

DEPARTMENT OF ELECTIONS
OFFICE OF THE COMMISSIONER OF ELECTIONS FOR THE STATE OF DELAWARE
Statutory Authority: 15 Delaware Code, Section 8021(c), 8041(1)
(15 Del.C. §§ 8021(c), 8041(1))

PROPOSED

PUBLIC NOTICE

Background

The Delaware Elections Disclosure Act (the "Act") was signed into law on August 15, 2012. In connection therewith, the Act requires the Commissioner of Elections (the "Commissioner") to adopt regulations no later than December 31, 2012:

- a) exempting, to the extent possible, persons from reporting duplicative information in campaign finance reports;
- b) promulgating standards with respect to the size, layout and timing of the disclaimer statements required with respect to certain campaign advertisements;
- c) adopting any amendments or modifications to, or exemptions from, such disclaimer statements; and
- d) adopting procedures for the electronic filing of reports and the posting of said reports to the Commissioner of Elections' web site.

See 15 Del.C. §8041(1).

The Commissioner first adopted campaign finance regulations in 1992. Those regulations are shown below in normal text. The proposed regulations to be adopted in connection with the Act are shown below in underline or ~~strikethrough~~.

Public Comment Period

The Commissioner of Elections will take written comments on the proposed Regulations from November 1, 2012 through November 30, 2012.

Any requests for copies of the proposed Regulations, or any questions or comments regarding this document should be directed to:

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Campaign Finance Regulations

1.0 Authority Scope and purpose

~~The State Election Commissioner has authority under 15 Del. C. § 8041(1) to enact rules and regulations not inconsistent with law "as are necessary to implement and enforce the Campaign Financing Act." These regulations should be read in conjunction with Chapter 80 of Title 15 and have the force and effect of law. The State Election Commissioner has authority under 15 Del. C. Sec. 8041(1) to enact rules and regulations to implement and enforce the Campaign Financing Act of 1990 and the 2012 Delaware Elections Disclosure Act. The purpose of these regulations is to mandate disclosure of sources of campaign money to give voters information to make informed choices of candidates and to educate and to regulate candidates and political committees, including persons making independent expenditures through third party advertisements. The regulations should be read in conjunction with Chapter 80 of Title 15 and have the force and effect of law.~~

2.0. Definitions

- 2.1 "Campaign advertisement" has the meaning set forth in 15 Del.C. §8021(a) or any successor provision, as the same shall be amended from time to time.
- 2.2 "Electioneering communication" has the meaning set forth in 15 Del.C. §8002(11) or any successor provision, as the same shall be amended from time to time.

- 2.3 "Electronic format" means a communication posted or displayed electronically, and includes but is not limited to communications in electronic messages, electronic message attachments, text messages, or communications and advertisements appearing on Internet web pages, blogs, mobile devices, or other electronic communication systems.
- 2.4 "Independent expenditure" has the meaning set forth in 15 Del.C. §8002(13) or any successor provision, as the same shall be amended from time to time.
- 2.5 "Printed communication" means any communication distributed via mail, sign, the Internet, newspaper or other periodical.
- 2.6 "Third-party campaign advertisement" has the meaning set forth in 15 Del.C. §8002(27) or any successor provision, as the same shall be amended from time to time.

