); or
- The January 1st immediately preceding the next general election (for a candidate who wins the general election).

Contributions from Foreign Nationals. Under federal law, foreign nationals are prohibited from making any contributions or expenditures in connection with any election in the U.S. for a federal, state, or local political office. More information is available at www.fec.gov.

Expenditure Limitations. A PAC may not make a contribution to a candidate for an election that exceeds the limitation for the office sought by the candidate. PACs may not contribute in any amount or form to MCEA candidates.

Prohibited Activity for Leadership and Caucus PACs

Leadership and Caucus PACs are prohibited from the following activities in addition to those contained in the Prohibited Activity for All Committees section.

Compensation and Reimbursements. If a Legislator is a principal officer, treasurer, fundraiser, or decision maker for a PAC, it may not compensate them for services provided to the PAC, except reimbursement for travel expenses incurred performing their duties and volunteering for the PAC. The PAC may pay mileage as part of the travel reimbursement at a rate established by



the Commission by rule, but not for the costs of repairing or maintaining the Legislator's vehicle. The PAC may reimburse the Legislator for other expenses incurred in the proper performance of their official duties and for purchases made on behalf of it. The PAC may not reimburse the Legislator for expenses that have been reimbursed by any other source. The PAC may not pay or reimburse the Legislator for any expenses determined to be for the purpose of the Legislator's personal financial enrichment.

The PAC may not compensate a Legislator's immediate family members for services provided to it, nor reimburse them for any expenses for their personal financial enrichment. The PAC may also not make payments to a business owned or operated by the Legislator, or an immediate family member of the Legislator.

The funds of the PAC may not be commingled with any other funds.

A person who violates these prohibitions may be assessed a penalty of not more than \$500 or the amount of the impermissible payment or reimbursement, whichever is greater.

Contributions from Lobbyists and Lobbyist Clients and Firms. When the legislature is in session, a lobbyist, lobbyist associate, lobbying client, or lobbying firm may not make a contribution to a Leadership or Caucus PAC. When the Legislature is *not* in session:

- A lobbying client and lobbying firm may contribute to a Leadership or Caucus PAC.
- Lobbyists and lobbyist associates may make contributions to Caucus PACs
- Lobbyists and lobbyist associates may only make contributions to Leadership PACs if the Legislator who is an officer of the PAC would appear on the ballot where the lobbyist or lobbyist associate would vote.

LEGAL REFERENCES

Restrictions on Constitutional Officers	21-A M.R.S. § 1063
Candidates Participating in the MCEA	21-A M.R.S. § 1125(6-F)
Contributions from Foreign Nationals	52 U.S.C. § 30121
Expenditure Limitations	21-A M.R.S. § 1056(1)
Prohibited Activity for Leadership PACs - Compensation and Reimbursement	21-A M.R.S. § 1054-B
Prohibited Activity for Caucus & Leadership PACs - Contributions from Lobbyists & Clients & Firms	1 M.R.S. § 1015-A



CHAPTER 4

Campaign Finance Reports

Initial Campaign Finance Reports

The initial campaign finance report is due seven (7) days after registration, or within 14 days after the PAC exceeds \$2,500 in contributions or expenditures, whichever comes first, and must include all contributions and expenditures made since the start of the campaign.

Regular Campaign Finance Reports

A PAC must file reports until it terminates, even if it has no financial activity.

Depending on the year and activity, PACs file between four (4) and eight (8) campaign finance reports annually. All regularly scheduled reports must be filed by 11:59 p.m. on the day of the deadline or will be subject to a civil penalty.

Quarterly Campaign Finance Reports. A PAC must file four (4) quarterly reports annually, regardless of financial activity.

Pre- and Post-Election Reports in a Candidate Election Year. In even-numbered years, all PACs must file reports 11 days before and 42 days after the primary and general elections, regardless of financial activity.

Pre- and Post-Election Reports in Odd Years. In odd-numbered years, if a PAC makes expenditures to influence a candidate special election or ballot question election, it must file an 11-Day Pre-Election Report and a 42-Day Post-Election Report, in addition to quarterly reports.

24-Hour Reports

24-Hour Reports provide disclosure of campaign activity immediately before an election. If a PAC is required to file an 11-Day Pre-Election Report, they must file a 24-Hour Report for any contribution received of \$5,000 or more, and any expenditure made of \$1,000 or more, during the last 13 days before the election. The report must be filed within 24 hours of receiving the contribution or making the expenditure, even if the filing deadline falls on a weekend or a holiday. Transactions made on the day before an election must be reported on election day. Loans and pledges are considered contributions, and unpaid debts or obligations for goods or services are considered expenditures for the purposes of 24-hour reporting.

24-Hour Reports are filed online through the Commission's eFiling system. The eFiling system



will automatically add the transactions reported in a 24-Hour Report to the next regularly scheduled report.

Independent Expenditure Reports

See the next chapter, *Supporting Candidates* for more information on Independent Expenditure reports.

Amendments

If a PAC unintentionally makes an omission or includes incomplete or inaccurate information in a campaign finance report, they must promptly file an amendment. All reports are reviewed by the Commission staff, and if the original version of a

report does not substantially conform to the disclosure requirements, the Commission may consider the report late, even if it was originally filed on time.

Electronic Filing

PACs must file their campaign finance reports electronically using the Commission’s eFiling system. Usernames and passwords are assigned to the PAC’s Principal Officer, Treasurer, and any authorized agents upon registration. The eFiling system has instructions for entering each type of transaction, and Commission staff are available to help filers become familiar with the website.

