



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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OCPF-IB-88-01
Issued: September 1988
Revised: May 9, 2014

INTERPRETIVE BULLETIN

**The Applicability of the Campaign Finance Law to
Groups That Do Not Engage in Political Fundraising**

This bulletin defines when activity supporting or opposing Massachusetts candidates and candidate committees, PACs or political party committees by organizations that do not raise money for a political purpose becomes subject to the provisions of M.G.L. c. 55, the campaign finance law. In particular, where an organization makes expenditures, but does not raise funds to support or oppose candidates, political action committees or political parties, this bulletin defines (1) whether, when and to whom the organization must report its financial activities, (2) what the reporting obligations are, and (3) the relevant limitations on financial activities.

Summary

An organization that does not solicit or receive funds for any political purpose (i.e. to support or oppose candidates, political action committees, or political parties, whether in Massachusetts or elsewhere), does not need to organize a separate Massachusetts political committee to contribute to, or make independent expenditures to support or oppose, Massachusetts candidates and candidate committees, PACs and party committees ("political entities").

If the total amount of the organization's financial activity, including contributions to political entities and independent expenditures made to support or oppose such entities becomes "more than incidental," the organization becomes subject to limitations on what it may contribute to political entities, and to the reporting requirements that apply to PACs. The organization remains subject to these limitations and requirements until one year after the last year that the organization's financial activity does not exceed the incidental threshold. Financial activity is "more than incidental" if it exceeds, in the aggregate, in a calendar year, either \$15,000 or 10 percent of such organization's gross revenues for the previous calendar year, whichever is less.



Part I of this bulletin describes when a group or organization is considered a “political committee” under the campaign finance law. These guidelines apply to groups, unions, associations or other types of organizations, including non-profit corporations, “social welfare,” i.e., “501(c)(4),” or other tax-exempt organizations established under Section 501(c) of the Internal Revenue Code, and also to political organizations created under Section 527 of the Internal Revenue Code.

The bulletin also provides guidance for organizations that make independent expenditures or contributions¹ to political entities, but do not engage in political fundraising, i.e., for organizations that do not solicit or receive funds to support or oppose the nomination or election of Massachusetts candidates, political parties, or political action committees. As discussed below, such an organization, even if it is not required to organize as a political committee, may become subject to limits on what it may contribute to political entities and also to the reporting requirements of the campaign finance law if the organization’s financial activity is “more than incidental.”

Organizations that receive any amount of money from entities that are prohibited from contributing to candidates may not use such funds to make contributions. The campaign finance law states that business and professional corporations, and LLPs, LLCs, and partnerships, may not contribute to candidates, PACs (other than independent expenditure PACs) or party committees. See M.G.L. c. 55, § 8. An organization which has a general treasury that contains funds derived from such entities may not make contributions to candidates, PACs or political parties.

Section 8 prohibits indirect as well as direct contributions by business or professional corporations, LLPs, LLCs, or partnerships to candidates, PACs (other than independent expenditure PACs), or political parties. This means that an entity that receives corporate or partnership funds may not, by segregating those funds into a separate account, make contributions from an account that does not contain the prohibited funds. See AO-98-18. Business corporations or other entities that may not contribute to candidates under Section 8, may, however, make independent expenditures to support or oppose candidates.

This bulletin does not address the disclosure requirements or limitations of political committees, whether organized in Massachusetts or elsewhere², or expenditures that may be made by groups to support or oppose ballot questions.³

I. When must a group or organization formally register as a Massachusetts political committee?

The Massachusetts campaign finance law defines a political committee, in part, as “any committee, association, organization or other group of persons, including a national, regional, state, county or municipal committee, which *receives contributions or makes expenditures* for the purpose

¹ “Contributions” include in-kind or monetary contributions, and also coordinated expenditures.

² Political committees are regulated by the campaign finance law and by regulations issued by this office. Unregistered political committees may not contribute to Massachusetts candidates and committees, other than ballot question committees, unless they do so through an affiliated Massachusetts PAC duly organized with OCPF and operated in accordance with M.G.L. c. 55 and 970 CMR. See IB-82-01.

