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**M-04-01**

Issued: November 18, 2004

Revised: May 29, 2020

**MEMORANDUM**

To: Interested Parties  
From: OCPF  
Subject: Contributions to Political Committees by Credit or Debit Card

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M.G.L. c. 55, § 9 authorizes candidates and political committees<sup>1</sup> to accept contributions by credit or debit card where the transaction is documented and complies with the contribution limitations of the campaign finance law. OCPF promulgated regulations at 970 CMR 1.09 to govern the receipt of credit or debit card contributions. This memorandum is intended to explain these regulations in more detail. Committees that intend to accept credit or debit card contributions should also read 970 CMR 1.09, which may be accessed from the “Legal Main Page” from the “Legal” drop down menu on OCPF’s website, [www.ocpf.us](http://www.ocpf.us).

I. AUTHORIZED TRANSACTIONS

A. CREDIT CARD OR DEBIT CARD CONTRIBUTIONS MADE VIA INTERNET OR SIGNED AUTHORIZATION

To make a contribution by credit or debit card, a contributor must first authorize the transaction either on the Internet or by way of a signed paper record as described below. See M.G.L. c. 55, § 9 and 970 CMR 1.09. Therefore, credit and debit cards may be used to make contributions in one of the three following ways:

(1) Internet transactions, including transactions made via a committee website, a mobile app, crowd funding website or social media, but **only if** contributors, contemporaneously with the making of the contribution: (a) certify that the contributor is using the contributor’s own credit or debit card, which is in the contributor’s name, and (b) that the contributor’s personal funds are the true source of the contribution. In addition, the contribution may be accepted only if the contributor, contemporaneously with the making of the contribution, provides his or her name and residential address, and if the amount contributed is \$200 or more, their occupation and employer.

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<sup>1</sup> Candidates and committees are collectively referred to as “committees” in this Memorandum.

The certification and required information must be submitted, at *the time the contribution is made*, in written or electronic form to the candidate or committee receiving the contribution. A candidate or committee may not process a credit or debit card transaction made via the Internet if the required acknowledgment and contributor information is not provided with the contribution.

(2) Transactions where the cardholder-contributor provides credit or debit card information and a signed authorization by mail to a candidate or committee.

(3) Face-to-face transactions where, in the presence of a candidate, committee member or agent thereof, a cardholder-contributor either signs a credit or debit card receipt, or makes a contribution using a candidate or committee's credit card swiping device.

*A candidate or committee may not receive a contribution based solely on a verbal authorization by the contributor-cardholder, such as over the telephone.*

#### B. CONTRIBUTIONS FROM CONTRIBUTOR'S BANK ACCOUNT MADE ELECTRONICALLY

Contributions may be made from a contributor's bank account by electronic means, but only if the committee complies with the record keeping and disclosure requirements applicable to receipt of credit or debit card contributions. See 970 CMR 1.09, defining contributions made using "credit or debit card" to include such contributions. For purposes of this Memo, the terms "credit or debit card" or "credit card" include contributions made by electronic means from a bank account.

#### C. DUTY TO ENSURE COMPLIANCE

Committees must review all credit and debit card contributions received to determine that the contributions comply with the source and limitation requirements of the campaign finance law. Any contribution determined to be illegal, including excess contributions, must be refunded to the contributor in accordance with 970 CMR 1.04(8).<sup>2</sup>

## II. CREATING A WEBSITE THAT SOLICITS CREDIT CARD CONTRIBUTIONS

### A. CONTRACTING WITH VENDOR

Where a candidate or committee contracts with a vendor,<sup>3</sup> such as a bank, to process credit or debit card contributions on the candidate's or committee's behalf, such a contract must conform to the campaign finance regulations at 970 CMR 1.09(2)(a). This

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<sup>2</sup> 970 CMR 1.04(8) states, in relevant part, "Any contribution which is believed by a candidate or committee to be illegal, subsequent to its deposit, shall be refunded to the contributor immediately. This refund shall be in the form of a check written to the contributor on the account of the candidate or political committee into which the original contribution was deposited."

