



PUBLIC FUNDING

FOR GUBERNATORIAL CANDIDATES

2022

MICHIGAN DEPARTMENT OF STATE
BUREAU OF ELECTIONS

Topics

- Introduction & History
- Contribution Limits/Immediate Family Limits
- \$2 Million Expenditure Limit
- Primary Election
 - Qualifying Contributions/ Non-Qualifying Contributions
 - Public Funding Applications
 - Expedited Payment Agreement
- General Election
- Return of State Campaign Funds
- Public Funds Status Report
- Post Election Audit
- Record Keeping
 - Private Funds/Public Funds & Bank Accounts
 - Public Fund Expenditures
 - Exemptions from the Limitation
 - In-Kind Contributions & Other Receipts
 - In-Kind Expenditures
 - Debt Limitation
 - Inventory of Assets
 - Debts and Obligations

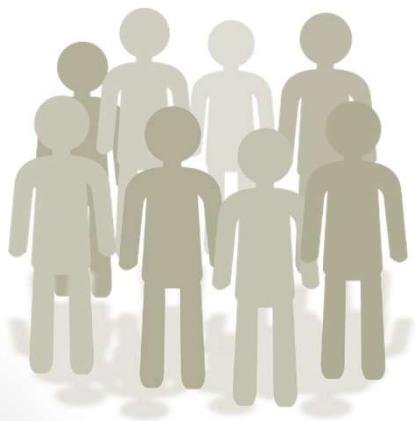
Introduction & History

- The Michigan Campaign Finance Act allows Gubernatorial candidates to apply for public funds from the State Campaign Fund to make qualified campaign expenditures.
 - The State Campaign Fund was established in 1976 after the U.S. Supreme court ruled that campaign spending limits could not be imposed *unless* public funds are used.
- To receive Public Funds, a Gubernatorial Candidate MUST:
 - Indicate intent to seek public funds on the Statement of Organization;
 - Limit candidate and the candidate's immediate family contributions to \$50,000 for the *entire election cycle*; and
 - Agree to limit campaign spending to \$2 Million *per election*.

Immediate Family

List & Limit

- Gubernatorial candidates seeking public funds must limit their own and their immediate family contributions to \$50,000 in total for the entire election cycle.
 - This includes both Direct Contributions AND In-Kind Contributions.
 - Loans from an individual or an individuals guarantee of a committee loan **IS** considered a contribution!
 - A committee which has already received public funds would be **REQUIRED** to return all funds if this limit is exceeded **at any time during the entire election cycle.**
 - Immediate family for public funding purposes **ONLY** is defined as:
 - Spouse
 - Parents
 - Siblings
 - Children
 - Prior to submitting the first public funding application, the candidate must submit a list of their immediate family.



Contribution Limits

CONTRIBUTOR → OFFICE ↓	<u>Individual *</u>	<u>Political Committee</u>	<u>Independent Committee</u>	<u>Caucus Committee</u>	<u>Political Party (District/County)</u>	<u>Political Party (State)</u>
Governor/Lt. Governor (w/Public Funding)	\$7,150.00	\$7,150.00	\$71,500.00	\$71,500.00	\$30,000.00	\$750,000.00
Governor/Lt. Governor (w/out Public Funding)	\$7,150.00	\$7,150.00	\$71,500.00	\$71,500.00	\$71,500.00	\$143,000.00

* The candidate, any child residing in a candidate's household, the candidate's spouse, or any individual claimed by that candidate or that candidate's spouse as a dependent for federal income tax purposes are exempt from these individual limitations but must still adhere to the \$50,000 "Immediate Family" limit for candidates seeking public funds.