3.0 Contributions

- 3.1 Amount of contributions
- 3.1.1 A contribution as defined by 15 Del.C. §8002(6) may not exceed the maximum allowed for any election period regardless of whether that contribution is designated by the donor to retire a previous campaign debt or for a present campaign.
- 3.1.2 Regardless of how it is characterized, the total amount given by any contributor to any candidate for any election period may not exceed the limits permitted for contributions under Subchapter II of Chapter 80.
- 3.1.3 Incumbents not seeking reelection or other elective office may accept contributions to repay debt after the close of the election. However, the total contributions by any person given to any office holder in this circumstance may not exceed the amount permitted to be received by such office holder in the last election in which such office holder stood for election.
- 3.2 Receipt of contribution
- 3.2.1 Cash or reportable in-kind services. The date of receipt of a contribution in cash or in kind services required to be reported under 15 Del.C. Ch. 80 is the date that it is physically received by the candidate, treasurer or other representative of the committee which is registered with the State Election Commissioner Office. This date of receipt and not the date of deposit or otherwise shall be the date for reporting purposes.
- 3.2.2 Checks. The date of receipt of a contribution paid by check is the date the candidate, treasurer or other representative of the committee physically receives it. If the check is received by mail, the date of receipt and date for reporting purposes is the date it is received by the candidate, treasurer or representative of the registered committee. The person first receiving the check on behalf of the candidate or committee shall note on its face the date of physical receipt of the check. The person marking the date of receipt shall also accurately and legibly initial the notation of the date of actual receipt of the check.
- 3.3 Committee structure.
- 3.3.1 An office holder intending to seek a different office must establish a campaign committee for the new campaign ~~within seven days after first receiving a contribution to, or making expenditure for, the new campaign.~~ no later than 24 hours after it receives any contribution or makes any expenditure that causes the aggregate amount of contributions by or expenditures to such committee to exceed \$500 during an election period.
- 3.3.2 If such candidate has not closed out the candidate's existing campaign committee, the existing committee shall become a subcommittee of the new campaign committee. No candidate may have more than one committee, although a committee may have subcommittees however they are designated. The new committee must be established as outlined above even if established for exploratory purposes only. For example, if a candidate is currently in office, is maintaining a candidate committee to settle past debt and is seeking a different office, there shall be one committee and a subcommittee.
- 3.3.3 A single report shall be filed with the Commissioner on behalf of the committee showing the required information for both the committee and subcommittee(s). A candidate and treasurer are jointly responsible for filing reports on behalf of a candidate committee. The designation by a candidate of a treasurer does not relieve the candidate of the requirement to file reports.
- 3.3.4 A candidate committee may accept contributions for the new campaign or to pay off debts of the subcommittee. However, the total contributed by any person to any candidate may not exceed the limits permitted under Subchapter II of Chapter 80 for the "election period" whether such contributions are for the new campaign or for its subcommittees to pay off prior debts.

4.0 School boards and offices paying under \$1,000

- 4.1 No candidate for election to any school board or to any other public office that pays less than \$1,000 per year shall be required to form a candidate committee if the candidate files a Certificate of Intention Form prepared by the Commissioner within 7 days of filing as a candidate and certifying (under penalty of perjury) the intention not to receive nor to spend more than \$2,000 in campaign funds.
- 4.2 A candidate who has filed a Certificate of Intention Form shall not be required to file any further reports with the Commissioner. However, if the candidate subsequently receives more than \$2,000 in contributions or spends more than \$2,000 before the end of the year in which the election for such office is held, the candidate or committee must, within 7 days of such receipt or expenditure, notify the Commissioner and file all reports that would otherwise have been required had no Certificate of Intention been made.
- 4.4 Reimbursement for personal expenses in connection with performance of duties of the office is not salary for purposes of calculating the \$1,000 limit on salaries for offices not required to report.