<sup>3</sup> A "vendor" is a bank or other business authorized to process credit card transactions, or an individual or entity that provides services for campaign fundraising on the Internet to candidates and political committees. See 970 CMR 1.09(1). Banks and other businesses that process credit card contributions are also known as "merchant providers." The term "vendor," as used in this Memorandum, includes both merchant providers and vendors.

provision requires that the contract be consistent with the vendor's customary and usual business practices, and not provide any discount that is not available to other political committees or the general public. The candidate or committee must be responsible for paying its portion of the fees charged by the vendor. See 970 CMR 1.09(2)(a)1-3.

In addition, to ensure compliance with section 19(b) of the campaign finance law, which requires depository committees to deposit contributions within seven days of "receipt," agreements that depository committees enter into with vendors should ideally require transfer of contributions from the vendor to the committee within seven days after the vendor receives the funds from the contributor. Where an agreement does not specifically require transfer by a vendor within seven days, however, transfers from the vendor must occur in the ordinary course of the vendor's business. Committees should review their accounts frequently to ensure timely transfer of funds.

#### B. CONTENT OF WEBSITES THAT SOLICIT CREDIT CARD CONTRIBUTIONS

The campaign finance regulations at 970 CMR 1.09(2)(b) set forth the criteria for web sites that solicit political contributions by credit or debit card. Specifically, the sites must: (1) set forth appropriate questions, which require an affirmative response from a contributor, to determine that the source and amount of the contribution complies with M.G.L. c. 55 and 970 CMR 1.09; (2) clearly identify the name of the candidate or committee involved in the solicitation; (3) require a contributor to certify with an affirmative action that the contributor is responsible for making payments on the credit or debit card and that the contributor's personal funds will be the true source of the contribution as required by M.G.L. c. 55, § 10<sup>4</sup>; and (4) clearly distinguish between required and optional information collected.

Vendors give committees *some* of the contributor information committees must maintain, e.g., the name of card holders and the amount contributed. Vendors typically do not, however, provide *all* required information, such as contributors' address, employer and occupation. Committees must obtain such information themselves at the time the contribution is made. The information may be obtained, for example, through the committee's own website before a contributor is redirected to another site that actually processes the contribution. Vendors also do not obtain the required true source certification. The certification must be obtained by committees at the time a contribution is made.

#### C. SOLICITATIONS ON MULTIPLE SITES

There is nothing in the campaign finance law, M.G.L. c. 55, to preclude a candidate's or committee's vendor from accepting credit or debit card contributions on behalf of the

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<sup>4</sup> For example, by including the following statement requiring a response from the contributor: "I certify that I am making this contribution with my own funds. I have not been, nor will be, reimbursed by another person or entity for this contribution. The credit card I am using is my personal card, not a corporate or business card or a card issued to another person. I am a United States citizen or a lawfully admitted permanent resident of the United States (green card holder). I am at least 18 years of age. My contributions to the [name of candidate] committee will not exceed \$1,000 per calendar year (\$200 per calendar year for lobbyists)."

candidate or committee via multiple websites, as long as the content of each of the websites conforms to 970 CMR 1.09(2). For example, subject to the appropriate regulations, committees may, in addition to their own websites, receive Internet credit or debit card contributions solicited on their behalf by an independent website created and maintained by unpaid volunteers (or by paid staff or other agent of the committee). See AO-04-11.

### III. CONFIRMATION OF CONTRIBUTIONS AND RECORD KEEPING

#### A. TRANSACTION CONFIRMATIONS

Credit or debit card contributions must be promptly confirmed to the contributor in writing via e-mail by the recipient candidate or committee, or by regular mail if the contributor does not provide an e-mail address. A record of such written confirmation should be retained by the committee. See 970 CMR 1.09(2)(c).

#### B. RECORD KEEPING

Besides M.G.L. c. 55, §§ 2 and 5, and 970 CMR 1.10, the record keeping provisions of the campaign finance statute and regulations that are applicable to all political contributions, the campaign finance regulation at 970 CMR 1.09(5)(a) imposes certain additional requirements in regard to Internet credit and debit card contributions.

Specifically, this regulation requires electronic (where applicable) and paper records of credit and debit card contributions, which include the following:

- (1) the name and residential address of the contributor;
- (2) the date received and amount of the contribution;
- (3) the occupation and employer of the contributor if the annual aggregate contribution(s) from the individual is equal to or greater than \$200;
- (4) any costs or fees deducted by or paid to the vendor; and
- (5) the contributor's billing address, if it is different from his or her mailing address.