\$2 Million Expenditure Limit

- Candidates seeking public funds must limit their expenditures to \$2 million for each election for which they receive public funds.
 - A committee which has already received public funds for an election would be required to return all funds received if this limitation is exceeded and the limitation is NOT suspended pursuant to Section 69 for that election.
- The expenditure limit is suspended if in the:
 - Primary Election: a candidate **seeking the same nomination** that is not seeking public funds contributes to their own committee or receives from their immediate family \$340,000.00 or more during the election cycle ; or
 - General Election: a candidate **seeking the same office** that is not seeking public funds contributes to their own committee or receives from their immediate family \$340,000.00 or more during the election cycle

Primary Election

- The Gubernatorial Candidate Committee of a candidate on the primary ballot may apply for up to \$990,000* in public funds for the Primary Election.
 - The **MUST** receive at least \$75,000 in Qualifying Contributions in order to qualify.
 - This means the committee's first application must contain at least \$75,000 in contributions certified by the Bureau of Elections to be Qualifying Contributions
 - The committee will receive \$2 in public funds for every \$1 qualifying contribution.
 - The committee must submit applications for public funding in order to receive funds for the Primary Election.
- Public Funds may not be disbursed until AFTER January 1, 2022.
- Applications may not be submitted after December 15, 2022.

*If insufficient funds exist for full funding to all eligible candidates, the campaign funds are distributed to public funding candidates on a pro rata basis (i.e. proportional) and not on a first come first serve basis.

Qualifying Contributions

- A Qualifying Contribution is a direct contribution by an individual of \$100.00 or less in a calendar year.
 - Contributor must be a Michigan resident.
 - The contributions must be made after April 1, 2021 or after the date the committee submitted a Statement of Organization requesting public funding, whichever is later.
 - The contribution is considered made by the contributor on the date they issue the contribution to the committee (e.g., the date the check is written, the date the online contribution is submitted) which may not be the same date the committee received the contribution.
- An individual's contributions may only be matched for up to \$100 *per calendar year*:
 - Example 1: Contributor gives the maximum contribution of \$7,150.00 to the Gubernatorial Candidate Committee in Year 1, \$100 of the contribution can be matched for Year 1 and \$200.00 in public funds is receivable for that contributor.
 - Example 2: Contributor gives \$7,050.00 in Year 1, and \$100.00 in Year 2; \$100.00 can be matched for Year 1 and \$100.00 can be matched for Year 2, resulting in \$400.00 of public funds receivable for that contributor.

Non-Qualifying Contributions

- Loans to the committee
- In-Kind Contributions
- Funds transferred from previous committee
- Contributions made by the contributor before the Statement of Organization requesting public funding is received by the Bureau of Elections
- Contributions made by the contributor before **April 1, 2021**
- Contributions from Political/Independent Committees (PACs), Political Parties, unincorporated businesses, partnerships or limited liability companies, trusts, businesses
 - Contributions on checks from unincorporated businesses, partnerships, LLCs, trusts may be matched when it is accompanied solicitation form filled out and signed by the contributor(s) attributing the contribution to an individual or individuals.



Public Funding Application

- The committee must submit an application for public funding listing the qualifying contributions the committee believes can be matched.
 - Each application has a cover page that must be signed by the candidate and the committee treasurer.
 - The subsequent pages consist of the alphabetized listing of the qualifying contributions, including:
 - A unique sequence number (first contribution would be sequence number 1) issued to each contribution.
 - Each application will continue the sequence; example: if the first application has 1925 contributions, then application two will pick up with sequence number 1926.
 - Name and Michigan Address (NO PO BOXES!) of the Contributor (in alphabetical order by last name).
 - Date of Issue (Date the contributor made the contribution)
 - Date of Receipt (Date the committee received the contribution)
 - Total Amount of Contribution
 - Amount of Qualifying Contribution

Public Funding Application

Continued

- The application is submitted both hard copy (with the cover page signed by the candidate and committee treasurer) and electronically.
 - The hard copy MUST match electronic copy exactly. Any differences may result in rejection of the application. (No handwritten changes on the paper copy will be accepted).
 - The hard copy may be submitted by way of email or other means agreed upon between the committee and the Bureau of Elections.
- Supporting documentation must be submitted with the application before the application will be processed.
 - Supporting documentation MUST have the sequence number from the application clearly written and MUST be in the same order as the application.
- The first application must contain at least \$75,000 in contributions that are deemed Qualifying Contributions by the Bureau of Elections.
 - It is suggested the committee's first application not contain more than \$150,000 in contributions for quicker processing. Subsequent applications can be submitted to apply for the full amount of public funds the committee qualifies for.

