

MARYLAND REGISTER

Proposed Action on Regulations

Transmittal Sheet PROPOSED OR REPROPOSED Actions on Regulations	Date Filed with AELR Committee	TO BE COMPLETED BY DSD
	08/28/2018	Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

1. Desired date of publication in Maryland Register: 10/12/2018

2. COMAR Codification

Title	Subtitle	Chapter	Regulation
33	13	01	01
33	13	07	01, .02
33	13	10	02
33	13	15	13
33	13	17	01, .02
33	13	19	01, .02, .03, .04
33	13	20	01, .02
33	13	22	01, .02, .03, .04, .05, .06, .07

3. Name of Promulgating Authority

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08/23/2018

Title 33

STATE BOARD OF ELECTIONS

Subtitle 13 CAMPAIGN FINANCING

33.13.01 Definitions

Subtitle 13 CAMPAIGN FINANCING

33.13.07 Authority Line Requirements; Electronic Media

Subtitle 13 CAMPAIGN FINANCING

33.13.10 Prohibitions

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33.13.17 Participating Organizations

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33.13.19 Expenditures and Disbursements

Subtitle 13 CAMPAIGN FINANCING

33.13.20 Contributions by Employee Membership and Membership Entities

Subtitle 13 CAMPAIGN FINANCING

33.13.22 Legal Expenses

Authority: Election Law Article, §§1-101, 2-102(b)(4), 13-218(b), 13-245 and Title 13, Subtitle 3, Annotated Code of Maryland Election Law Article, §§2-102(b)(4), 13-401, 13-404, 13-245 and Title 13, Subtitle 4, Part I, Annotated Code of Maryland Annotated Code of Maryland Election Law Article, §§2-102(b)(4), 13-218, 13-225-13-237, 13-239 and 13-245, and Title 13, Subtitle 3, Annotated Code of Maryland Election Law Article, §§2-102(b)(4) and 13-309.1, Annotated Code of Maryland Election Law Article, §§2-102(b)(4) and 13-309.2, Annotated Code of Maryland Election Law Article, §§1-101, 2-102(b)(4), 13-218(b), 13-304(b), 13-221(a)(3), 13-245, and Title 13, Subtitle 3, Annotated Code of Maryland Annotated Code of Maryland Election Law Article, §§1-101, 2-102(b)(4), Annotated Code of Maryland Annotated Code of Maryland Election Law Article, §§2-102(b)(4), 13-233, Annotated Code of Maryland Annotated Code of Maryland

Notice of Proposed Action

□

The State Board of Elections proposes to amend Regulation .01 under COMAR 33.13.01 Definitions; amend Regulations .01 and .02 under COMAR 33.13.07 Authority Line Requirements; Electronic Media; amend Regulation .02 under COMAR 33.13.10 Prohibitions; adopt Regulation 13 under COMAR 33.13.15 Political Action Committees; amend Regulations .01 and .02 under COMAR 33.13.17 Participating Organizations; adopt Regulations .01, .02, .03, .04 under COMAR 33.13.19 Expenditures and Disbursements; adopt Regulations .01, .02, under COMAR 33.13.20 Contributions by Employee Membership and Membership Entities; adopt Regulations .01, .02, .03, .04, .05, .06, .07 under COMAR 33.13.22 Legal Expenses.

This action was considered by the State Board of Elections at its August 23, 2018 meeting, notice of which was given in accordance with the State Government Article, §10-506 (c), Annotated Code of Maryland.