As discussed below, committees, to ensure accurate disclosure of contributions actually received, must obtain transaction details from their vendor and reconcile the transaction details to information provided by the committee's bank.

### IV. DISCLOSURE

#### A. REPORTING CONTRIBUTIONS AND FEES

For credit card contributions authorized in any month other than December that are received by a non-depository committee, contributions made by credit or debit card shall be disclosed as received by a committee on the day that the committee has access to the funds. Credit card contributions authorized in December are considered "received" in the year in which the contributions were authorized, and are reported in the year-end

campaign finance report, even if the funds are not actually available until January. See 970 CMR 1.09(5)(b). Also, the amount of the contribution reported and attributed to the individual contributor is the gross amount authorized by the contributor, even where a vendor deducts a transaction fee prior to depositing the proceeds of the contribution into the candidate or committee's account or otherwise assesses a fee for processing the transaction. See 970 CMR 1.09(5)(c).

All credit and debit card fees paid by the candidate or committee are reportable transactions by the candidate or committee for the purposes of the campaign finance law, even if the fee is directly deducted by the vendor prior to deposit in the committee account. See 970 CMR 1.09(5)(c).

Although it is permissible for a vendor to deduct fees prior to or at the same time as the transfer to the committee, the vendor may also debit the committee's bank account on a periodic basis for the fees or transfer the entire amount received from contributors and separately bill the committee for the fees.

## B. DISCLOSURE BY DEPOSITORY COMMITTEES<sup>5</sup>

### (1) Disclosure of information regarding contributors

Depository committees should keep in mind that the information a vendor gives to the depository bank regarding contributions generally does not include the names and addresses of contributors or their occupation/employer. Therefore, vendors should provide committees with the name, address, date and amount of all contributions, and also the fees incurred to process the contributions. Committees must obtain occupation/employer information either through their own efforts or in conjunction with a vendor.

Depository committees are responsible for reporting credit and debit card contribution activity directly with OCPF. This is done by electronically filing deposit reports in accordance with the same reporting schedule applicable to depository banks: by the 5<sup>th</sup> of the month, for all activity in the prior month. Depository committees that receive contributions by credit or debit card, like other committees that receive such contributions, must obtain information from their vendor and reconcile the information to information provided by the committee's bank, and from contributors. (See discussion in Part IV(C), below, and 970 CMR 1.09(6)(d)). *The reconciliation must take place prior to filing each deposit report and a deposit report must be filed for each period during which a committee receives credit or debit card contributions.*

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<sup>5</sup> Depository candidates and committees include state, county, and mayoral candidate committees, PACs that file reports with OCPF (other than independent expenditure PACs), state party committees, and committees organized on behalf of candidates for 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). See M.G.L. c. 55, § 19. The only candidates who file with OCPF who are not in the depository system are candidates for Barnstable Assembly of Delegates. Such candidates are not addressed in this Memo and should contact OCPF for guidance. See M.G.L. c. 55, § 19.

*For credit card contributions authorized in any month other than December, the contributions are reported “received” on the day that the committee has access to the funds. Credit card contributions authorized in December but not received until the following calendar year are considered “received” in the year in which the contributions were authorized, and are reported in the year-end report for that calendar year. Depository committees that receive contributions authorized in December, but not available until the following calendar year, report the contribution as a “receipt in transit” in the previous year’s year-end report. See 970 CMR 1.09(5)(b) and 1.09(6).*

(2) Disclosure of fees.

Committees must report credit and debit card processing fees in instances where the vendor or merchant directly deducts the fee from the contribution. This is necessary because the amount of the (gross) contribution reported on the deposit report will vary from the (net) amount actually deposited. A committee accounts for the deduction of fees by making an entry on the deposit report. The entry is made by calculating the aggregate amount of fees per deposit. The information regarding the amount is provided by the vendor.

In contrast, fees are generally deducted by the vendor before contributions are transmitted to a committee. Alternatively, a vendor may debit fees directly from a committee’s depository account. When fees are directly debited from a committee’s account, the committee may need to append its bank report to explain the purpose of the expenditure.