5.0 ~~Duties of a political committee~~ Statements of Organization

- 5.1 ~~A political committee must file, on forms prescribed by the Commissioner, the documents and reports required by 15 Del. C. Sec. 8005. In the case of a political committee, all~~ Each political committee shall file, under penalty of perjury, ~~officers of the committee are responsible for filing the a~~ Statement of Organization with the Commissioner no later than 24 hours after the committee receives any contribution or makes any expenditure that causes the aggregate amount of contributions by or expenditures to such committee to exceed \$500 during an election period. and Statement of Purposes and Goals with the Commissioner within 7 days after the committee first receives any contribution or makes any expenditure, or within 7 days of any change of officers. In accordance with 15 Del. C. Sec. 8030 the treasurer of a committee is responsible for timely filing of the report required by that section.
- 5.2 ~~The Statement of Organization of a candidate committee, or any amendment thereto, shall be signed under penalty of perjury by either the candidate or the treasurer. Notwithstanding the foregoing, in the case of a candidate committee, the candidate and treasurer are~~ shall be jointly responsible for timely filing of all documents and reports required by 15 Del. C. § § 8005 and 8030. such documents. All Statements of Purposes and Goals must state the political office(s) and/or election for which the committee is being formed. The Statement of Organization of a candidate committee must be signed by the candidate and committee treasurer personally.
- 5.3 ~~Any officer of a political committee may submit a resignation to the Commissioner and be removed from the list of committee officers, except that no committee shall be without a treasurer. In the event a committee treasurer resigns without the appointment by the committee of a new treasurer, the following people shall automatically become treasurer: (1) In the case of a candidate committee, in the absence of a treasurer the candidate becomes the treasurer and is responsible for carrying out the duties of the treasurer as required by law, (2) In the case of a political committee the highest remaining officer becomes the treasurer and is responsible for the duties of the treasurer until a new treasurer is designated. In the case of any political committee other than a candidate committee, the Statement of Organization and any amendments thereto shall be signed under penalty by the treasurer, who shall be responsible for the timely filing thereof.~~

6.0 Authorized campaign expenditures

- 6.1 Reporting of Expenses
 - 6.1.1 Vehicles. Payments made toward the purchase or lease of vehicles are not travel expenses and must be listed on reporting forms as equipment purchases. Such vehicles must be titled or leased in the name of the political committee. If, at the end of the election, the vehicle is transferred to personal use, the person to whom the vehicle is transferred must reimburse the political committee for the fair market value of the vehicle at the time of the transfer. Fair market retail value for a motor vehicle shall be that listed by the National Automobile Dealers Association ("NADA Bluebook").
 - 6.1.2 Equipment
 - 6.1.2.1 No committee may close out its business with equipment remaining. Equipment possessed by the political committee at the end of the election must be sold to satisfy debts, obligations or loans of the committee; or be given to a successor committee, or donated to any religious, charitable, educational or scientific organization exempt from Delaware income tax under 30 **Del.C.** §1902(b)(2), political parties, or to any volunteer fire company and to no other person, treating such equipment the same as left over funds pursuant to 15 **Del.C.** §8022.
 - 6.1.2.2 In the event equipment is transferred by sale or other lawful means under these regulations to personal use, the person receiving the equipment shall pay the committee the fair market value of

the equipment at the time of the transfer. Fair market value shall be that price that would be paid by disinterested parties on the open market for equipment of like age and condition.

- 6.1.2.3 When equipment is sold or transferred from the committee to the person receiving such equipment for personal use, the person receiving such equipment bears the burden of showing the payment of fair market value to the committee of such item of equipment transferred for personal use. Any such transfer shall be reported on the disclosure reports required by Chapter 80 and such report shall be accompanied by a sworn affidavit from the person receiving such equipment attesting that the person receiving such equipment in good faith believes the value paid to the committee for the transfer of the equipment to personal use equals the fair market value of the equipment at the time of the transfer. The Commissioner may require such a person receiving such equipment to substantiate such value by acceptable appraisal or other estimate of value of the equipment from a person in the business of appraising or selling such equipment, or other evidence of a like piece being sold for a comparable price. Whenever this Section requires a person to submit an affidavit or other documentation relating to the transfer of equipment, it is the political committee's obligation to obtain and attach such documentation or affidavit to its report regardless of whether the person receiving the equipment is a candidate or a person under the control of the committee.