Statement of Purpose

The purpose of this action is to amend the definition of donation to include the compliance account of a political action committee.

amend the requirements for an electronic media advertisement to include the definition of a qualifying paid digital communication and other clarifying changes to comply with the recently passed legislation. It expands the authority line requirements for online campaign material to participating organizations and other person required to register with the State Board. The proposed regulations change the authority line requirements for campaign material where it would not legible to read to current technological standards, such as the use of an icon or an overlay rather than a click through. The regulations prohibit data collection from the viewer of an authority line.

amend the current regulation to conform ownership of a video lottery operation license with Election Law Article §13-226(e).

codify current State Board policy on the attribution of contributions between merged or acquired political action committees.

reflect the statutory changes the General Assembly changed the reporting requirements for a participating organization.

detail how political committees treat the receipt of a polls, mailing list or voter access file. The proposed regulation set up a tiered approach on the value of a poll based upon the date of receipt of the information. It is similar to how the Federal Election Commission value polling information. Additionally, mailing list have been a frequently asked question by committees on how to value them. The valuation of the list will be industry standards for purchasing similar lists. Finally, the regulations clarify that the purchase of a voter file from a political party is not considered a transfer or a contribution to the political party.

clarify and define the activities not considered contributions by those entities.

clarify the reporting obligations for a political committee engaging in fundraising effort for a recount challenge or defense.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Erin Perrone, Director, Election Reform & Management, State Board of Elections, PO Box 6486, Annapolis, MD 21401-0486, or call 410-269-2845, or email to erin.perrone@maryland.gov, or fax to 410-974-2019. Comments will be accepted through November 13, 2018. A public hearing has not been scheduled.

Economic Impact Statement Part C

A. Fiscal Year in which regulations will become effective: FY 19

B. Does the budget for the fiscal year in which regulations become effective contain funds to implement the regulations?

No

C. If 'yes', state whether general, special (exact name), or federal funds will be used:

D. If 'no', identify the source(s) of funds necessary for implementation of these regulations:

No funds are necessary to implement these regulations.

E. If these regulations have no economic impact under Part A, indicate reason briefly:

These regulations are technical and administrative in nature.

F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.

These regulations do not impact small business as they are technical and administrative in nature.

G. Small Business Worksheet:

Attached Document:

Title 33 State Board of Elections

Subtitle 13 Campaign Financing

Chapter 01 Definitions

Authority: Election Law Article, §§1-101, 2-102(b)(4), 13-218(b), 13-245 and Title 13, Subtitle 3, Annotated Code of Maryland

.01 Definitions.

A. [text unchanged]

B. Terms Defined.

(1) - (5) [text unchanged]

(6) "Donation" means the gift or transfer, or promise of gift or transfer, of money or other thing of value to:

(a) An administrative account of the central committee or legislative party caucus committee;

(b) A person who makes independent expenditures; [or]

(c) A person who makes electioneering communications[.]; *or*

(d) *A compliance account of a political action committee.*

(7) - (17) [text unchanged]

Title 33 State Board of Elections

Subtitle 13 Campaign Financing

Chapter 07 Authority Line Requirements; Electronic Media

Authority: Election Law Article, §§2-102(b)(4), 13-401, 13-404, 13-245 and Title 13, Subtitle 4, Part I, Annotated Code of Maryland
Annotated Code of Maryland

.01 Definitions.

A. [text unchanged]

B. Terms Defined.

(1) – (4) [text unchanged].

(5) "Distribution" means the act or instance of sharing or sending campaign material or hyperlinks of campaign material to the public, or to a list of subscribers, by means of an electronic communication *or online* platform, the Internet, text messaging service, or software application.

(6) "Electronic media advertisement" means a *qualifying paid digital communication, or other electronic communication in which campaign material* [advertisement, logo, or small icon that] is [posted] *disseminated, distributed or published* on social media, a micro-blog, the Internet, text messaging, an online platform, or other forms of electronic media *other than radio, broadcast, cable or satellite television by a political committee.*

(7) [text unchanged].

(8) Political Committee.

(a) "Political committee" has the meaning stated in Election Law Article, §1-101, Annotated Code of Maryland; *and*[.]

(b) "Political committee" *also* includes:

(i) A candidate;

(ii) A person required to file an independent expenditure report pursuant to Election Law Article, §13-306, Annotated Code of Maryland; [or]

(iii) A person required to file an electioneering communication report pursuant to Election Law Article, §13-307, Annotated Code of Maryland [.] *or*

(iv) *Any entity or person required to register with the State Board under Title 13, Subtitle 3 of the Election Law Article.*

(9) Publication.

