



# New Jersey Election Law Enforcement Commission

## Gubernatorial Public Financing

November 2020



# Requirements

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- After raising and spending or committing to spend the required threshold, candidates are qualified to receive two dollars in public matching funds for every one dollar raised from private sources
- Candidates who qualify for and receive public funds agree to limit campaign expenditures
  - 7,300,000 for the Primary
  - 15,600,000 for the General
- Publicly financed candidates must participate in two ELEC sanctioned debates per election
- All gubernatorial campaign treasurers must attend a training session conducted by ELEC Compliance staff no later than 90 days after designation as a campaign treasurer

# Establishing a Candidate Committee

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- Candidates are required to file Form D-1 no later than the 10<sup>th</sup> day after receipt of the first contribution or after incurring or making the first expenditure, whichever comes first
- Candidates must file separate D-1 forms for each account that is established
  - Matching funds account (eligible contributions for match)
  - Depository account (any funds that are not eligible for match)
- Candidates must designate a campaign treasurer
- All candidates must maintain separate bank accounts for the primary and general elections
- No moneys deposited in the candidate's primary campaign bank accounts may be expended for any general election expense

# Campaign Finance Reports

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- Quarterly reports
  - April 15 (Activity from January 1 through March 31)
  - July 15 (Activity from April 1 through June 30)
  - October 15 (Activity from July 1 through September 30)
  - January 15 (Activity from October 1 through December 31)
- Election-cycle reports
  - 29-day preelection
  - 11-day preelection
  - 20-day postelection
- If a candidate committee is established more than five months prior to the due date of the 29-day preelection report, quarterly reports must be filed. If the committee is established five months or less prior to the due date for 29-day preelection report, the 29-day report will be the initial election fund report
  - A candidate filing quarterly reports prior to the 29-day preelection report is not required to file the April 15<sup>th</sup>, 2021 quarterly. Financial activity of that term shall be reported on the 29-day preelection report

# Limitations and Thresholds

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- Publicly Financed Candidates (“Participating”)
  - 2021 Qualification threshold - \$490,000
  - 2021 Contribution limit - \$4,900
  - Expenditure limit
    - Primary 2021 - \$7,300,000
    - General 2021 - \$15,600,000
  - Public funds cap
    - Primary 2021- \$4,600,000
    - General 2021- \$10,500,000
  - \$25,000 max of candidate’s own funds
  - \$50,000 aggregate bank loan total
- Non-Participating Candidates
  - Subject to contribution limit
  - No overall spending limit, no limit on own funds, no limit on bank loans personally guaranteed by the candidate

# Loans

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- A loan received by a candidate is a contribution until it is repaid
  - A loan is subject to the contribution limit
  - A loan is not eligible for matching funds
  - A loan must be repaid no later than 20 days prior to the election (reported on the 11-Day Pre-election report)

# Candidates for Lieutenant Governor

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- Candidates in the general election are required to select a candidate for Lieutenant Governor no later than 30 days after the date on which the Secretary of State certifies the names of general election candidates
- Candidates for Lieutenant Governor must be reported to the Commission by filing the Form D-1G
- Candidates for Lieutenant Governor form a single candidate committee with the Candidate for Governor.
  - Do not run as a Joint Candidates Committee
  - A contribution to the Lieutenant Gubernatorial candidate IS a contribution to the Gubernatorial candidate
  - An expenditure from the Lieutenant Gubernatorial candidate IS an expenditure from the Gubernatorial candidate
  - A candidate for Lieutenant Governor participating in the public financing program may give the committee \$25,000 in his or her own funds

# Contributions

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- A contributor may contribute a maximum of \$4,900 in the aggregate per election to a gubernatorial candidate, regardless of participation in public financing
- All funds received must be deposited in the campaign depository within 10 days of receipt
- Every contribution must include the contributor's signature and mailing address
- Cash contributions are acceptable up to \$200 in the aggregate per contributor for each election
- Occupation and employer information is required for all cash contributions and all other contributions greater than \$300 in the aggregate

# Contributions by Owners of a Joint Checking Account

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- Each owner of the account is permitted to make a contribution of up to the limit using the same instrument
- The contribution will not be attributed to other joint owners of the account, unless the check or other accompanying written instrument contains the signature of each contributing owner
- In the absence of specific instructions to the contrary, the contribution will be allocated equally among all owners whose signatures appear on the instrument

# Contributions by Partnerships, Limited Liability Partnerships, and Limited Liability Companies

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- A partnership, limited liability partnership, and a limited liability company are not permitted to make contributions as entities
  - Any contribution drawn on the account of a partnership, LLP or LLC must be accompanied by the signature of a partner or member and is a contribution from the individual partner or member who has signed the check or other instrument
- If it is the intent of the contributor that any portion of the check be attributed to a partner or individual who did not sign the check, the following information must be provided in order to receive matching funds:
  - Written instructions concerning the allocation of the contribution amount to a contributing partner or among contributing partners
  - A signed acknowledgement of the contribution from each contributing partner who has not signed the contribution check
  - Contributor information for each contributing partner