³ See IB-90-02 for information on the disclosure and reporting of such expenditures.

of influencing the nomination or election of a candidate, or candidates.”⁴ A strict application of this definition would, however, place an extraordinary burden, not intended by the Legislature, on non-political organizations making only incidental expenditures for a political purpose. Accordingly, ***OCPF considers groups and organizations that make contributions or independent expenditures but do not solicit or receive funds for any political purpose differently than groups and organizations that actively engage in political fundraising.***

Any organization that intends to solicit or receive money or any other thing of value to influence the election of a Massachusetts state, county or municipal candidate or candidates, or to support or oppose a PAC or political party, must comply with the provisions of Chapter 55, formally organize a political committee, and appoint a treasurer prior to soliciting or receiving any funds for a political purpose. See M.G.L. c. 55, §§ 5 and 7. A determination of whether an organization is required to file campaign finance reports as a political committee depends on an assessment of various factors, including the timing and content of solicitations. See 970 CMR 1.22 (stating that a tax-exempt or other organization is considered a political committee if it solicits or receives funds for the purpose of making contributions or independent expenditures in Massachusetts).

In addition, groups or organizations that solicit or receive money or any other thing of value to influence elections in other states or nationwide or to support political parties, whether or not registered as a political committee in another jurisdiction, must comply with the provisions of Chapter 55 and formally organize a Massachusetts political committee, with a separate, segregated account, prior to making contributions to a Massachusetts candidate, candidate committee, PAC, or party committee. See IB-82-01.

For example, a union, like any group, may not solicit or receive funds for the purposes of influencing Massachusetts elections without first organizing a political committee in accordance with M.G.L. c. 55. It is not uncommon, however, for unions to use their general treasury fund to make contributions or independent expenditures to support or oppose candidates. For a union to make contributions or independent expenditures in Massachusetts without first organizing a separate political action committee, the union must make the expenditures from an account containing funds that were not raised for a political purpose, such as the union’s general treasury fund.

Groups or organizations that do not plan on making contributions but wish to make ***independent expenditures***, do not need to organize separate political committees if they do not solicit or receive contributions for that purpose. These groups will, however, as discussed below, become subject to certain provisions of the campaign finance law applicable to political committees once their political expenditures become “more than incidental.”

An organization that raises funds to make only independent expenditures must organize as an “Independent Expenditure PAC.” See 970 CMR 2.17 and IB-10-03. The requirement to organize an independent expenditure PAC exists for 501(c)(4) and other organizations that raise money to make independent expenditures, even if making such expenditures is not the primary purpose of the organization. As an independent expenditure PAC, such an organization will be required to disclose not only independent expenditures made, but also contributions received for that purpose.

⁴ The definition of “political committee” includes political party committees, PACs, independent expenditure PACs, people’s committees and ballot question committees.

II. What are “more than incidental” political expenditures?

Contributions and independent expenditures made by an organization that is not a political committee are “more than incidental” if they are made (1) for the purpose of aiding, promoting or preventing the nomination or election of any person to public office, or aiding or promoting or antagonizing the interest of any political action committee or political party and (2) they exceed, in the aggregate, in a calendar year, *either \$15,000 or 10 percent of such organization's gross revenues for the previous calendar year, whichever is less (the “incidental threshold”).*⁵

This standard balances the public interest of disclosure and regulation of campaign finance activity in Massachusetts with the administrative and legal burdens imposed on organizations participating financially in the Commonwealth's political process.

All contributions (whether monetary or in-kind) and independent expenditures made during a calendar year are included in the determination of whether the incidental threshold has been exceeded. Contributions by an organization to candidates, PACs, and political party committees are included, as well as independent expenditures made by the organization to support or oppose candidates. In addition, any liability incurred by the organization on behalf of or to oppose a candidate or political committee (other than a ballot question committee) is included in the computation of whether the incidental threshold is exceeded for the calendar year in which the liability is incurred. Such liabilities are included even if the actual expenditure to discharge such liability is not made until a later calendar year, e.g., if a liability is incurred in 2014, but the amount owed is paid in 2015, the amount is counted only in 2014.