(a) “Publication” means the act or instance of making campaign material available to the public, or to a list of subscribers, including by means of an electronic communication *or an online* platform, the Internet, a text messaging service, or a software application.

(b) “Publication” includes displaying content on the Internet, updating webpages, posting blogs, and providing updates or posts on social media.

(10) [text unchanged]

.02 Requirements.

A.-C. [text unchanged]

D. Electronic Media Advertisements.

(1) An electronic media advertisement published or distributed by a political committee *or an agent of the political committee* for the purpose of promoting or opposing a candidate, prospective candidate, or the approval or rejection of a question is campaign material as defined under Election Law Article, §1-101(k), Annotated Code of Maryland.

(2) Authority Line Required.

(a) [text unchanged]

(b) If an electronic media advertisement is *in text or graphic form and is too small to include the authority line information required under Election Law Article, §13-401(a), Annotated Code of Maryland*, in a legible manner, the political committee is in compliance with the authority line requirement under Election Law Article, §13-401(a), Annotated Code of Maryland, if:

(i) [For an] *The electronic media advertisement [that allows the viewer to click on the electronic media advertisement, the user is taken to a landing or home page that prominently displays the authority line information required under Election Law Article, § 13-401 (s), Annotated Code of Maryland; or] includes an icon or button that:*

(a) *When viewed in the context of the electronic media advertisement, provides clear, meaningful and prominent notice that the electronic media advertisement is campaign material; and*

(b) *when clicked or scrolled over by the person viewing the electronic media advertisement, opens a page, window or an overlay that prominently displays the authority line information required under Election Law Article, §13-401(a), Annotated Code of Maryland and the information required under Election Law Article, §13-405(b)(6), Annotated Code of Maryland; or*

(ii) [For an] *The electronic media advertisement that does not allow [the viewer to click on the electronic media advertisement the political committee registers the advertisement and the authority line information required under Election Law Article, § 13-401 (a), Annotated Code of Maryland, with the State Board.] for the use of the icon or button referenced in Regulation .02D(2)(b)(i) of this Chapter, when clicked by the person viewing the electronic media advertisement, opens a page or window that prominently displays the authority line information required under Election Law Article, §13-401(a), Annotated Code of Maryland[.]; and*

(b) *The political committee notifies the State Board of the online platform that does not allow for the use of the icon or button referenced in Regulation .02D(2)(b)(1) of this Chapter.*

(c) Examples of electronic media advertisements that are too small to contain an authority line as required under Election Law Article, §13-401(a), Annotated Code of Maryland, include:

(i) A micro bar;

(ii) A button ad;

(iii) A [paid] text [advertisement] *or communication* that is 200 characters or fewer in length; and

(iv) A [paid] graphic or picture link where it is not reasonably practical due to the size of the graphic or picture link.

E.-F. [text unchanged]

G. *Bots and Paid promotion. A political committee or other person responsible for any publication may not conceal or misrepresent the identity of the political committee or person responsible for the publication via the use of a software application or paid service that generates or deploys multiple social media profiles, such as a bot, to distribute or disseminate the publication.*

Title 33 STATE BOARD OF ELECTIONS

Subtitle 13 CAMPAIGN FINANCING

Chapter 10 Prohibitions

Authority: Election Law Article, §§2-102(b)(4), 13-218, 13-225-13-237, 13-239 and 13-245, and Title 13, Subtitle 3, Annotated Code of Maryland

.02 Prohibited Contributions.

A.- C. [text unchanged]

D. Video Lottery Operation Licensee or Applicant — Same Owners. If the person in §C of this regulation is a corporation, any wholly owned [corporations or other corporations owned by identical shareholders] *direct or indirect subsidiary or any other entity owned or controlled by persons owning at least 80% of the ownership interests in the corporation, at any time during the election cycle*, may not make any contributions to a political committee organized in support of a non-federal candidate for the rest of the election cycle.