Committees account for the vendor fees by entering a “Merchant Provider Fee” on a deposit report. This is done by selecting “Merchant Provider Fee” in the drop-down menu displayed below the “Deposit Date” field in a deposit report. After selecting “Merchant Provider Fee,” the name of the vendor should be entered into the “Merchant Name” field and in the “Description” field, enter “Contribution Processing Fee.” The total fees are entered into the “Amount” field. This amount will automatically be deducted from the deposit total of gross contributions ensuring the deposit report total reconciles to the actual deposit at the committee’s bank.

For an example, please see the attached Exhibit A, a sample deposit report, which involves disclosure of two credit card contributions totaling \$2,000. Assuming that the committee’s vendor deducted a \$40 fee prior to depositing these amounts, only \$1,960 would actually have been received by the depository bank. To account for this, a merchant provider fee of \$40 was added to the deposit report created by the committee using Reporter 7.

C. DISCLOSURE BY NON-DEPOSITORY COMMITTEES<sup>6</sup>

As with any monetary contribution, non-depository committees are required to report (gross) credit and debit card contributions on the list of receipts in the relevant campaign

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<sup>6</sup> Non-depository candidates include candidates and committees that file with local election officials, as well as local party committees.

finance report, including, where applicable, all information required by M.G.L. c. 55, § 18, such as the contributor's name and residential address, or occupation and employer. Likewise, all fees and costs paid by a candidate or committee in conjunction with the solicitation and receipt of credit and debit card contributions are reported on the list of expenditures in the relevant campaign finance report. This includes all flat fees and per transaction fees, whether or not the fee is paid separately by the committee or is deducted from the proceeds of funds received by the vendor, i.e., netted out of the contributions.

For example, if three individuals each make a \$1,000 credit or debit card contribution to a candidate's committee on the Internet, the committee should disclose \$3,000 in receipts on the Receipts schedule of the relevant campaign finance report from those individuals, even if the committee's vendor deducted its fee, e.g., 3%, and only deposited \$970 of each of the three contributions into the committee's account. The committee would reflect the \$90 fee as an expenditure made payable to the vendor on the Expenditures schedule of the same report. Fees incurred during a reporting period may be aggregated and reported as a one line item. See attached Exhibit B.

Committees that receive credit card or debit card contributions via a vendor must obtain information from the vendor reflecting credit and debit card contributions processed by the vendor and any fees assessed. The vendor must itemize actual deposits made to the committee's account, list all contributions that cleared or were declined by the issuing bank, and provide such information to the candidate or committee. After receiving this information from the vendor, the committee must reconcile it to the information provided by the committee's bank regarding actual deposits. This will allow the committee to ensure the accuracy of its campaign finance reports. See 970 CMR 1.09(5)(e) and (f). The committee must also obtain information from contributors, including their residential address and, for persons contributing \$200 or more in a calendar year, their employer and occupation. See 970 CMR 1.09(5)(a).

*Any committees who have additional questions regarding credit or debit card contributions should contact OCPF for further guidance.*

**Exhibit A:  
Sample deposit report (page 1)**

**5/28/2020 Deposit (#250) Tank Dep Committee (40024)**

This report is a draft. It will not be considered e-filed until you complete and file it. When ready to file, switch to the summary tab and click the **E-File Report** button.

Summary

Deposit Items

Individual Contribution

Select a tender type:

- Credit Card**
- Check
- Cash (\$50 or less)
- Money Order (\$100 or less)
- Transfer
- Other

Amount

First Name

City MA

Employer

Save

**Step 1: Enter the full amount for each deposit item, selecting the "credit card" tender type.**

**In this example, the committee received and deposited two credit card contributions.**

Filters: Filter by Name --- ALL RECORD TYPES --- Start Date End Date Minimum Amount Maximum Amount Clear Filters



Date	Type	Name, Address	Occupation	Employer	Other	Amount	Actions
5/28/2020	Individual	<b>Berger, Elizabeth</b> 34323 Mebane St. Boston, MA 02108	Owner	Liz's Flower Store		\$1,000.00	<a href="#">Edit</a>
5/28/2020	Individual	<b>Squires, Nick</b> 1234 Clare St. Brockton, MA 02301	Research Analyst	Herman Research Inc.		\$1,000.00	<a href="#">Edit</a>



## Sample deposit report (page 2)

OCPF Reporter 7 Home Reports Tools

### 5/28/2020 Deposit (#250) *Tank Dep Committee (40024)*

This report is a draft. It will not be considered e-filed until you complete and file it. When ready to file, switch to the summary tab and click the **E-File Report** button.