2023 Filing Schedule for PACs		
Type of Report	Due Date	Reporting Period
April Quarterly	April 10, 2023	January 1 - March 31
July Quarterly	July 17, 2023	April 1 - June 30
October Quarterly	October 5, 2023	July 1 - September 30
January Quarterly	January 16, 2024	October 1 - December 31
2024 Filing Schedule for PACs		
Type of Report	Due Date	Reporting Period
April Quarterly	April 10, 2024	January 1 - March 31
11-Day Pre-Primary	May 31, 2024	April 1 - May 28
Primary 24-Hour Reports	Within 24 hours of qualifying transaction	May 29 - June 10
42-Day Post-Primary	July 23, 2024	May 29 - July 16
October Quarterly	October 7, 2024	July 17 - September 30
11-Day Pre-Election	October 25, 2024	October 1 - October 22
General 24-Hour Reports	Within 24 hours of qualifying transaction	October 23 - November 4
42-Day Post-Election	December 17, 2024	October 23 - December 10
January Quarterly	January 15, 2025	December 11 - December 31



Contents of Reports

Contributions. For cash contributions exceeding \$50, the PAC must report the date and amount of the contribution, the name and mailing address of the contributor, and the occupation and employer for individual contributors. If the PAC is unable to obtain a contributor's employment information, it should select "information requested" when entering the transaction, and amend the report once the information is received.

Cash contributions of \$50 or less do not have to be itemized and are reported in one unitemized lump sum per report.

In-kind contributions of goods or services valued at \$50 or more must be reported with the contributor's name, address, occupation and employer for individual contributors, a date and description of the goods or services, and the fair market value. If another organization donates paid staff time, the PAC should include a description of those activities with the number of hours contributed. Contributed staff time and coordinated expenditures must be reported separately.

In-kind contributions of \$50 or less do not have to be itemized and are reported in one unitemized lump sum per report.

Commonly Overlooked Contributions.

- Contributions from the general treasury of the organization which founded the PAC.

- Contributions of paid staff time received by the PAC from the founding organization or others.
- Other in-kind contributions of goods and services.

Reporting Interest from Bank Accounts. Bank account interest is reported using the "Other Receipts" contribution type.

Expenditures. All expenditures made from the campaign account must be reported, regardless of their purpose. The date, amount, payee, and purpose of every expenditure must be reported. The "payee" is the vendor that provided the goods and services. If someone is reimbursed for an expenditure, the PAC must report the name of the *vendor* as the payee and state who the reimbursement was made to in the description of the expenditure.

Expenditures made to support or oppose a candidate or ballot question must include the name of the candidate, committee, or ballot question and whether the expenditure was made to support or oppose the candidate or ballot question.

Each expenditure must have an expenditure type, as shown on the next page, and as much information as possible to describe the expenditure. For instance, if the expenditure is for professional services, the PAC should identify the specific type of service performed.



EXPENDITURE TYPES

APP	Apparel (t-shirts, hats, embroidery, etc.)	OTH	Other and fees (bank, contribution, and money order fees, etc.)
CON	Contribution to party committee, non-profit, other candidate, etc.	PER	Personnel and campaign staff, consulting, and independent contractor costs
EQP	Equipment of \$50 or more (computer, tablet, phone, furniture, etc.)	PHO	Phones (phone banking, robocalls and texts)
EVT	Campaign and fundraising events (venue or booth rental, entertainment, supplies, etc.)	POL	Polling and survey research
FOD	Food for campaign events or volunteers, catering	POS	Postage for US Mail and mailbox fees
HRD	Hardware and small tools (hammer, nails, lumber, paint, etc.)	PRO	Professional services (graphic design, legal services, web design, etc.)
LIT	Printed campaign materials (palmcards, signs, stickers, flyers, etc.)	RAD	Radio ads and production costs only
MHS	Mail house and direct mail (design, printing, mailing, and postage all included)	TKT	Entrance cost to event (bean suppers, fairs, party events, etc.)
NEW	Newspaper and print media ads only	TRV	Travel (mileage and lodging, etc.)
OFF	Office supplies, rent, utilities, internet service, phone minutes and data	TVN	TV/cable ads, production, and media buyer costs only
ONL	Social media and online advertising only	WEB	Website and internet costs (website domain and registration, etc.)

Commonly Overlooked Expenditures. All PAC expenditures must be tracked to ensure timely registration. The most overlooked expenditures include:

- Paid staff time, consultants, pollsters, or other personal services costs.
- Travel reimbursements.
- Fundraising expenses.
- Website set-up, design, and maintenance costs.

Expenditures Made by a Consultant. When a PAC hires a consultant, and they make expenditures on behalf of it, those expenditures must be reported as though the PAC made them directly.

The report must detail the name of the third-party vendor or payee to whom the expenditure was made, the date, purpose, and amount. It is not sufficient to report only the total retainer or fee paid to the consultant if they used it to pay others for campaign-related goods or services. If the PAC reported a lump sum payment to a consultant in a previously filed report, they may need to amend it to deduct from that amount any expenditures made by the consultant, to avoid double-reporting. The Commission recommends the PAC note in the expenditure remarks section the payment was made by the consultant.

However, when a PAC pays a media buyer, or similar consultant to purchase advertising time from a broadcast station, cable TV system, or streaming service, the PAC may report all of the



payments made by the consultant for advertising time as a lump sum with an explanation that it is the total paid by the consultant for advertising time. The PAC does not need to itemize the amounts paid to individual broadcast stations, cable TV systems, or streaming services.

The treasurer should obtain receipts or paid invoices for all sub-vendor purchases by the consultant on behalf of the PAC.

Loans. All received loans, loan repayments, and forgiven loans must be reported.

Debts. All unpaid debts and obligations for goods and services, including unpaid bills, owed at the end of a reporting period must be reported. Debts are disclosed in each report until the debt has been fully paid. If an order has been placed for goods and services but the exact amount is unknown, the PAC must disclose an estimate from the vendor for reporting purposes. Once a debt is fully paid, any remaining balance from the original estimate can be closed out.

Record Retention The treasurer must retain all relevant records, including bank statements, invoices, and receipts for expenditures of more than \$50, for a minimum of four (4) years.

Termination

When a PAC determines it will no longer be financially active, it can file a final report and a termination statement. The final report covers the time from the close of the last reporting period to the date of termination. Prior to terminating, the PAC must dispose of all surplus funds and report how they were disposed in the final report. The PAC can do this by making contributions to other PACs, BQCs, party committees, candidates, non-profits, or by making a transfer back to the general treasury of the founding organization, if appropriate. The PAC must also dispose of any loans, debts, or other obligations that are unpaid or outstanding at the time of its termination in the manner prescribed by the Commission. Until the termination statement is filed, the PAC must continue to file reports.