Title 33 STATE BOARD OF ELECTIONS

Subtitle 13 CAMPAIGN FINANCING

Chapter 15 Political Action Committees

Authority: Election Law Article, §§2-102(b)(4) and 13-309.1, Annotated Code of Maryland

.13 Mergers and Acquisitions.

A. *Acquisition. If a political action committee acquires, merges with, or takes control of another political action committee and is the surviving entity in the transaction, the prior contributions made by the non-surviving entity will not be retroactively attributed to the surviving entity.*

B. *Newly Formed Entity. If a political action committee merges with another political action committee to form a new political action committee, the prior contributions made by each of the non-surviving political action committees will be attributed to the newly formed political action committee. If, as a result of such attribution, the prior contributions to a particular political committee exceed the applicable contribution limit under Title 13 of the Election Law Article, Annotated Code of Maryland, and this Subtitle, the political committee shall not be required to return any amounts attributed to the newly formed political action committee that exceed the applicable contribution limit, but the newly formed political action committee may not make a further contribution to that political committee.*

Title 33 STATE BOARD OF ELECTIONS

Subtitle 13 CAMPAIGN FINANCING

Chapter 17 Participating Organizations

Authority: Election Law Article, §§2-102(b)(4) and 13-309.2, Annotated Code of Maryland

.01 Scope and Definitions.

A. [text unchanged]

B. [This chapter is effective as of January 1, 2015.] *In this chapter, the following terms have the meaning indicated.*

C. *Terms Defined.*

(1) *“Participating organization” has the meaning stated in Election Law Article, §13-309.2, Annotated Code of Maryland.*

(2) *“Political disbursement” has the meaning stated in Election Law Article, §13-309.2, Annotated Code of Maryland.*

(3) *“Principal Officer” means the person exercising direction or control over the activities of the participating organization.*

.02 Registration.

A. In General. The participating organization shall file a registration notice with the State Board within 48 hours of making [a contribution, donation, or] *political disbursements of more than \$6,000 [or more] cumulatively in an election cycle [to:*

(1) A political committee;

(2) A person making independent expenditures;

(3) A person making electioneering communications; or

(4) An out-of-State political committee for the purpose of influencing a Maryland election].

B. Notice Requirements.

(1) The registration notice shall consist of the following information:

- (a) The identity of the participating organization;
 - (b) The business address of the participating organization;
 - (c) The name and mailing address of the individual designated as the treasurer or responsible officer authorized to file reports required under Election Law Article, §13-309.2, Annotated Code of Maryland;
 - (d) [The election year or years in which the participating organization will be participating] *The name and address of the principal officer of the participating organization;* and
 - (e) A statement on whether or not the participating organization will *file a participating organization report* or provide an active Internet address on its landing page [for the entire election year] that contains the information required by the State Board as to the participating organization's disbursements made and donations received[, including the names and addresses of all donors who have donated within the last 6 months from the date of filing the registration notice with the State Board].
- (2) If the participating organization:
- (a) *Will publish the required information on* [Has] an active Internet address as described in §B(1)(e) of this regulation, it shall provide the Internet address on the registration notice and identify the Internet link on its landing page as "Campaign Finance Activity" and use at least 12-point font for all required information; or
 - (b) *Will not [have] publish the required information on* an active Internet address, the participating organization shall submit the reports required by Election Law Article, §13-309.2, Annotated Code of Maryland[, including the names, addresses, and occupations of the five largest monetary donors to the participating organization within the last year from the date of filing the registration notice with the State Board].

Title 33 State Board of Elections

Subtitle 13 Campaign Financing

Chapter 19 Expenditures and Disbursements

Authority: Election Law Article, §§1-101, 2-102(b)(4), 13-218(b), 13-304(b), 13-221(a)(3), 13-245, and Title 13, Subtitle 3, Annotated Code of Maryland Annotated Code of Maryland

.01 Scope.