Supporting Documentation

- The burden of proof lies on the committee to prove that a contribution on a public funding application is a Qualifying Contribution, meaning:
 - The contributor IS a Michigan Resident.
 - Address must be the contributors physical address in the State of Michigan (No PO Boxes).
 - The contribution was MADE after April 1, 2021 or after the date the committee submitted a Statement of Organization requesting Public Funds.
 - The issue date should be clear on the supporting documentation (e.g., the date on the check filled out by the contributor; the credit card contribution solicitation form must be dated by the contributor.)
 - The contributor INTENDED to contribute to the Gubernatorial Committee.
 - E.g., checks must be made payable to the committee; solicitation forms must clearly indicate the committee.
 - The Gubernatorial Committee received AND deposited the contribution into the Gubernatorial Committee account.

Supporting Documentation

Continued

- Supporting documentation includes but is not limited to:
 - Photocopies of the written instrument;
 - Deposit slips and/or bank statements for the private committee account;
 - Solicitation forms.
 - Any other documentation that supports the information on the application.
- Contributors account numbers may be redacted on the supporting documentation, HOWEVER any other indications of alterations on the supporting documentation after they are filled out by the contributor WILL cause the contribution to be rejected as a Qualifying Contribution.
- Adequate supporting documentation is imperative for the contributions on the application to be deemed a Qualifying Contribution by the Bureau of Elections.

Supporting Documentation

Online Contributions

- When a committee receives contributions via an online vendor, those contributions may be considered as Qualifying Contributions.
- The burden of proof still lies upon the committee to ensure and prove that the contributions received online are:
 - From the actual person named as the contributor and are from a legal source AND
 - The contributor is a Michigan resident.
- Supporting documentation for online contributions must include the process the committee uses to ensure this compliance.
 - You may find this [FEC opinion](https://www.fec.gov/data/legal/advisory-opinions/1995-09/) (<https://www.fec.gov/data/legal/advisory-opinions/1995-09/>) helpful in researching methods to ensure MCFA compliance. As always, if you have questions please ask.

Application Review

- The Bureau of Elections reviews every application for public funding submitted by the committee.
- Each contribution reported on the application is compared to the supporting documentation for accuracy to determine if the contribution is in fact a Qualifying Contribution.
 - Bureau of Elections will determine which contributions qualify to be matched with public funds and which contributions are not eligible to be matched.
- After complete review of an application; the Bureau of Elections will:
 - Send the committee correspondence indicating the amount of Public Funds the Bureau of Elections certifies the committee is entitled to receive for that application.
 - Send the committee a coded list of contributions deemed ineligible by the Bureau of Elections.
 - Request the Department of Treasury issue the certified amount of public funds to the committee.
 - The committee **MUST** sign up as a Vendor in the Department of Treasury software in order to receive the funds.

Resubmission Application

- Contributions that were not matched on an original application but were rejected for reasons that are correctable may be submitted again on a Resubmission Application with corrections made or with additional documentation provided to the Bureau of Elections.
 - The contributions must never appear on subsequent original applications.
- A Resubmission consists only of contributions for which corrections have been made or additional documentation is being provided
- A separate Resubmission Application must be submitted for each application that needs correcting.
- A resubmission is created using MERTS but must be printed and filed on paper (not electronically) along with any supporting documentation.
 - Supporting documentation would be the same as required for the original application.

Expedited Payment Agreement

- The agreement may be offered to the committee after the Bureau of Elections has certified the committee's first Public Funding Application has the minimum of \$75,000 in Qualifying Contributions in order to qualify for public funds.
 - The first application will need to be submitted with more than \$75,000 in contributions to ensure \$75,000 are deemed by the Bureau of Elections to be Qualifying Contributions but not more than \$150,000 to speed the processing of the first application.
- In order to be offered the agreement, the *first application must be certified with no more than a 10% error rate.*
 - This error rate will be based on the total monetary amount of contributions submitted on the application divided by the monetary amount of contributions found to be ineligible by BOE review.
- The agreement will only apply to original applications that contain more than \$50,000 in contributions.