Summary **Deposit Items**

Merchant Provider Fee

\$35

Paynow

Processing Fee

Save

**Step 2: Enter the merchant provider fee information and click save.**

Filters: Filter by Name --- ALL RECORD TYPES --- Start Date End Date Minimum Amount Maximum Amount Clear Filters

Date	Type	Name, Address	Occupation	Employer	Other	Amount	Actions
5/28/2020	Individual	<b>Berger, Elizabeth</b> 34323 Mebane St. Boston, MA 02108	Owner	Liz's Flower Store		\$1,000.00	<a href="#">Edit</a>
5/28/2020	Individual	<b>Squires, Nick</b> 1234 Clare St. Brockton, MA 02301	Research Analyst	Herman Research Inc.		\$1,000.00	<a href="#">Edit</a>

### Sample deposit report (page 3)

Individual Contribution

Select a tender type:

MA

Save

**Filters:**  --- ALL RECORD TYPES ---

Clear Filters

Date	Type	Name, Address	Occupation	Employer	Other	Amount	Actions
5/28/2020	Individual	<b>Berger, Elizabeth</b> 34323 Mebane St. Boston, MA 02108	Owner	Liz's Flower Store		\$1,000.00	<span>Edit</span>
5/28/2020	Individual	<b>Squires, Nick</b> 1234 Clare St. Brockton, MA 02301	Research Analyst	Herman Research Inc.		\$1,000.00	<span>Edit</span>
5/28/2020	Merchant Provider Fee	<b>Paynow</b>				(\$35.00)	<span>Edit</span>

**Step 3: The merchant provider fee now appears in the report. The report can be e-filed.**

	<b>Itemized Total:</b>	\$1,965.00
	<b>Unitemized Total:</b>	\$0.00
	<b>Total Deposit:</b>	\$1,965.00

**Exhibit B:**  
**Sample disclosure by Non-Depository Committee**

**Schedule A: Receipts**

*M.G.L. c. 55 requires that the name and residential address be reported, in alphabetical order, for all receipts over \$50 in a calendar year. Committees must keep detailed accounts and records of all receipts, but need only itemize those receipts over \$50. In addition, the occupation and employer must be reported for all persons who contribute \$200 or more in a calendar year.*

<u>Date</u>	<u>Name and Residential Address</u>	<u>Amount</u>	<u>Occupation and Employer</u>
5/28/2020	<b>Grein, Thomas</b> 1234 West Street Haverhill, MA 01830	\$1,000.00	Vice President North Essex County Bank
5/28/2020	<b>Herman, Cassandra</b> 1234 Woodlands Street Lawrence, MA 01840	\$1,000.00	Professor Umass Lowell
<b>Total Itemized Receipts:</b>		<b>\$2,000.00</b>	
<b>Total Unitemized Receipts:</b>		<b>\$0.00</b>	
<b>Total Receipts:</b>		<b><u>\$2,000.00</u></b>	

**Schedule B: Expenditures**

*M.G.L. c. 55 requires committees to list, in alphabetical order, all expenditures over \$50 in a reporting period. Committees must keep detailed accounts and records of all expenditures, but need only itemize those over \$50. Expenditures over \$50 and under may be added together from committee records, and reported on line 13.*

<u>Date</u>	<u>Name and Address</u>	<u>Amount</u>	<u>Purpose</u>
5/28/2020	<b>Paynowservice</b> 1234 Main St. Los Angeles, CA 90210	\$40.00	Merchant Provider Fee
<b>Total Itemized Expenditures:</b>		<b>\$40.00</b>	
<b>Total Unitemized Expenditures:</b>		<b>\$0.00</b>	
<b>Total Expenditures:</b>		<b><u>\$40.00</u></b>	