LEGAL REFERENCES

Initial Campaign Finance Reports	21-A M.R.S. § 1059
Regular Campaign Finance Reports	21-A M.R.S. § 1059(2)
24-Hour Reports	21-A M.R.S. § 1059(2)(E)
Amendments	21-A M.R.S. § 1062-A(2)
Electronic Filing	21-A M.R.S. § 1059(5)
Content of Reports	21-A M.R.S. § 1060
Expenditures Made by a Consultant	94-270 C.M.R. Ch. 1 § 7(1)
Loans	21-A M.R.S. §§ 1052(3)(A), 1060
Debts	94-270 C.M.R. Ch. 1 § 7(3)
Record Retention	21-A M.R.S. § 1057
Terminating a PAC	21-A M.R.S. § 1061



CHAPTER 5

Supporting Candidates

Direct Contributions

Contribution Limits. Generally, there are no restrictions on the types of entities a PAC may contribute to, except they may not contribute to candidates participating in the MCEA program. PACs may contribute to other PACs, BQCs, and state and local party committees and other organizations. Contributions can be in cash or in-kind. Traditionally financed candidates are limited in how much they can accept from a single contributor, including PACs. The contribution limits per election (the primary and general elections are separate elections) for traditionally financed candidates are as follows (21-A M.R.S. § 1015(2)):

- Legislative candidates - \$475 per election
- Gubernatorial candidates - \$1,950 per election
- County candidates - \$975 per election
- Municipal candidates - \$575 per election

Municipal candidates and candidates who are not enrolled in a political party are only eligible to receive contributions for the general election, as they do not participate in a primary.

In-Kind Contributions. A PAC may provide goods and services of value to a candidate, but if the candidate does not reimburse the PAC for the full value the PAC has made an in-kind contribution to the candidate. The amount of the contribution is the value of the goods and services less any reimbursement the candidate has made to the PAC. In-kind contributions are subject to the same contribution limits and restrictions, and are aggregated with cash contributions for limitation calculation purposes.

Independent Expenditures

Definition of Independent Expenditure (IE). The term “independent expenditure” applies only to expenditures for communications made to influence a candidate election. IEs are payments or obligations made by a person(s), acting independently of candidate campaigns, for communications expressly advocating for the election or defeat of a candidate. Communications include, but are not limited to:

- print media advertisements;
- online advertisements;
- radio and television advertisements;



- live calls and robocalls;
- direct mail pieces;
- paid for email communications;
- campaign signs;
- palm cards; and
- other campaign literature.

These expenditures are considered made at the **earliest** of the following events:

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

Maine’s IE reporting law also covers a communication naming or depicting a “clearly identified” candidate and is made within certain time periods before an election, which are:

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

The costs of these communications are IEs, unless the spender demonstrates to the Commission the expenditure did not have the purpose or effect of influencing a candidate’s nomination or election (as discussed on page 18).

IEs must be made completely independently of any candidate mentioned in the communication. “Candidate” includes the candidate, the candidate’s committee, and agents of either. If an expenditure is made to promote or support the nomination or election of a candidate, or defeat of the candidate’s opponent(s), and the expenditure is made in cooperation, consultation or concert with, or at the request or suggestion of the candidate, the expenditure is considered to be a contribution from the spender to the candidate.

For example, if a PAC runs a newspaper ad supporting a candidate and obtained the candidate’s photograph from that candidate for the ad, the entire cost of the ad is a contribution to the candidate. An IE must be made completely without cooperation from, consultation, or acting in concert with the candidate or the candidate’s committee or agents.

Some communications are exempt from IE reporting, such as membership communications.

Definition of “Cooperation, Consultation or in Concert With.” Per the Commission’s Rules the definition includes, but is not limited to:

- Discussion or participation between the candidate and the creator, producer or



distributor of a communication, or the person paying for that communication regarding any decisions on the content, timing, location, mode, intended audience, volume of distribution, or frequency of placement of it.

An expenditure is presumed to be made in cooperation or consultation with a candidate when:

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

If a candidate requests any potential spender not make expenditures to support them, or oppose their opponent(s), the request does *not* constitute cooperation or coordination.

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

- The spender
 - * obtained a photograph, biography, position paper, press release, logo, or similar material about the candidate from a publicly available source;
 - * made a contribution to the candidate, or has discussed with the candidate their campaign plans or activities as part of the candidate's solicitation for a donation;
- The person making the expenditure
 - * has previously provided advice to the candidate on communication strategies, budgets, issues of public policy, or other campaign plans or activities;
 - * does so in response to a general, unspecific request for support by a candidate, provided there is no discussion, cooperation, or consultation with the candidate about the expenditure prior to dissemination;
- The expenditure is made by
 - * A person for invitations, announcements, food, beverages, and similar costs associated with an event to which the candidate has been asked to appear



before the organization's members, employees, shareholders, and families; or

- * an individual who spends \$100 or less for a sign lettered or printed individually by hand and reproduces or replicates a candidate's campaign-related design or graphic.

Communications Containing Express Advocacy.

"Expressly advocate" means a communication uses phrases such as:

- "vote for the Governor;"
- "reelect your Representative;"
- "support the Democratic nominee;"
- "cast your ballot for the Republican challenger in Senate District 1;"
- "Jones for House of Representatives;"
- "vote Pro-Choice" or "vote Pro-Life" accompanied by clearly identified candidates described as pro-choice or pro-life;
- "support" or "defeat" accompanied by a picture of one or more candidates; or
- "reject the incumbent."

Express advocacy also includes communications having no other reasonable interpretation than as an appeal to vote for or against a clearly identified candidate.

Requesting a Determination a Communication is not an IE. If a communication referring to a specific candidate is disseminated to voters during the time periods on page 16, the spender may request a determination the communication is not an IE from the Commission within seven (7) days of dissemination. The Commission's Executive Director will make an initial determination on each request. The request must include the complete communication and be specific as to when and to what audience the communication will be disseminated. If the Commission determines the communication did not have the purpose or effect of influencing the election, no IE Report is required.

While there is no penalty for failing to file a determination request itself within seven (7) calendar days, if the Commission determines the communication was an IE and an IE Report was not filed on time, the PAC making the expenditure will be assessed a penalty for the late-filed report.