6.2 Self Dealing

- 6.2.1 When a committee has a commercial dealing with a person associated with the committee in that person's personal capacity, the committee has the burden of showing an arm's length, actual legitimate business transaction. For example, leases of personal property to one's political committee at higher than the fair market value will result in the excess above the fair market value being considered as an illegal expenditure of campaign funds not authorized under 15 Del.C. §8020. Likewise, any party or person other than the candidate who leases equipment to the political committee at a cost less than the fair market value will result in the difference between the lease cost and the fair market value of such lease being considered a campaign contribution by the lessor.
- 6.2.2 Also, all no or low interest loans made to the political committee by other than the candidate which are below the market rate of interest charged for similar loans in an arm's length commercial transaction will be considered contributions to the extent below the market interest rate and subject to the limitations of Chapter 80. Likewise, any reportable in kind services provided will be considered a contribution.
- 6.2.3 The committee has the obligation of attaching to its reports any documentation necessary by affidavit, appraisal or otherwise, that the dealings between the political committee and the person associated with the political committee were arms length transactions.
- 6.3 Payments to candidates and their Spouses as compensation for services, regardless of how denominated, shall be considered wages or salary and, as such, are prohibited under 15 Del.C. §8020.

7.0 General content requirements.

- 7.1 All campaign advertisements having a fair market value of \$500 or more, except printed items with a surface of less than 9 square inches, shall include prominently the statement: "Paid for by [name of political committee or other person paying for such advertisement]."
- 7.2 All third-party advertisements having a fair market value of \$500 or more, except printed items with a surface of less than 9 square inches, shall include prominently the statement: "Paid for by [name of political committee or other person paying for such third-party advertisement]. Learn more about [political committee or other person paying for such third-party advertisement] at elections.delaware.gov."
- 7.3 Statement specifications, general. All statements required pursuant to Section 2 hereunder must be presented in a clear and conspicuous manner, to give the reader, observer, or listener adequate notice of (a) the identity of the political committee or person that paid for the communication; and (b) if applicable, the address of the Commissioner of Elections' web site. A disclaimer is not clear and conspicuous if it is difficult to read or hear, or if the placement is easily overlooked.
- 7.4 Statement specifications, printed communications. In addition to the general requirements of Section 6.2 hereunder, all statements required pursuant to 15 Del.C. §8021 that appear on any printed communication must also comply with the following specifications:
- 7.4.1 The statement must be of sufficient type size to be clearly readable by the recipient of the communication. Statements printed in the following font sizes shall be presumed to satisfy the foregoing type size requirement:
- 7.4.1.1 For printed communications smaller than 8½" x 11", a font size of eight (8) points or larger;
- 7.4.1.2 For printed communications from 8½" x 11" to 24" x 36", a font size of twelve (12) points or larger;

- 7.4.1.3 For printed communications that are larger than 24" x 36", a font size equal to least five percent (5%) of the height of such communication.
- 7.4.2 The statement must be contained in a printed box set apart from the other contents of the communication.
- 7.4.3 The statement must be printed with a reasonable degree of color contrast between the background and the printed statement. A statement satisfies the color contrast requirement of this section if it is printed in black text on a white background
- 7.4.4 If a printed communication appearing in electronic format lacks sufficient space to include the required statement in accordance with the foregoing specifications, such communication may meet disclosure requirements if, by clicking on the printed communication appearing in electronic format, the viewer is taken to a landing page or a home page that displays the statement in a conspicuous manner in accordance with the foregoing specifications.
- 7.5 Statement specifications, television communications. In addition to the general requirements of Section 7.2 hereunder, all statements required pursuant to 15 **Del.C.** §8021 that appear in any television communication must also comply with the following specifications:
 - 7.5.1 The statement shall be both written and spoken either at the beginning or at the end of the communication, except that if the statement is written for at least five seconds of a broadcast of thirty seconds or less or ten seconds of a sixty second broadcast, a spoken disclosure statement is not required.
 - 7.5.2 The written disclosure statement shall appear with a reasonable degree of color contrast between the background and text of the statement, must be of sufficient size to be readily legible to an average viewer and shall air for at least four (4) seconds.
- 7.6 Statement specifications, radio communications. In addition to the general requirements of Section 7.2 hereunder, all statements required pursuant to 15 **Del.C.** §8021 that appear in any radio communication must also comply with the following specifications:
 - 7.6.1 The statement shall be spoken in a clearly audible and intelligible manner at the beginning or end of the communication.
 - 7.6.2 The statement shall have a duration of at least three (3) seconds.
- 7.7 Statement specifications, telephone communications. In addition to the general requirements of Section 7.2 hereunder, all statements required pursuant to 15 **Del.C.** §8021 that appear in any telephone communication must also comply with the following specifications:
 - 7.7.1 The statement shall be spoken in a clearly audible and intelligible manner at the beginning or end of the communication.
 - 7.7.3 The statement shall have a duration of at least three (3) seconds.