Expedited Payment Agreement

Continued

- Under the agreement, the Department of State agrees to conduct a preliminary review of subsequent applications within 3 business days after receipt and certify to the Department of Treasury that 90% of the amount requested on the application be paid to the committee.
- The Bureau of Elections will then conduct a full detailed review of the subsequent applications. If after review is found that either:
 - The committee is qualified to receive more funds than initially paid, the committee will be issued the remainder of the funds qualified for; OR
 - The committee received more funds than qualified for, the committee will be required to pay back the excessive funds received.



General Election

- The major party Primary Election winners who have indicated their intent to seek public funds may receive a flat grant of \$1,125,000.00 each for the General Election
 - This money is set aside prior to and not used in the disbursement of public funds for the Primary Election.
- The Bureau of Elections is REQUIRED to issue \$56,250.00 of the funds within 10 days after the primary if there is more than 2% difference in vote totals for the candidates of the same party.
 - If the committee DOES NOT wish to receive public funds for the General Election, the committee MUST notify the Bureau of Elections before the first of the money is issued or the committee WILL BE subject to the limitations for the General Election.
- For Public Funding purposes, the candidates for the office of governor and lieutenant governor of the same political party in a general election shall be considered as 1 candidate.

Return of State Campaign Funds

- Public funds must be returned to the State Campaign Fund if:
 - The candidate does not file nominating petitions or files an insufficient petition for the office of governor.
 - Any funds remain after all qualified debt has been paid; or
 - The qualifying contribution was returned to contributor, or the bank determined the contributor's check or other written instrument to be invalid due to insufficient funds.
 - Unexpended funds **MUST** be returned within 60 days after the election for which they were received.
 - October 3, 2022 for funds received for the Primary Election.
 - January 7, 2023 for funds received for the General Election.
- A check from the public funds account, payable to the State of Michigan, should be remitted to the Bureau of Elections.
 - Written explanation of the reason for return should also be included with the check.
 - If the refund is due to return or invalidation of a qualifying contribution, the name and address of the contributor, date of the original receipt, sequence and application number on which the contributions was submitted must also be included.

Public Funds Status Report

- The committee is required to file a Public Funds Status Report if funds have not been returned to the State within 60 days after the election for which they were received.
 - Funds are considered expended and may be retained past that date if the committee documents that it owes debts that qualify to be repaid with Public Funds.
 - Prior approval by the Bureau of Elections must be obtained to retain funds after the 60-day limit.
- Public Funds Status Reports must be filed if public funds are retained by the committee.
- Status reports do not replace campaign statements.
 - Information shown on the status report must also be reported on a subsequent campaign statement.
- Coverage periods of the status reports begins one day after the closing date of the last campaign statement filed or one day after the most recent status report.

Public Funds Status Report

Types & Due Dates

- **Post Primary Application Report**
 - Public Funds Status Report must be submitted with any Post-Primary Application for public funds.
- **60-Day Public Funds Status Report**
 - The closing date is 60 days after the election.
 - Must be filed 10 days after the close.
 - October 11, 2022 for funds received for the Primary Election.
 - January 17, 2023 for funds received for the General Election.
- **Monthly Public Funds Status Report**
 - After the 60 day limit, the closing date is the last day of the month.
 - Must be filed by the 10th day of the following month.
- **Termination of Public Funds Account Report**
 - The termination of Public Funds Account Report must be filed when the committee closes its public funds account.
 - The closing date of the Report will be the date the account is closed.

Post Election Audit

- A complete audit of the committee records will be performed after the election.
- The committee must supply all records documenting the committee's campaign financing activity.
- Required documents include (but are not limited to):
 - Bank statements
 - Checkbook Registers
 - Canceled checks
 - Deposit Slips
 - Wire transfers
 - Internet/electronic contributions
 - Contracts
 - Payroll records
 - Vendor invoices
 - Expense vouchers
 - Mileage logs
 - Receipts
- Detailed documentation must be provided for both private and public fund accounts when requested by the Department.