Exclusions. An IE does not include:

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



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

When To File an IE Report. Whether an expenditure for a communication has to be reported in an IE Report depends on: (1) if more than \$250 was spent on the communication per

candidate, and (2) when the expenditure was made (refer to the chart below).

Filing Independent Expenditure Reports. IE Reports must be filed when they are due, regardless of weekend or holiday. The report may be filed online, faxed, or scanned and emailed.

Late Independent Expenditure Reports. If a PAC files an IE report late, the maximum penalty is \$5,000, except if the reported activity exceeds \$50,000, in which case the maximum penalty is 100% of the reported financial activity.

Membership Communications

The costs of communications by membership organizations and corporations expressly

Independent Expenditure Reporting Schedule	
Reporting Period	Report and Due Date
Anytime on or before the 61 st day before an election	60-Day Pre-Election IE Report due on the 60 th day before an election
From the 60 th day to the 14 th day before an election	2-Day Pre-Election IE Report within 2 calendar days of making the expenditure
From the 13 th day before an election to and including election day	1-Day Pre-Election IE Report within 1 calendar day of making the expenditure

2024 Independent Expenditure Reporting Schedule		
Reporting Period	Report Name	Report Due Date
January 1 - April 11	60-Day Pre-Primary IE Report	April 12 by 11:59 p.m.
April 12 - May 28	2-Day Pre-Primary IE Report	Within two (2) days of making the IE
May 29 - June 10	1-Day Pre-Primary IE Report	Within one (1) day of making the IE
June 11 - September 5	60-Day Pre-General IE Report	September 6 by 11:59 p.m.
September 6 - October 22	2-Day Pre-General IE Report	Within two (2) days of making the IE
October 23 - November 4	1-Day Pre-General IE Report	Within one (1) day of making the IE



advocating for or against a clearly identified candidate are not considered expenditures, and those costs do not count toward the \$2,500 threshold for registering a PAC. The spender must file a report with the Commission if the cost of the communication in any one race exceeds \$100. The report is available on the Commission’s website.

A “membership organization” is one whose members satisfy any membership requirements, accept the organization’s invitation to become a member, *and*:

- Pay membership dues, at least annually, of an amount set by the organization;
- Have significant financial attachment to the organization; or
- Have a significant professional attachment to the organization, including direct participatory rights in its governance, such as the right to vote on the organization’s board, budget, or policies.

Members of a local union are considered members of any national or international union of

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

If a communication by a membership organization is disseminated to a larger audience than members or shareholders, the communication forfeits its status as a membership communication and will be considered an IE or an in-kind contribution to the candidate(s) mentioned in it. Additionally, the costs will count toward the threshold amount for registering a PAC with the Commission.

LEGAL REFERENCES

Direct Contributions	21-A M.R.S. §§ 1015, 1056
Independent Expenditures	21-A M.R.S. § 1019-B
Cooperation, Consultation, in Concert With Express Advocacy	94-270 C.M.R Ch. 1 § 6(9) 94-270 C.M.R Ch. 1 § 10(2)(B)
IE Supposal & Requesting Determination	21-A M.R.S. § 1019(2)
IE Reports	94-270 C.M.R Ch. 1 § 10(3)
Late IE Reports	21-A M.R.S. § 1020-A(2)
Membership Communications	21-A M.R.S. § 1019-A, 94-270 C.M.R Ch. 1 § 13



CHAPTER 6

Disclosure Statements on Campaign Communications

Communications & Candidate Elections

Whenever a person makes an expenditure to finance a communication expressly advocating the election or defeat of a clearly identified candidate, it must clearly and conspicuously state whether it has been authorized by the candidate, and include the name and address of the person who made or financed it.

Authorized and/or Financed by a Candidate.

Whenever a communication expressly advocating for the election or defeat of a clearly identified candidate is disseminated, the communication, if *authorized* by a candidate, their committee, or agents, but *financed* by another entity, must clearly and conspicuously state it has been so authorized, and the name and address of the person who made or financed it. There is an exception for this requirement for radio communications: only the city and state of the address of the person who financed it must be stated

A communication *authorized and financed* by a candidate or their committee is *not* required to include the address of the candidate or their committee, only who paid for and authorized it.

Not Authorized or Financed by a Candidate. If a communication has *not* been authorized by a candidate, their committee, or agents, and expressly advocates for the election or defeat of a clearly identified candidate, it must clearly and conspicuously state it is *not* authorized by any candidate and include the name and address of the person who made or financed the communication. Communications with a visual component, including all IEs, must have at the bottom in 12-point, bold print, Times New Roman font: "NOT PAID FOR OR AUTHORIZED BY ANY CANDIDATE."

Other Communications. If a communication clearly identifies a candidate but does *not* expressly advocate for their election or defeat, it must still clearly and conspicuously state the name and address of who financed it, if it is disseminated during:

- the 28 days before a primary election;
- the 35 days before a special election; or
- Labor Day and the day of a general election.

If the communication has been authorized by the candidate, the disclosure statement must state as such.



Text Messages. Text messages sent with the assistance of mass distribution technology must clearly state the name of the person who made or financed it if it expressly advocates for the election or defeat of a candidate; or it contains a link to a website that does so.

Top 3 Funders Disclosure on IEs

When an organization makes an IE to support or oppose a candidate, they are required to name its three (3) largest funders on or in the communication, in addition to the “paid for” requirements discussed in the previous section.

Communications Requiring a Top 3 Funders Disclosure. A communication must include this disclosure statement if the communication:

- is an IE;
- cost more than \$250 per candidate; and
- is made through television, radio, internet audio or video, direct mail, newspaper, or other periodical publications.

Examples of communications *not* requiring the top 3 funders disclosure statement are:

- telephone calls;
- outdoor advertising; and
- TV or internet advertisements of 30 seconds or less.

Requirements for a Top 3 Funders Disclosure Statement. The communication must clearly and conspicuously include the statement:

“The top 3 funders of [PAC Name] are: [Top Funder 1], [Top Funder 2], and [Top Funder 3].”