This chapter applies to expenditures and disbursements made by political committees and persons.

.02 Polls

A. Expenditure. The purchase of opinion poll results by a political committee or person is an expenditure by the political committee or person.

B. In-Kind Contribution. The acceptance of any part of an opinion poll's results by a candidate, the authorized campaign committee of the candidate, or an agent of the candidate, prior to such time as those results have been made public and without the payment of fair market value, shall be treated as an in-kind contribution by the political committee or person furnishing the opinion poll results to the candidate or the authorized candidate campaign committee.

C. Acceptance. The poll results are considered accepted by a candidate if the candidate, agents of the candidate, or the political committees affiliated with candidate:

- (1) *Requested the poll results before the opinion poll was concluded;*
- (2) *Used the poll results before they became public; or*

(3) *Failed to notify the person purporting to provide the opinion poll results that the candidate refused to accept the opinion poll results.*

D. Public Release. The acceptance of any part of a poll's results which part, prior to receipt, has been made public without any request, authorization, prearrangement, or coordination by the candidate or the agents of the candidate shall not be treated as an in-kind contribution by the political committee or person releasing the opinion poll results.

E. Fair Market Value.

(1) *Fair market value of an opinion polls is determined as of the date when the candidate or its agents receives the poll results. The value of the polls decreases as the benefits derived from the poll results are less timely.*

(2) *The fair market value of an opinion polls is as follows:*

(a) *If the results are received within 30 days following receipt by the initial recipient(s) of the opinion poll, 100 percent of the amount paid for the opinion poll;*

(b) *If the results are received between 31 and 60 days following receipt by the initial recipient(s) of the opinion poll, 50 percent of the amount paid for the opinion poll,*

(c) *If the results are received between 61 and 180 days following receipt by the initial recipient(s) of the opinion poll, 5 percent of the amount paid for the opinion poll;*

(d) *If the results are received more than 180 days following receipt by the initial recipient(s) of the opinion poll, the fair market value shall be zero.*

(3) If only a portion of the opinion poll results are shared with a candidate, then the fair market value of the results received by the candidate shall be further reduced:

(a) To an amount reflecting the proportion of the number of question results received by the candidate or political committee as compared to the total number of questions in the opinion poll; or

(b) To an amount computed by any other method which reasonably reflects the benefit derived.

.03 Mailing List

A. *Expenditure.* The purchase of a mailing list, email list or a contributor list is a permissible expenditure by a political committee.

B. *In-Kind Contribution.* The acceptance of a mailing list, email list or a contributor list by a political committee from another person without providing compensation at fair market value is considered an in-kind contribution.

C. *Fair Market value.* The fair market value of the mailing list, email list or contributor list shall be determined by industry practice for selling mailing list data at the time of receipt.

.04 Voter File Access

A. *Field Expense.* The purchase of voter file access is a permissible expenditure by a political committee. The purchase of the voter file access is considered a field expense.

B. *Procurement.* The purchase of voter file access from a central committee by a political committee is not considered a transfer or contribution to the central committee.

Title 33 State Board of Elections

Subtitle 13 Campaign Finance

Chapter 20 Contributions by Employee Membership and Membership Entities

Authority: Election Law Article, §§1-101, 2-102(b)(4), Annotated Code of Maryland Annotated Code of Maryland

.01 Definitions

A. *In General.* In this chapter, the following terms have the meanings indicated.

B. *Terms Defined.*

(1) "Affiliated political action committee" has the meaning stated in Election Law Article §13-242 and §13-243.

(2) "Employee membership entity" has the meaning stated in Election Law Article §13-242.

(3) "Membership entity" has the meaning stated in Election Law Article §13-243.

.02 Non-Contribution Disbursements.