Post Election Audit

Continued

- The objective of the audit is to:
 - Review the Candidate Committee's Campaign Finance Statements for accuracy
 - Verify the receipt/propriety of Public Funds paid to the Committee.
 - Verify the receipt/propriety of all Private Funds reported by the Committee.
 - Review and verify the propriety of expenditures made by the Committee (including the applicable limit on spending of \$2 million) and determine the accuracy of all disbursements reported as exempt expenditures.
- Findings of the Audit will be reported to the committee.
 - The committee will be required to respond to any questions and findings of the auditor.

Post Election Audit Process

What You Should Know

- The audit process can be lengthy and time consuming.
- The committee must have access to all committee records, including electronic records.
- Public funds may not be used to make expenditures incurred on or after January 1, 2023.
 - This means public funds MAY NOT be used to fund the audit process.
 - It is suggested to set aside private funds for the audit process to fund the audit process.



BREAK TIME!



Record Keeping

- The treasurer is responsible for keeping records of all committee bank accounts and financial activity.
- All committee records are to be preserved for 5 years and MUST be made available for the Post Election Audit.
- Accurate record keeping is imperative for:
 - Substantiating information on Campaign Statements;
 - Preparing Public Funding Applications; and
 - Completing the Post Election Audit.



Public Funds

vs.

Private Funds

- Public Funds are funds the committee receives from the State Campaign Fund after Public Funding Applications have been submitted and approved.
 - Public Funds received for the Primary may only be used to make expenditures for the Primary.
 - Public Funds received for the General may only be used to make expenditures for the General.
- Private Funds are contributions received by the committee that are reported on their campaign statements.
- Public and Private Funds can NOT be commingled and MUST be kept in separate bank accounts.
 - Primary Public Funds and General Public Funds must also be kept in separate bank accounts.

Bank Accounts



- Public Fund Candidate Committees must establish the following bank accounts:
 - If receiving Public Funds for the Primary Election **ONLY**:
 - 1 private funds bank account
 - 1 public funds bank account
 - If receiving Public Funds for the General Election **ONLY**:
 - 1 private funds bank account
 - 1 public funds bank account
 - If receiving Public Funds for **BOTH** the Primary and General Election:
 - 1 private funds bank account
 - 2 public funds bank accounts (primary and general)

Public Fund Expenditures

Qualified Campaign Expenditures

- Public funds must only be used for qualified campaign expenditures.
- Qualified campaign expenditures must be made during the year in which the election is held.
 - No expenditures incurred after January 1, 2023 may be paid for with Public Funds
- Qualified campaign expenditures include the purchase of:
 - Services;
 - Materials;
 - Facilities; or
 - Other things of value to further the nomination or election of the candidate.
- All expenditures made with Public Funds are subject to the \$2 Million Expenditure limit except:
 - A transfer between accounts due to the committee making an expenditure from the wrong account.
 - The committee ***MUST*** obtain prior written approval from the Bureau of Elections before funds can be transferred.
 - Return of unexpended funds to the State Campaign Fund

Public Fund Expenditures

Prohibited Expenditures

- Payment on a debt incurred prior to the year of the election.
- Any expenditure in violation of State or Federal law.
- A payment made to the candidate or a relative within the third degree of consanguinity of the candidate, or to a business with which the candidate or the relative is associated.
- A payment in excess of fair market value of services.
- An individual's wage or salary in excess of \$5,000.00 per month.
 - "Wage or salary" means gross pay (amount before deductions).
 - Anything beyond \$5,000.00 must be paid using private funds.
- Payment from petty cash.
- Gifts.
- Payment to a defense fund.
- Incidental office expenses of incumbents.

Exempt from Limitation

Private Funds & In-Kind Contributions - Rule 39a

- Based on Rule 39a, the following expenditures made with private funds, or given to the committee as an in-kind contribution, are not subject to the \$2 million expenditure limitation:
 - Expenditure necessitated by security requirements;
 - Legal and accounting expenditures solely to ensure compliance with the MCFA;
 - Expenses incurred by the committee in response to a written complaint (pursuant to act or promulgated rules) or in response to a notice of Error or Omission or Late Filing Fee notice;
 - Post Election “winding down” costs:
 - Record Storage required by section 22;
 - Post election communication (thank you cards) if sent within 60 days after the election.
 - Allowed after Primary Election for candidate NOT moving on to General
 - Allowed after General Elections for participating committee
 - Late filing fees as assessed under the MCFA.