Audio and visual communications (videos of any kind) require *both* an audio *and* visual statement. The visual portion of a top 3 funders disclosure statement in television communications must also conform to federal regulations on text size and duration of sponsorship information, specifically:

- text size must be equal to or greater than four percent of the vertical picture height, and
- sponsorship information must appear for not less than four seconds.

For communications with a visual aspect without an audio component (i.e., printed materials or static online advertisements) the top 3 funders disclosure statement must appear in a 12-point font size or larger.

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

“Paid for by the Mainely Maine PAC, 123 Pine Street, Bangor, Maine 04401. The top 3 funders of the Mainely Maine PAC are: Americans for More Places Like Maine, the National Council for New England States, and Support Red Snappers Project. **Not paid for or authorized by any candidate.**”



The law contains some exceptions for small or short communications. If a communication is:

- on television and is 30 seconds or less, the *audible* portion of the statement only requires the organization's top funder. The visual portion must still include the top three (3) funders.
- printed and is not larger than 20 square inches, the statement only requires the organization's top funder.
- made in an audio-only format and is 30 seconds or less, the statement only requires the organization's top funder.

Finding Top Funders. A funder is any entity that has given a cash or in-kind contributions to the organization since the day after the last general election.

If the communication is paid for by a PAC that is a separate or segregated fund established by an organization to engage in political activity, the top 3 funders of that organization must be named in the disclosure.

If the communication is paid for by a PAC fully funded or controlled by another PAC or organization, the disclosure must contain the top 3 funders of the entity funding or controlling the PAC.

If two or more funders are tied, the tie is broken by naming the funders in chronological order, with the oldest first. If a tie cannot be broken, either of the tied funders to include in the disclosure.

If an organization's top funders change, the disclosure for any communication paid for after the change must be updated.

An organization does not have to name funders giving less than \$1,000, or whose contributions can *proven* to have been used for purposes other than the communication on the basis the funds were either spent in the order received or were strictly segregated in other accounts.

If there are fewer than 3 funders, the disclosure should be modified to read: "The top funder of..." or "The top 2 funders of..." The top funders statement is not required if none of the PAC's contributors meets the criteria for the disclosure.

Federal Requirements

The Federal Communications Commission (FCC) requires sponsorship identification for all political advertisements on television, in pre-recorded automated voice messages, and in auto-dialed calls. For more information on federal sponsorship identification regulations, contact the FCC at the number listed at the end of this guidebook.

LEGAL REFERENCES

Campaign Communications for Candidate Elections
Top 3 Funders

21-A M.R.S. § 1014
21-A M.R.S. § 1014(2-B)
94-270 C.M.R. Ch. 1, § 7(12)



CHAPTER 7

Enforcement Actions by the Commission

Penalties

Penalties are assessed for late campaign finance reports using a formula established by statute, which considers the number of days the report was filed late, any previous violations by the PAC during a two (2) year period, and the amount of financial activity during the reporting period. The two (2) year period begins on January 1st of each even-numbered year.

The maximum penalty that can be assessed against a PAC for a late-filed, or substantially non-conforming campaign finance report is \$10,000. If the amount of the financial activity reported late exceeds \$50,000, the maximum penalty is the dollar amount of that financial activity. A PAC that fails to file a required report within 30 days of the filing deadline may also be charged with a Class E crime.

Reminders by the Commission

The Commission publishes the filing schedule on its website, and the required reports and their due dates are listed on the PAC's eFiling homepage. While the Commission staff send courtesy reminders before each filing, failure to receive such a reminder is no excuse for a late filing.

Commission's Review of Reports

The Commission staff reviews reports for completeness and compliance with the law. They may contact the PAC if it appears a report is incomplete or requires additional information.

Requesting a Penalty Waiver

If a PAC files a report late, the Commission sends a letter informing the treasurer of the preliminary amount of the penalty and advises the PAC may pay it or seek a waiver. If a waiver is not requested within 14 days, the penalty becomes final.

Waiver requests are considered by members of the Commission at a public meeting - not by the Commission staff. Although not required, the PAC's treasurer or representative is encouraged to attend the Commission meeting. After the Commission meets, notice of its final determination and the penalty imposed, if any, is sent to the PAC.

The Commission may waive a penalty in whole or in part if there are mitigating circumstances such as a valid emergency, an error by Commission or municipal staff, or other circumstances including the level or experience of the committee, or the



harm suffered by the public from the late disclosure. A penalty of less than \$25 is automatically waived. However, the late-filed report will still be considered a violation and will count toward the calculation of any future penalty.

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

Appealing a Penalty Determination

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

Investigations & Audits

The Commission is authorized to undertake investigations and audits of the financial reporting of PACs. The Commission may initiate an investigation on its own or in response to a request submitted by the public. The Commission will review the request to determine whether the allegations set forth sufficient grounds for believing that a violation may have occurred.

LEGAL REFERENCES

Commission's Review of Reports	94-270 C.M.R. Ch. 1 § 5(1)
Penalties for Late-Filed Campaign Finance Reports & Failure to File Reports	21-A M.R.S. § 1062-A(2)
Requesting a Waiver of a Penalty	21-A M.R.S. § 1062-A(5)
Appealing a Penalty Determination	21-A M.R.S. § 1062-A(5)
Investigations & Audits	21-A M.R.S. § 1003



APPENDIX

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DIRECTORY

Commission on Governmental Ethics and Election Practices

Office: 45 Memorial Circle, Augusta Mail: 135 State House Station
Augusta, Maine 04333
Phone: (207) 287-4179 Email: ethics@maine.gov
Website: www.maine.gov/ethics eFiling: www.maineecampaignfinance.com

Department of the Secretary of State, Division of Elections

Office: 111 Sewall Street, Augusta Mail: 101 State House Station
Cross Office Building 4th Floor Augusta, Maine 04333
Phone: (207) 624-7650 Email: cec.elections@maine.gov
Website: www.maine.gov/sos/cec/

Department of Transportation, Right of Way Control Section

Mail: 16 State House Station Phone: (207) 624-3611
Augusta, Maine 04333

Federal Elections Commission

Mail: 99 E Street, NW Phone: (800) 424-9530
Washington, DC 20463
Website: www.fec.gov Phone: (202) 694-1000

Federal Communications Commission, Office of Political Programming

Mail: 445 12th Street, SW Phone: (888) 225-5322
Washington, DC 20554
Website: www.fcc.gov/media/policy/
political-programming Phone: (202) 418-1440

Maine Association of Broadcasters

Mail: 69 Sewall Street Phone: (207) 623-3870
Augusta, Maine 04330
Website: www.mab.org Email: info@mab.org



Janet T. Mills
GOVERNOR

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

Bruce A. Van Note
COMMISSIONER

To Whom it May Concern:

As we approach another campaign season the Maine Department of Transportation would like to take this opportunity to offer some information regarding the placement of temporary signs in the right-of-way on state and state aid highways.