A. *Requirements.* The costs in §B of this regulation will not be considered a contribution by an employee membership entity or a membership entity to an affiliated political action committee that:

(1) It has established; and

(2) Only solicits contributions from the members participating in a payroll deduction program of the employee membership entity, or a program for periodic collection of dues of the membership entity.

B. *Disbursements.* The following costs of operating an employee membership entity or membership entity are not considered a contribution to an affiliated political action committee it has established:

(1) The cost of establishing or modifying the payroll program or program for periodic collection of dues to permit the employer or membership entity to offer its employees or members, respectively, the option of making contributions by payroll deduction or other periodic method of payment;

(2) The cost of providing information or written materials regarding how to participate in the payroll deduction program or program for periodic collection of contributions to the members;

(3) The cost of compliance training for members who volunteer to contact other members to explain the political purpose and operation of the affiliated political committee established by the employee membership entity or membership entity and the member's right to refuse to participate without reprisal.

(4) The costs associated with soliciting members to participate in the payroll deduction program or program for periodic collection of contributions, including:

(a) The use of office space in the employee membership entity or membership entity; or

(b) Personnel of the employee membership entity or membership entity.

(5) The cost of legal services concerning the requirements of Title 13 of the Election Law Article.

C. *Restrictions.* A solicitation permitted under §B of this regulation by an employee membership entity or membership entity shall be limited to:

- (1) Current or active members, not former members or spouses of current or former members;
- (2) Appeals for voluntary contributions without promise of reimbursement, reward, or other inducement from the employee membership entity or membership entity in exchange for the member's participation; and
- (3) Appeals for voluntary contributions without actual or threatened penalty, coercion, discrimination, or other reprisal for the member's non-participation.

Title 33 State Board of Elections

Subtitle 13 Campaign Financing

Chapter 22 Legal Expenses

Authority: Election Law Article, §§2-102(b)(4), 13-233, Annotated Code of Maryland Annotated Code of Maryland

.01 Scope.

This chapter applies to legal expenses associated with maintaining or contesting the results of an election.

.02 Establishment.

Prior to the receipt of contributions received pursuant to Election Law Article 13-233, a political committee shall:

A. Establish a segregated checking account from the campaign accounts of the political committee, consistent with the requirements of Election Law Article, §13-220, Annotated Code of Maryland; and:

B. Register the segregated account with the financial institution and the State Board in a manner that identifies it as being for legal expenses associated with maintaining or contesting the results of an election.

.03 Management.

The political committee shall:

A. Maintain account books and records for legal expenses associated with maintaining or contesting the results of an election in accordance with the requirements of Election Law Article, §13-221, Annotated Code of Maryland; and

B. Report all contributions received, disbursements made, and outstanding obligations incurred in connection with legal expenses associated with maintaining or contesting the results of an election on a disclosure report.

.04 Reporting.

The political committee paying for reasonable legal expenses associated with maintaining or contesting the results of an election must report all contributions received and expenditures made on a campaign finance.

.05 Applicability of Contribution Limits.

A. Contributions.

(1) All monies received from an individual to the political committee to pay for the legal expenses associated with maintenance or contest of the election result are contributions.

(2) All services provided by an individual to the political committee to offset the costs of legal expenses associated with maintenance or contest of the election result are contributions.

B. Contribution limit. An individual may make an unlimited contribution to the political committee to pay for or offset the legal expenses associated with maintenance or contest of the election result.

.06 Permissible Uses.

A. Permissible Use. Contributions received in accordance with Election Law Article § 13-233(b), Maryland Code Annotated, shall be used exclusively for legal expenses associated with maintenance or contest of the election result.

.07 Prohibitions.

A. Commingling of Funds. A political committee may not commingle the funds of a campaign account and the account established under .02 of this section.

B. Prohibited Activities. The political committee may not expend any funds received in accordance with Election Law Article § 13-233(b), Maryland Code Annotated, for any reason other than the payment of legal expenses associated with maintenance or contest of the election result.

LINDA H. LAMONE
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