III. What expenditures are not counted in determining whether the incidental threshold is exceeded?

Expenditures not included in the incidental threshold analysis include (1) payments made or liabilities incurred, in connection with electioneering communications, (2) expenditures not related to the nomination or election of Massachusetts state, county or municipal candidates, (3) expenditures not made to or for the benefit of political committees organized in Massachusetts, (4) expenditures made to the federal account of a political committee of a political party, (5) expenditures made to discharge liabilities incurred in a previous calendar year and, (6) expenditures made for the purpose of opposing or promoting a ballot question, irrespective of whether such question appears on a Massachusetts ballot or elsewhere, and (7) donations to a legal defense, inauguration or recount fund. In addition, costs resulting from communications between a membership organization and its members and their families are not deemed to be “contributions” or “expenditures” for the purpose of the campaign finance law, and, therefore, are not included in the determination of whether an organization has exceeded the incidental threshold. See M.G.L. c. 55, § 1.

IV. What are the consequences of exceeding the incidental threshold?

Contributions made to political entities after exceeding the incidental threshold *shall be subject to the contribution limitations set forth in M.G.L. c. 55, § 6 applicable to political action committees*

⁵ For a new organization, i.e., an organization that has been in existence for less than a full calendar year, the incidental threshold is \$15,000 or 10 percent of the organization's gross revenues for the *current* calendar year, whichever is less.

making contributions to candidates, candidate committees and other political committees.

Independent expenditures and contributions to independent expenditure PACs, however, may continue to be made without limit, regardless of whether the incidental threshold has been exceeded. In addition, once the incidental threshold is exceeded, organizations must, as discussed below in Part IV(B), report all contributions to, and independent expenditures made to support or oppose, candidates, party committees or PACs.

A. Limit on Contributions.

Prior to exceeding the threshold, a group may contribute any amount up to the threshold to one or more candidates or committees without becoming subject to the limitations in M.G.L. c. 55, § 6. However, once the threshold is exceeded, contributions to any one candidate, candidate committee, or political action committee (not including an independent expenditure PAC) would be limited to an additional \$500 in the calendar year in which the limit was exceeded, and aggregate contributions to all committees of any one political party, including those on the state and local level, would be limited to an additional \$5,000 in the calendar year in which the limit was exceeded. These limitations would apply in subsequent calendar years until one year after the first calendar year in which the threshold is not exceeded.

For example, if an organization, whose incidental threshold is \$15,000, exceeds a total of \$15,000 in contributions and/or independent expenditures to candidates, PACs and political party committees in 2014, the organization would become subject to the limits that apply to PACs as of the date the threshold is exceeded. If the organization, prior to October 1, 2014, made contributions to candidates of \$7,000 and then on October 1 makes its first independent expenditure of the year, of more than \$8,000, the organization, as of October 1, will have exceeded the incidental threshold. The organization could contribute no more than an additional \$500 to any one candidate or PAC (other than an independent expenditure PAC), and no more than \$5,000 in the aggregate to committees of any one political party, between October 1, the date it exceeded the threshold in 2014, and December 31, 2014. In addition, the organization would then be subject to these same limitations during 2015, and every year thereafter until one year after the incidental threshold is not exceeded in a particular year. Therefore, if the organization's threshold is \$15,000 and its activity is \$15,000 or less in 2015, the organization would not be subject to the limitations in M.G.L. c. 55, § 6 in 2016, assuming the contributions and independent expenditures do not exceed the incidental threshold in 2016.

If an organization makes a contribution to a candidate or political committee in an amount that causes the organization to exceed the incidental threshold, the portion of the contribution over the incidental threshold would be subject to the contribution limits contained in M.G.L. c. 55, § 6. For example, after an organization whose incidental threshold is \$15,000 has made \$10,000 in contributions and independent expenditures in a calendar year, the most it could subsequently give to a single candidate during the remainder of that year (assuming no other contributions or independent expenditures were made) would be \$5,500, the balance of the incidental threshold plus the amount of the annual PAC limit to candidates.