8.0 Reports of political committees

(a) Forms

~~Reports of political committees required by 15 *Del. C.* Sec. 8030 shall be on forms prescribed or approved by the Commissioner. Such reports shall provide all information required on such forms and shall be printed legibly or typed in blue or black ink. Forms shall be available in the Office of the Commissioner.~~

(b) Filing

~~Both the candidate and treasurer bear personal responsibility to file the reports required. Such reports must be received in the Office of the Commissioner by 4:30 p.m., on the second day after the end of the reporting period that is not a State holiday under 1 *Del. C.* Chapter 5; or mailed to the Commissioner and postmarked by the end of the due date. Reports may be transmitted by facsimile, provided, however, that they are received in the Office of the Commissioner by 4:30 p.m. on the day due. In such event, the original must be mailed to the Office of the Commissioner postmarked no later than the due date.~~

(c) Signing

~~All reports must be signed personally by the candidate or committee treasurer and the signature of the treasurer does not relieve the candidate of responsibility for filing the necessary reports of a candidate committee.~~

- 8.1 Forms. Reports of political committees and third party advertisers required by 15 **Del.C.** §§8030, 8031 shall be filed electronically on forms prescribed by the Commissioner. The Commissioner shall issue to each person subject to 15 **Del.C.** §§8030, 8031 an electronic password upon the approval and processing of each such person's Statement of Organization.
- 8.2 Filing. Reports must be filed electronically by the deadline on the date they are due.
- 8.3 Signing. The electronic password issued to a person subject to 15 **Del.C.** §§8030, 8031 shall constitute that person's signature. The electronic password issued to third party advertisers shall constitute that person's

signature upon reports filed pursuant to 15 Del.C. §§8030, 8031. The electronic password shall also constitute the signature under penalty of perjury of a third party advertiser filing pursuant to 15 Del.C. §8031.

9.0 ~~Reports of independent expenditures~~ Special reports of third party advertisements

~~Pursuant to 15 Del. C. Sec. 8031 any person who makes an independent expenditure that causes the aggregate amount of independent expenditures made by such person to exceed \$100 in an election period, must file a report with the Commissioner on forms prescribed by the Commissioner. That report must be filed at the times required by 15 Del. C. Sec. 8030 and contain the information required by 15 Del. C. Sec. 8031.~~

9.1 The initial report filed by a person pursuant to 15 Del.C. §8031 during an election period shall contain all of the information required by Section 8031. Each subsequent report filed within the same election period shall contain the following information:

9.1.1 Any information required by Section 8005, if such information has changed since the last report filed with the Election Commissioner pursuant to Section 8031.

9.1.2 The full name and mailing address of each person to whom any expenditure has been made by the reporting person since the date of the last period under Section 8030 or Section 8031 in an aggregate amount in excess of \$100; the total aggregate amount of expenditures during the election period; the amount, date and purpose of each such expenditure; and the name of, and office sought by, each candidate on whose behalf such expenditure was made;

9.1.3 The full name and mailing address of each person who has made a contribution to the reporting person since the date of the last report filed pursuant to Section 8030 or Section 8031 in an aggregate amount or value in excess of \$100; the total of all contributions from such person since the date of the last report filed pursuant to Section 8030 or Section 8031; and the amount and date of all contributions from such person since the date of the last report filed pursuant to Section 8030 or Section 8031 .

9.1.4 If a person listed under section (3) above is not an individual, the full name and mailing address of:

9.1.4.1 Any person who, directly or otherwise, owns a legal or equitable interest of 50 percent or greater in such entity; and

9.1.4.2 One responsible party, if the aggregate amount of contributions made by such entity during the election period exceeds \$1,200.