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

There are areas within the state's roadway system that are off limits to temporary signs. These areas include the Maine Interstate System, the Maine Turnpike Authority system, Route 1 between Bath and Brunswick and all connecting interchanges and ramps. Along with the interstate system, some sections of state highways have been designated as "control of access" (C.O.A) roadways where ingress and egress to and from the highway is prohibited/limited. **No temporary signs of any kind can be placed along these control of access areas.** These areas have been officially designated with signage indicating the beginning and ending of a C.O.A. A sample of these signs has been provided below for your reference:



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

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

Here are some questions that campaign personnel may ask regarding the placement of political signs:

How do I recognize a "control of access" area?

- *Aside from the Interstate System, MaineDOT officials have marked C.O.A areas across the state. These areas will have signs indicating the beginning and ending of a C.O.A.*



THE MAINE DEPARTMENT OF TRANSPORTATION IS AN AFFIRMATIVE ACTION - EQUAL OPPORTUNITY EMPLOYER
PHONE: (207) 624-3000 TTY USERS CALL MAINE RELAY 711 FAX: (207) 624-3001

What will happen to my sign if it has been placed within a C.O.A. section?

- *MaineDOT personnel have been advised to remove temporary signs from within the C.O.A. areas. Maintenance crews have also been instructed to safely store the signs until the owner of the sign can be contacted or 60 days, whichever comes first.*

Does MaineDOT enforce these sign placement restrictions statewide?

- *MaineDOT is committed to providing the equitable enforcement of these sign restrictions upon notification of a violation.*
- *Per a recent statute change, Temporary Signs within Urban compact areas may be enforced by the municipality they are within.*

What do I need to know about placing my sign along the roadway?

- *The first thing to consider in placement is the safety of the traveling public. Please do not install your signs where they will limit the sight line of anyone trying to pull out of a side road or driveway. Signs that block a driver's sight line will be removed and held at the closest MaineDOT maintenance lot to be picked up by the owner.*

In summary, when placing political signs, the important areas to avoid are the interstate system with the connecting interchanges, including the MTA system, and control of access areas across the state. Also, individual signs bearing the same message can be no closer than 30 feet from one another and must contain appropriate contact information and the date in which the sign was placed in the ROW. Candidates/referendums/special interest signage may want to work with sign making companies to have the contact information printed on their signs. MaineDOT will continue to provide the necessary information to help Maine's candidates.

For more information regarding the appropriate placement of political signs, please contact the Department's Legislative Liaison, Meghan Russo at Meghan.russo@maine.gov.

MaineDOT appreciates your cooperation in this effort.

Sincerely,

Stephen Landry, P.E.
State Traffic Engineer
MaineDOT

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PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

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Internet: <http://www.fcc.gov>
TTY: 1-888-835-5322

DA 16-264
March 14, 2016
Enforcement Advisory No. 2016-03

FCC ENFORCEMENT ADVISORY

TELEPHONE CONSUMER PROTECTION ACT ROBOCALL AND TEXT RULES

BIENNIAL REMINDER FOR POLITICAL CAMPAIGNS ABOUT ROBOCALL AND TEXT ABUSE

With the 2016 campaign season underway, the FCC's Enforcement Bureau reminds political campaigns and calling services that there are clear limits on the use of autodialed calls or texts (known as "robocalls") and prerecorded voice calls. The FCC is committed to protecting consumers from harassing, intrusive, and unwanted robocalls and texts, including to cell phones and other mobile devices.

Since its adoption in 1991, the Telephone Consumer Protection Act ("TCPA") has placed limits on unsolicited prerecorded telemarketing calls to landline home telephones, and all autodialed calls or prerecorded voice calls to wireless numbers, emergency numbers, and patient rooms at health care facilities. The FCC's corresponding rules¹ governing automated telephone calls set forth restrictions that govern the use of prerecorded voice messages and automatic telephone dialing systems including those that deliver text messages. These provisions apply to all such prerecorded voice calls and autodialed calls or texts, including those made by political campaigns or other organizations involved in the 2016 election. The restrictions vary according to whether a call is delivered to a business or residential landline telephone, a cell phone, or some other category of protected telephone lines such as toll-free lines, emergency lines, or those lines servicing hospitals, nursing homes, or paging systems.²

We expect this Advisory will facilitate compliance with the law and rules by senders of campaign related voice messages and autodialed calls and texts and again remind all those using these tool to carefully observe the legal limits. The FCC's Enforcement Bureau will rigorously enforce the important consumer protections in the TCPA and our corresponding rules.

¹ See 47 CFR § 64.1200.

² By this Enforcement Advisory, the FCC's Enforcement Bureau highlights certain obligations under the TCPA and corresponding Commission rules. Failure to receive this notice does not absolve an entity of the obligation to meet the requirements of the Communications Act of 1934, as amended, or the Commission's rules and orders. Companies, individuals, and other entities should read the full text of the relevant portions of the TCPA and corresponding Commission rules, respectively, at 47 U.S.C. § 227 and 47 CFR § 64.1200.



Prohibition Against Prerecorded Voice Messages and Autodialed Calls to Cell Phones and Other Mobile Services.