B. Reporting requirements.

In addition to being subject to contribution limits, once an organization has exceeded the incidental threshold, it must submit reports in accordance with the schedule set forth in clause (e) of the

second paragraph of M.G.L. c. 55, § 18.⁶ Once the incidental threshold is exceeded, the organization must file a report disclosing the total amount of contributions and independent expenditures made by the organization during the reporting period, using Form CPF 111, including contributions and independent expenditures made prior to reaching the incidental threshold as well as all those made after the threshold is met. See Form CPF 111, "*Report of Association or Other Group Making Contributions to or Expenditures on Behalf of Candidates, PACs & Political Party Committees.*"⁷

When the report reflects financial activity supporting or opposing candidates or committees that file with OCPF, the report is filed (in paper form) with OCPF, but it is scanned and posted on OCPF's website. If all financial activity in a report relates to local candidates in one municipality who do not file with OCPF, an organization must file the form with the city or town clerk or election commission in the city or town where such expenditures are made, in accordance with the schedule set forth in clause (b) of the second paragraph of M.G.L. c. 55, § 18.⁸

In any year prior to a year in which an organization initially exceeds the incidental threshold, an organization is not required to periodically report contributions or independent expenditures made on behalf of political action committees, party committees, or candidates on CPF Form 111. **The obligation to file a report begins when the organization's expenditures exceed the incidental threshold and continues until one year after the next year that the organization's expenditures do not exceed the incidental threshold.** For example, if an organization whose incidental threshold is \$15,000 makes political expenditures of more than \$15,000 in 2014, the reports must be filed for 2014, and in each year thereafter until one year after the incidental threshold is not exceeded. If in 2015 the organization makes political expenditures totaling \$10,000, the organization would still be required to file in 2015, but not in 2016, assuming the expenditures remain less than the incidental threshold in 2016.

Independent expenditures in amounts exceeding \$250 during a calendar year must, however, always be reported on a separate form, regardless of whether an organization has exceeded the incidental threshold. See M.G.L. c. 55, § 18A. If an organization makes an independent expenditure(s) over \$250 during any calendar year advocating the election or defeat of a clearly identified candidate or candidates, the organization must electronically file, within seven business days after such expenditure(s) exceed \$250 during a calendar year, a Form CPF 18A, "*Report of Independent Expenditures*" with this office. If expenditures are made to support or oppose a candidate who files with a local election official, a paper form M18A must be filed with the city, town or district clerk or election commission. In addition, the statute as amended by Chapter 28 of the Acts of 2009 requires the filing of reports of independent expenditures when independent expenditures exceeding

⁶ Such reports must be filed (in paper) on or before the eighth day preceding a primary or caucus, the eighth day preceding a biennial state election, and, as a final report, the twentieth day of January in the following year complete as to the thirty-first day of December of the prior year. In addition, the organization would be required to file midyear reports by July 20 of each odd-numbered year, in accordance with clause (h) of the second paragraph of M.G.L. c. 55, § 18. Completed forms are scanned by OCPF and posted on OCPF's website.

⁷ The report does not disclose the source of funds received by the organization since the organization has not received "contributions" subject to the campaign finance law, i.e., it has not received money or other things of value for the purpose of influencing the nomination or election of a candidate or candidates.

⁸ Such reports must be filed on or before the eighth day preceding a city or town preliminary or primary, including a caucus, the eighth day preceding a city or town election, and if a city election, by the twentieth day of January in the following year complete as to the thirty-first day of December of the prior year, and if a town election, by the thirtieth day following said election.

\$250 are made after the tenth day, but more than 24 hours, before the date of any election. These reports must be filed within 24 hours of making the independent expenditures. For organizations that have exceeded the incidental threshold, the Form CPF 18A must be filed in addition to the CPF Form 111 that is required to be filed periodically in accordance with the schedule set forth in clause (b) of the second paragraph of M.G.L. c. 55, § 18. As stated in Section II, above, independent expenditures count towards an organization's incidental threshold.

V. Forms.

Form CPF 111 is filed in paper form. A copy of the form is attached to this bulletin. Reports of independent expenditures that relate to expenditures made to promote the election or defeat of any candidate who files with OCPF must be electronically filed with this office.

VI. Verification and Record Keeping.

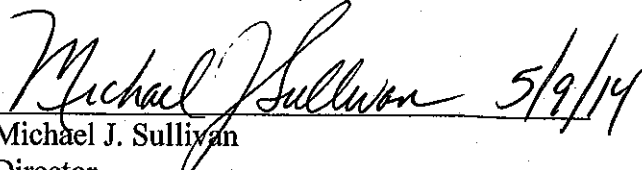
Each organization subject to the guidelines discussed in this bulletin shall keep records of its political expenditures for six years following the date of the relevant election.

