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MEMORANDUM

TO: Interested Persons
FROM: Michael J. Sullivan, Director *MJS*
SUBJECT: Reporting of Year-End Contributions

At the end of each year, OCPF receives questions regarding the accurate reporting of contributions¹ made near the end or beginning of a calendar year. How should a committee determine the appropriate date of a contribution's "receipt," for purposes of the campaign finance law? This question typically occurs when a contributor mails or delivers a contribution by check, or makes a credit card contribution, late in the calendar year and the recipient committee deposits or receives the contribution early in the new year.

This memorandum explains how candidates and treasurers should disclose these contributions. Although no administrative solution is perfect, the approach described in this Memorandum seeks to provide the best possible answer for determining contributors' intent while at the same time ensuring effective administration of, and compliance with, the campaign finance law.

I. The Basic Rule

The general rule, which applies to contributions made during most of the calendar year, is that if a contribution is made by check, a candidate or committee is considered to have received the contribution when the contribution is actually delivered to, taken possession of or acquired by the candidate or political committee, e.g., the committee's treasurer or other authorized agent of the committee. A credit card contribution is generally deemed made and received for purposes of disclosure and compliance with the limits of the campaign finance law on the day that the contribution is received into the committee's bank account. See 970 CMR 1.09(5)(b) and M-04-01.²

¹ A "contribution" is defined by the campaign finance law as any "gift, subscription, loan, advance, deposit of money, or thing of value, except a loan of money to a candidate by a national or state bank made . . . in the ordinary course of business . . ." given "for the purpose of influencing the nomination or election" of a candidate "or for the purpose of promoting or opposing a [ballot question]." See M.G.L. c. 55, § 1.

² If a vendor that processes credit card contributions by aggregating the contributions and then providing the funds to a committee by check or electronic transfer, the contributions are deemed to have been made and received as of the date the original credit card contributions were authorized, not the date the funds are received into the committee's account by check or electronic transfer.



An exception to the basic rule applies, however, to credit card (or debit card) contributions that are made in December, but not actually received into a committee's account until the next calendar year. If a contributor **authorizes a credit card contribution** in December, the contribution is deemed to be "received" for purposes of the campaign finance law in December. The contribution by credit card was authorized in December and there is a paper trail documenting the authorization, even if the funds may not actually be in the committee's account until January.

The manner in which year-end contributions are reported depends in part on whether the committee discloses activity in the depository system or the non-depository system.

(a) **Non-depository committees:** Legislative candidate committees, local party committees, ballot question committees, and many municipal candidate committees file campaign finance reports in the non-depository system. For these committees, credit card contributions authorized by the contributor in December, but received in the next calendar year must be reflected in the year-end report, even if the funds are not received into the committee's bank account until January. Contributions made by check, however, are reported in the reporting period in which they are actually received by the committee, even if the funds are not deposited until January. For their records, committee treasurers are advised to note on a photocopy of a contribution check that is received late in the year the actual date the contribution was received.

(b) **Depository committees:** Depository candidates and committees³ must account for all contributions received during the preceding calendar year on their year-end report. Credit card contributions authorized prior to the end of the calendar year that are not yet deposited as of December 31 should be noted in the year-end report as "receipts in transit." Credit card contributions authorized late in one year, and counted in that year for contribution limitation purposes, may actually be deposited and disclosed in deposit reports filed early in the subsequent year.

Checks written to a depository committee and in possession of the committee in December are considered received in December, even if not deposited until January. The committee must note, on the deposit report filed in January for the items deposited at that time, that the contributions were received in the previous calendar year. In addition, like credit card contributions authorized prior to the end of the previous calendar year, these contributions must be aggregated and reported in the year-end report under the category "receipts in transit."

Finally, PACs that file with OCPF are within the depository system. Payroll deductions authorized in December 2018 by contributors to such PACs may be received in January 2019. In that instance, the contributions received are considered 2019 contributions and must be disclosed in the PAC's deposit reports.

³ Depository candidates and committees include statewide and county candidate committees, PACs that file reports with OCPF (other than independent expenditure PACs), state party committees, governor's council committees and committees organized on behalf of candidates for mayor or city council in cities with a population of 65,000 or more (currently Boston, Cambridge, Lowell, Springfield, Worcester, New Bedford, Brockton, Quincy, Lynn, Fall River, Newton, Lawrence, Somerville, and Framingham). Such candidates and committees must deposit contributions within seven days after receipt. See M.G.L. c. 55, § 19.