Prerecorded voice messages and autodialed calls (including autodialed live calls, prerecorded or artificial voice messages, and text messages) to cell phones and other mobile services such as paging systems are prohibited, subject to only three exceptions: (1) calls made for emergency purposes, (2) calls made with the prior express consent of the called party, (3) and calls made to collect debts “owed to or guaranteed by the United States.”³ This broad prohibition covers prerecorded voice and autodialed calls, including those sent by nonprofit or political campaign-related organizations. Callers contending that they have the prior express consent to make prerecorded voice or autodialed calls to cell phones or other mobile service numbers have the burden of proof to show that they obtained such consent.⁴ Further, call recipients may revoke their consent to be called using any reasonable method including verbally or in writing.⁵

Prerecorded Voice Messages and Autodialed Calls to Landline Telephones. Political campaign-related prerecorded voice messages or autodialed calls—whether live or prerecorded—to most landline telephones are not prohibited, so long as they adhere to the identification requirements set forth immediately below. However, prerecorded campaign-related voice messages or autodialed calls to emergency telephone lines; lines in guest or patient rooms at a hospital, nursing home, or similar establishment; or toll-free lines are prohibited unless the called party has agreed to receive such calls.⁶

Identification Requirements for Prerecorded Voice Messages. All prerecorded voice messages, campaign-related and otherwise, that are permissible under Section 227 of the Communications Act of 1934, as amended, and the Commission’s rules must include certain information to identify the party responsible for the message. In particular:

- All artificial and prerecorded voice messages must state clearly, at the beginning of the message, the identity of the business, individual, or other entity that is responsible for initiating the call.⁷
- If a business or other corporate entity is responsible for the call, the prerecorded voice message must contain that entity’s official business name (the name registered with a state corporation commission or other regulatory authority).⁸
- In addition, the telephone number of such business, individual, or other entity must be provided either during or after the prerecorded voice message.⁹

³ See 47 U.S.C. § 227(b)(1)(A)(iii); see also 47 CFR § 64.1200(a)(1)(iii) (prohibiting such calls to “any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service which the called party is charged for the call”). Congress has amended the TCPA to exempt federal debt collection calls and the Commission is in the process of implementing rules related to that exemption.

⁴ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling and Order, 30 FCC Rcd 7961, 7990, para. 47 (2015) (*TCPA Omnibus Declaratory Ruling and Order*); see also *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling, 23 FCC Rcd 559, 565, para. 10 (2008) (concluding that creditors and debt collectors claiming prior express consent to deliver prerecorded voice or autodialed calls to cell phones are responsible for demonstrating such consent was granted).

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

⁶ Non-emergency prerecorded voice or autodialed calls to such destinations are permissible only with the prior express consent of the called party. 47 U.S.C. § 227(b)(1)(A); 47 CFR § 64.1200(a)(1).

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

⁸ 47 CFR § 64.1200(b)(1).

⁹ 47 U.S.C. § 227(d)(3)(A)(ii); 47 CFR § 64.1200(b)(2). Any telephone number so provided may not be for (1) the



Line Seizure by Prerecorded Voice Messages and Autodialed Calls. Automatic telephone dialing systems that deliver prerecorded voice messages must release the called party's telephone line within five seconds of the time that notification is transmitted to the system that the called party has hung up.¹⁰ In addition, an automatic telephone dialing system may not be used in a way that simultaneously engages two or more telephone lines of a multi-line business.¹¹

As we have done in previous election cycles, we remind senders of campaign-related prerecorded voice messages and autodialed calls or texts that failure to comply with the relevant sections of the TCPA and corresponding rules may subject them to enforcement action, including monetary forfeitures as high as \$16,000 per violation for any person who does not hold a license or other authorization issued by the Commission.¹²

autodialer or prerecorded message player that placed the call, (2) a 900 number, or (3) any other number for which charges exceed local or long distance transmission charges. 47 CFR § 64.1200(b)(2).

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

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

¹² This amount reflects inflation adjustments to the forfeitures specified in Section 503(b)(2)(D) of the Communications Act. Section 503(b)(2)(D) provides for forfeitures of up to \$10,000 for each violation by a person who is not a broadcast station licensee, cable operator, common carrier, or applicant for any broadcast station, cable operator, or common carrier license issued by the Commission. See 47 U.S.C. § 503(b)(2)(D). The Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. No. 101-410, 104 Stat. 890, as amended by the Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, Sec. 31001, 110 Stat. 1321 (DCIA), requires the Commission to adjust its forfeiture penalties periodically for inflation. See 28 U.S.C. § 2461 note (4). The Commission most recently adjusted its penalties to account for inflation in 2013. See *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, 28 FCC Rcd 10785, 10786-790, paras. 3-5 (EB 2013); see also *Inflation Adjustment of Maximum Forfeiture Penalties*, 78 Fed. Reg. 49370-01, 49370 (2013) (setting September 13, 2013, as the effective date for the increases). The Commission has made such inflation adjustments and the current maximum forfeiture is \$16,000 for each violation under Section 503(b)(2)(D). See *Inflation Adjustment of Maximum Forfeiture Penalties*, 78 Fed. Reg. at 49371. The penalties for broadcast station licensees, cable operators, common carriers, and applicants for broadcast station, cable operator, and common carrier licenses are higher.

Need more information? For further information regarding requirements for prerecorded voice and autodialed calls, contact Kristi Thompson at (202) 418-1318 or kristi.thompson@fcc.gov or Mary Romano at (202) 418-0975 or marv.romano@fcc.gov in the Telecommunications Consumers Division, Enforcement Bureau. More information can also be found at www.fcc.gov/guides/robocalls. To file a complaint, visit www.consumercomplaints.fcc.gov or call 1-888-CALL-FCC.

Media inquiries should be directed to Will Wiquist at (202) 418-0509 or will.wiquist@fcc.gov.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). You may also contact the Enforcement Bureau on its TTY line at (202) 418-1148 for further information about this Enforcement Advisory, or the FCC on its TTY line at 1-888-TELL-FCC (1-888-835-5322) for further information about the Telephone Consumer Protection Act.

Attachments: (1) "At a Glance," Political Calls; (2) Frequently Asked Questions.