In addition, although compliance with the reporting requirements and limits stated in this bulletin is primarily the responsibility of the organization making contributions and not the responsibility of the committee receiving a contribution, committees should exercise their best efforts to verify that the contribution complies with the campaign finance law. Committees may not knowingly accept contributions that are made in a manner that disguises the true source of the contributions. See M.G.L. c. 55, § 10, and 970 CMR 1.04(8)(requiring candidates and committees to exercise best efforts to determine whether contributions are legal at the time of receipt).

To demonstrate compliance with these requirements, OCPF strongly suggests that a committee receiving a contribution from an organization making a contribution in accordance with this bulletin to obtain an affidavit from the organization. The affidavit should affirm that the source of the funds contributed is the general treasury of the organization, that the funds were not solicited or received by the organization for the purpose of making a contribution, and that no part of the funds contributed was derived from business corporations or other entities prohibited from contributing by Section 8 of the campaign finance law.

VII. Conclusion.

Numerous and sometimes complex questions are raised when organizations other than political committees become involved in campaign finance activity. If you have questions or need further information regarding this bulletin or any other campaign finance matter, please call OCPF at 1-800-462-OCPF or 617-979-8300.


Michael J. Sullivan
Director



Commonwealth of Massachusetts

Form CPF 111: REPORT OF ASSOCIATION OR OTHER GROUP MAKING CONTRIBUTIONS TO OR EXPENDITURES ON BEHALF OF CANDIDATES, PACS OR PARTY COMMITTEES

Office of Campaign and Political Finance

Reporting Period: from: (MM/DD/YYYY) to: (MM/DD/YYYY)

Type of Report: [] 8th day preceding primary/preliminary [] 8th day preceding election [] 30th day after election [] January 20th

On behalf of: [] State / County Candidates, PACs & Party Committees or [] Municipal Candidates

Name of Association or Group: _____

Name & Title of Principal Officers: _____

Mailing Address: Street: _____ City/State/Zip: _____

DETERMINATION OF INCIDENTAL THRESHOLD:

- 1. Total gross revenues of previous calendar year: \$ _____
2. 10% of line 1 or \$15,000, whichever is less: \$ _____
3. Total expenditures, contributions to committees and liabilities incurred during previous calendar year: \$ _____
4. Total expenditures, contributions to committees and liabilities incurred during current calendar year: \$ _____

If line 3 or 4 exceeds line 2, Form 111 must be filed for the reporting period.

POLITICAL EXPENDITURES AND CONTRIBUTIONS TO CANDIDATES/COMMITTEES DURING REPORTING PERIOD:

- 1. Total contributions made (including in-kind contributions): \$ _____
2. Total independent expenditures made: \$ _____

I certify that this report is a true statement of the amount or value of every contribution or expenditure made, together with the date, purpose, and full name and address of the person to whom, or on whose behalf, it was made.

Signed under the penalties of perjury:

Signature of Officer _____ Date: (MM/DD/YYYY) Name: _____

WHO NEEDS TO FILE THIS FORM?

Once an organization has made political contributions or expenditures to support candidates or political committees in excess of the "incidental threshold" (i.e., \$15,000 or 10% of such organization's gross revenues for the previous year, whichever is less), a duly qualified officer must file this report.

WHERE SHOULD THIS FORM BE FILED?

State, county and municipal candidates and committees who file with OCPF: If contributions or expenditures are made to support or oppose candidates or committees who file with OCPF, this form should be filed with the Director of the Office of Campaign and Political Finance, One Ashburton Place, Room 411, Boston, MA, 02108.

Municipal candidates and committees who do not file with OCPF: If contributions or expenditures are made to support or oppose candidates or committees who file with local election officials, this form should be filed with the city or town clerk or local election commission.

WHERE CAN I GET MORE INFORMATION?

You can view or download OCPF Interpretive Bulletin IB-88-01 from the Legal Resources section of OCPF's website at www.ocpf.us. Call OCPF at (617) 979-8300 or (800) 462-OCPF.