Exempt from Limitation

Private Funds- Miscellaneous

- Response to unfavorable media editorial (one response per editorial).
- Return of prohibited contributions.
- Expenditure to “zero out” account in an effort to dissolve.
- Repayment of a loan of money from a financial institution in its ordinary course of business.
 - Interest paid on the loan ***IS*** subject to the limitation.
- An accounting transfer of funds from primary election private funds to general election private funds.
- A transfer between accounts due to the committee making an expenditure from the wrong account.
 - The committee ***MUST*** obtain prior written approval from the Bureau of Elections before funds can be transferred.
- Cost of photocopies of written instruments and other required documentation for application processing
- Any additional cost incurred for electronically filing applications and Campaign Statements

In-Kind Contributions & Other Receipts

- In-kind contributions are donations of goods or services.
- The value of an in-kind contribution is subject to the \$2 million expenditure limitation if, the expenditure would have been subject to the limit if it had been paid for with committee funds.
- An endorsement or guarantee of a loan from a financial institution is an in-kind contribution from the endorser.
 - An endorsement or guarantee is:
 - Exempt from the expenditure limitation;
 - Subject to an individual's contribution limit;
 - Reported with the debt on the debts and obligations schedule.
- Other Receipts are monies received by the committee that are not Direct Contributions, such as:
 - Funds received from the State Campaign Fund;
 - Bank loans;
 - Interest earned;
 - Refunds/Rebates;
 - Payments received on debts owed to the committee;
 - Any proceeds from the sale of committee assets
- Money refunded from an expenditure made that was subject to the expenditure limitation will count as a credit back to the limitation.

In-kind Expenditures

Credit to the Expenditure Limit

- Expenditure of goods/services purchased by the committee may be credited to the expenditure limitation for their fair market value.
 - These include the fair market value of assets donated to:
 - Political Party Committee
 - Ballot Question Committee
 - Tax-exempt charitable organization
 - Return of goods to contributors upon dissolution
- If an asset was purchased with private funds and transferred from the Primary to the General, it will be reported as in-kind expenditure from the Primary Election and an in-kind contribution to the General Election.
 - The in-kind expenditure will then be credited to the Primary Election expenditure limitation and the in-kind contributions will be counted towards the General Election expenditure limitation.



Debt Limitation

- The committee, or any person, may not incur a debt for goods, services, facilities or anything of value which, when paid would cause the committee to exceed the expenditure limitations.



Inventory of Assets

- A record must be kept of all assets purchased. Information to record:
 - The original purchase price
 - The item description
 - What account (public/private) the purchase was made from
- Committees that participate in both the General and the Primary election must purchase the assets from the previous election account.
 - The committee may use money from either their General Election Public or General Election Private funds account.
- Three types of assets may be transferred from the Primary Election to the General Election
 - Permanent assets: Committee should depreciate the original value of asset from time of purchase to the General Election
 - Consumable supplies: The Bureau of Elections recommends using just one account for purchase for ease of reporting
 - Production costs: Cost of production of ads that will also be used in the General Election

Debts and Obligations

- Debts owed to the committee are:
 - Security Deposits;
 - Overpayment for service; or
 - Money owed to the committee from the sale of committee assets.
- Repayment of debt owed to the committee will be a credit to the expenditure limit or the exempt 39a category, depending upon the purpose of the original expenditure.
 - Example: If the original expenditure was a deposit for a facility for a fund raising event that was subject to the expenditure limitation, the refund of the deposit would be a credit to the expenditure limitation
- Debts/Obligations owed by the committee that are not contributions are classified as exempt from or subject to the expenditure limitation based on the category the expenditure fell into when the debt was incurred.
 - Example: If the debt owed by the committee is for an unpaid invoice owed for campaign ads for the primary election, that debt would be subject to the expenditure limitation for the primary election.

QUESTIONS?



THANK YOU



MICHIGAN DEPARTMENT OF STATE
BUREAU OF ELECTIONS

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