Issued by: Chief, Enforcement Bureau



"AT A GLANCE"

POLITICAL CALLS

- Political campaign-related calls are subject to restrictions governing prerecorded voice and autodialed calls.
- There are no restrictions on live manually-dialed political calls, which may be delivered to any landline telephone or cell phone.
- Prerecorded voice and autodialed calls may NOT be delivered to the following types of landline phones without the prior express consent of the called party:
 - ✓ any emergency line (including any 911 line and any emergency line of a hospital, medical physician or service office, health care facility, poison control center, or fire protection or law enforcement agency);
 - ✓ the telephone line of any guest room or patient room of a hospital, health care facility, elderly home, or similar establishment; or
 - ✓ any service for which the called party is charged for the call such as toll-free lines.
- Prerecorded voice and autodialed calls (including live calls, prerecorded voice messages, and text messages) may NOT be delivered to cell phones, pagers, or other mobile devices without the prior express consent of the called party. This restriction governs all prerecorded voice and autodialed calls.
- All prerecorded voice messages must contain the following information:
 - ✓ the name of the person or entity responsible for the call, which must be provided at the beginning of the message;
 - ✓ the telephone number of the person or entity responsible for the call, which must be provided during or after the message.
- The National Do-Not-Call Registry and company-specific do-not-call lists do not apply to political calls.
- Individuals or entities who do not hold (and are not required to hold) FCC licenses responsible for unlawful political prerecorded voice messages or autodialed calls may face forfeiture penalties of up to \$16,000 per violation. The penalties are higher for FCC licensees, such as broadcasters, cable operators, and common carriers.



FREQUENTLY ASKED QUESTIONS

The following Frequently Asked Questions are addressed in this Advisory:

- What are the rules covering prerecorded voice messages and autodialed calls, and where can I find them?
- What is an autodialed call?
- Are nonprofit organizations exempt from the prohibition against making prerecorded voice calls or autodialed calls or texts to cell phones and other mobile service numbers?
- What does it mean to make a prerecorded voice or autodialed call for “emergency purposes”?
- Does the same prohibition against making autodialed calls to cell phones apply to sending autodialed text messages to cell phones?
- Do the rules allow me to send campaign-related prerecorded voice messages to a landline telephone number that is registered on the National Do Not Call Registry?
- Before making a prerecorded voice or autodialed call, how can I determine whether the target telephone number is associated with a landline phone or a wireless phone?
- What if I have questions?

What are the rules covering prerecorded voice messages and autodialed calls, and where can I find them?

These calls are subject to the general restrictions on prerecorded voice messages and autodialed calls, found at 47 U.S.C. § 227 and 47 CFR § 64.1200.

What is an autodialed call?

An autodialed call is any type of call or message, including a text message, that is made by an “autodialer” or “automatic telephone dialing system,” which is “equipment which has the capacity to store or produce telephone numbers to be called using a random or sequential number generator and to dial such numbers.”¹ The Commission has emphasized that this definition covers any equipment—including predictive dialers—that has the specified *capacity* to dial numbers without human intervention whether or not the numbers called actually are randomly or sequentially generated or come from calling lists.² The Commission has further emphasized that the capacity of a dialing system is not limited to any current configuration or present ability but also includes

¹ 47 CFR § 64.1200(f)(2).

² *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, 18 FCC Rcd 14014, 14092-93, para. 133 (2003) (*2003 TCPA Order*). Predictive dialers use automated equipment to dial numbers (either from lists or randomly or sequentially) and then connect the called party to a live person. The distinctive element of a predictive dialer is software that predicts calling patterns to minimize the time live agents spend between calls while also minimizing the incidence of individuals answering a call when no agent is available.



potential functionalities that are more than mere theoretical possibilities.³ Finally, the Commission has made clear that Internet-to-phone text messaging technology and text messaging apps that send to all or virtually all text-capable U.S. phone numbers constitute autodialers.⁴

Are nonprofit organizations exempt from the prohibition against making prerecorded voice calls or autodialed calls or texts to cell phones and other mobile service numbers?

No. Although nonprofit organizations enjoy certain exemptions under the TCPA, there is NO blanket exemption that allows nonprofit organizations to make either prerecorded voice calls or autodialed calls or texts to cell phones or other mobile service numbers without prior express consent.

What does it mean to make a prerecorded voice or autodialed call for "emergency purposes"?

Under Commission rules, "emergency purposes means calls made necessary in any situation affecting the health and safety of consumers." 47 CFR § 64.1200(f)(4). Political campaign-related prerecorded voice messages and autodialed calls are NOT included in this definition.

Does the same prohibition against making autodialed calls to cell phones apply to sending autodialed text messages to cell phones?

Yes. The Commission has determined that the prohibition against placing autodialed calls to cell phones without prior express consent "encompasses both voice calls and text calls to wireless numbers including, for example, short message service (SMS) calls, provided the call is made to a telephone number assigned to [a wireless] service."⁵ Accordingly, only manually placed text messages are permissible without prior express consent.

Do the rules allow me to send political campaign-related prerecorded voice messages to a landline telephone number that is registered on the National Do-Not-Call Registry?

Yes. Political campaign-related prerecorded voice messages (as well as live political calls) are not subject to the National Do-Not-Call Registry because such messages (or live calls) do not include telephone solicitations.⁶

Before making a prerecorded voice or autodialed call, how can I determine whether the target telephone number is associated with a landline phone or a wireless phone?

There are a variety of commercial services that callers may use to identify wireless telephone numbers.

What if I have questions?

For further information regarding requirements for prerecorded voice and autodialed calls, contact one of the following individuals in the Telecommunications Consumers Division, Enforcement Bureau: Kristi Thompson at (202) 418-1318 or kristi.thompson@fcc.gov or Mary Romano at (202) 418-0975 or mary.romano@fcc.gov. To file a complaint, visit www.consumercomplaints.fcc.gov or call 1-888-CALLFCC.

Media inquiries should be directed to Will Wiquist at (202) 418-0509 or will.wiquist@fcc.gov.

³ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling and Order, 30 FCC Rcd 7961, 7974-77, paras. 15-21 (2015).

⁴ *Id.* at 8017-22, paras. 108-22.

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

⁶ In order to constitute a "telephone solicitation," a call or message must be "for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services." 47 CFR § 64.1200(f)(14); *see also* 47 U.S.C. § 227(a)(4).

2023 & 2024 Political Action Committee Guidebook

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