II. Examples

(a) NON-DEPOSITORY COMMITTEES

(1) A contributor writes a check to a candidate for \$100 on December 31, 2018. The contributor hand delivers the check to the candidate's treasurer on the same day. The treasurer does not deposit the contribution until January 2, 2019. The contribution is deemed to have been received on December 31, 2018, the date the contribution was delivered to and acquired by the committee's treasurer, even though the treasurer did not deposit the check until 2019.⁴ The contribution should be reported as received in 2018, and should be itemized in the 2018 year-end report. For purposes of determining compliance with contribution limits, this is a 2018 contribution.

(2) A town committee writes a check for \$250 on December 20, 2018 to a candidate committee. The check is **hand delivered to the candidate on January 2, 2019**. The candidate committee should report the receipt of the contribution in its 2019 report. This is a 2019 contribution, which counts towards the contributor's 2019 limit.

(3) A contributor **authorizes a credit card contribution on December 28, 2018**. The vendor notifies the committee of the contribution on December 28 **and the contribution is electronically credited to the committee's account** on January 4. Because the contributor authorized the contribution in 2018, the contribution is considered to be made and received in 2018 and counts toward the contributor's 2018 limit.

(4) A contributor **authorizes a credit card contribution on December 29, 2018**. The vendor immediately notifies the committee of the contribution **and the vendor sends the committee a check** by mail that includes the amount contributed. The check is received in January, 2019 but the contribution is considered made and received in 2018 and counts toward the contributor's 2018 individual limit.

(b) DEPOSITORY COMMITTEES

(1) A contributor writes a check to a depository candidate on December 31, 2018 **and hand delivers it that day**. This is deemed to be a 2018 contribution and should be reported as such. If the candidate does not deposit it until January, it should be noted on the deposit report (after the contributor's last name) that this was a "2018 Contribution." Contributions authorized in 2018, but not deposited as of December 31, 2018, are aggregated and also reported in the committee's 2018 year-end report under the category "receipts in transit."

(2) A contributor writes a check to a depository candidate's committee on December 31, 2018 and puts the check in the mail. The candidate **receives the check on January 3, 2019**. This is deemed to be a 2019 contribution.

⁴ If a contributor "post dates" a contribution, the contribution is not deemed to have been made and received until the day the check is actually negotiable. For example, a check that is post dated January 5, 2019 but delivered prior to the new year is a 2019 contribution since the check cannot be negotiated until 2019.

(3) An individual **authorizes a credit card contribution on December 31, 2018**. The vendor notifies the committee of the contribution and the committee receives credit for the contribution in the committee account on January 4, 2019. Since the contribution was authorized in 2018 and there is a paper trail documenting the authorization, it is deemed to be a 2018 contribution. It should be noted on the deposit report (after the contributor's last name) that this is a "2018 Contribution." Contributions authorized in 2018, but not deposited as of December 31, 2018, are aggregated and also reported in the committee's 2018 year-end report under the category "receipts in transit."

(4) A contributor **authorizes a credit card contribution on December 28, 2018**. The vendor notifies the committee of the contribution and the vendor sends the committee a check by mail that includes the amount contributed. The check is received on January 4 and deposited on January 5. The contribution is reported as deposited in the January 5, 2019 deposit report, but the contribution counts towards the contributor's 2018 limit. It should be noted on the deposit report (after the contributor's last name) that this is a "2018 Contribution." The total contributions authorized in 2018, but not deposited by December 31, 2018, are reported in the 2018 year-end report as "receipts in transit" as of December 31.

Depository committees must deposit contributions **within seven days of receipt**. For example, if a committee receives a check from a contributor on December 23, 2018, the check must be deposited no later than December 30, 2018. Similarly, a check received on December 27, 2018 must be deposited no later than January 3, 2019 (which would be considered a 2018 contribution and would be reported in the 2018 year-end report as a "receipt in transit" as of December 31). A check received on December 30 must be deposited by January 6, 2019. However, since January 6 is a Sunday and most banks are closed, OCPF has determined that contributions received on December 30, 2018 but deposited no later than January 7, 2019 will meet the 7 day requirement.

This memorandum is not intended to cover every situation regarding the reporting of year-end contributions. For further information or guidance, therefore, please contact OCPF.