9.1.5 If an expenditure subject to Section 8031 is made more than 30 days before a primary or special election or 60 days before a general election, the report required under Section 8031 shall be filed within 48 hours after such expenditure is made. If the expenditure subject to Section 8031 is made 30 days or less before a primary or special election or 60 days or less before an election, such report shall be filed with the Commissioner within 24 hours after such expenditure is made. For purposes of this section, an expenditure shall be deemed to be made on the date it is paid or obligated, whichever is earlier.

10.0 ~~Failure to file reports~~ Late Reports

9.1 False or No Report

~~9.1.1 Any candidate or treasurer who knowingly files any report required by Sec. 8023 or Subchapter 4 (of Chapter so of Title 15) that is false in any material respect, or who fails to file any such report, shall be guilty of a Class A misdemeanor under 15 Del. C. § 8043(c).~~

9.2 Late Reports. ~~Pursuant to 15 Del. C. Sec. 8044 any candidate, political committee, or other person that fails to file a report required may be fined by the Commissioner \$50 per month, or fraction thereof, that such report is tardy in delivery to the Commissioner. Any person so fined shall have the opportunity within 30 days of the assessment of the fine to show cause to the Commissioner why the tardiness was due to reasonable cause and not willful neglect. Such fines are a debt owed to the State and recoverable against the committee, its treasurer or, in the case of a candidate committee, the candidate, or in the case of an independent expenditure, the person making such expenditure. The assessment of a fine by the Commissioner does not preclude the Commissioner from referring cases of failure to file to the Attorney General for possible criminal prosecution.~~

10.1 Any reporting party who fails to file or deliver to the Commissioner any report required under this chapter shall be assessed a fine by the Commissioner of \$50 for each day that such report is tardy. In the event any report required under this chapter shall be incomplete, such report shall be deemed tardy for purposes of this section. Notwithstanding the foregoing, a reporting party shall be entitled to an automatic, 1-time 24-hour extension hereunder, provided such party notifies the Commissioner in writing thereof no later than the filing deadline for such report.

10.2 In the event a report is incomplete or otherwise tardy, the Commissioner shall immediately notify the reporting party thereof in writing. Such notice shall state that a fine is being assessed for each late day, and to the extent

applicable, shall also specify why such report is incomplete. Upon receipt of such notice, the reporting party shall have 30 days to appeal such fine in writing to the Commissioner. In the event of an appeal, the reporting party shall have the opportunity to show the Commissioner that such tardiness is due to reasonable cause and not willful neglect. If the Commissioner determines that such tardiness is not due to reasonable cause, or the reporting party fails to timely file an appeal, such fine shall constitute a debt due and owing the State, assessable by the Commissioner and recoverable against the reporting party.

10.3 If a tardy report is not filed or corrected within 30 days following:(a) a determination by the Commissioner that such tardiness is not due to reasonable cause; or (b) the expiration of the appeal period set forth in 9.2, then the Commissioner shall notify the Office of the Attorney General that the reporting party has failed to file such report.

11.0 Advisory opinions

Any person may apply to the Commissioner for a ruling that applies 15 **Del.C.** Ch. 80 to a particular set of facts specified by the person. Such requests must be in writing and signed by the requestor. The Commissioner will issue such ruling in writing with copies available to the public, except that the identity of that person that requested the ruling will not be disclosed without the person's consent. Copies of such rulings will be distributed in accordance with 15 **Del.C.** §8041.

12.0 Public disclosure

All reports made to the Commissioner and all rulings made by the Commissioner shall be public and open for inspection and copying at reasonable cost by the public, except that the identity of the candidate or committee requesting a ruling pursuant to Section 8041(2) shall not be disclosed without the candidate's or committee's consent.

13.0 Regulations supplemental to statute

These regulations are in addition to and interpretive of the requirements of 15 **Del.C.** Ch. 80, and do not excuse any person from the obligation to comply with the provisions of that statute.

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