# Other Contributor Types

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- Contributions by **affiliated corporations, associations or labor organizations** shall be aggregated and count toward the contribution limit. Two or more corporations shall be deemed to be affiliated if:
  - Any individual, corporation, partnership, company, association, or other entity owns, directly or indirectly, more than a 30% interest in each corporation; or
  - One corporation owns, directly or indirectly, more than a 30% interest in another corporation
- A **minor** who is at least 14 years of age may make a contribution, if it is accompanied by sworn statements from the minor and the minor's legal guardian attesting that the decision to contribute was solely that of the minor and that the contribution is comprised of the minor's earned income

# In-Kind Contributions

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- An in-kind contribution is a contribution of goods or paid personal services received by a candidate or committee
- In-kind contributions must be reported and are subject to the contribution limit
- In-kind contributions are not eligible for public matching funds
- Personal services performed on an unpaid, voluntary basis will not be deemed to be in-kind contributions
- Upon receipt of a contribution in the form of personal services, the treasurer shall obtain a written statement from the contributor setting forth the amount of compensation paid by the contributor to the individual performing the services

# Contributions by Electronic Transfer of Funds

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- Contributions made by an electronic transfer of funds, such as by credit card, are eligible for match, provided that:
  - The date of receipt is the date on which the contribution is authorized
  - The account the contribution is drawn on is owned by the contributor
  - The amount of the contribution is the full amount authorized by the contributor
- Funds must be deposited directly into a campaign depository and can't be commingled with any funds other than those of the candidate committee
- Any fees imposed by a financial institution must be listed as an expenditure by the committee and may not be deducted from the original contribution amount
- Review N.J.A.C. 19:25-16.13(f) and N.J.A.C. 19:25-15.15 (f) and Advisory Opinion 04-2001 for further guidance

# Prohibited Contributions

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Banks	Insurance Companies	Public Utilities
Cable Companies	Casino Interests/ Casino Employees	Foreign Nationals

- Regulated industries cannot make direct contributions, but their employees can create PACs under existing state law, allowing them to contribute to candidates
- State, County, and Municipal Political Party Committees may not contribute in the general election
  - Consult subchapter 15 for further guidance concerning permissible Political Party Committee activity
- Under NJ Pay-to-Play laws, business entities with state contracts worth over \$17,500 are prohibited from giving over \$300 to candidates for Governor or Lieutenant Governor
- A business entity may request a refund within 30 days, provided that the contribution was not made within 60 days of gubernatorial primary or general election

# Return of Excessive Contributions

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- All candidates and committees must observe the contribution limits and must not accept a contribution in excess of the limit
- A candidate who or a committee which receives a contribution in an amount exceeding the contribution limit must return that portion of the contribution that exceeds the limit within 48 hours of receipt
- The committee must provide all documentation, including a copy of the refund check, to the Commission and any refunded contributions shall be included on the report required for the period in which the refund was made

# Submissions

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- All contributions submitted for match will be reviewed for compliance with requirements of the Campaign Contributions and Expenditures Reporting Act and Commission Regulations (N.J.S.A. 19:44A-1 et seq. and N.J.A.C. 19:25-1 et seq.)
- Campaigns should review complete text of regulations, especially N.J.A.C. 19:25-15 (general election) and 19:25-16 (primary election) concerning publicly financed gubernatorial candidates
- Submissions will be accepted no later than 12:00 noon on specified Tuesdays
- January through March (two per month)/April through May (weekly)
- June through August (two per month)/September through October (weekly)
  - Earliest submission date: January 5, 2021 (primary) /June 15, 2021 (general)

# Submissions (Continued)

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- Submissions must include scanned copies of contribution checks, deposit slips, receipted deposit slips or bank statements and any other related documents
- If information is not listed on the check, submissions must also include documentation containing:
  - Contributor's full name and address
  - Amount and date of contribution
  - Contributor's signature
- Occupation and Employer information required for all currency contributions and all other contributions over \$300
- Excessive contributions will suspend the review process. The committee will be contacted and must immediately issue a refund of the excessive amount and supply the Commission with a copy of the refund check.
- Public Funds may also be delayed or withheld for failure to comply with restrictions pertaining to the use of public funds

# Submissions (Continued)

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## **First Submission Only:**

- Must have raised the required amount of \$490,000 in contributions eligible for match
- The first \$156,000 of eligible contributions are not matched
- Expenditure documentation must be scanned and submitted to show that the threshold has been met on Form P-1
- Completed Candidate Certification for Public Financing and Debate Participation (Form G-1A)
- Issue Advocacy Participation (Form P-2) or Non-Participation in Issue Advocacy (Form P-2A)
- Committee must decide whether or not to disclose all detailed contribution information or only currency contributions and those greater than \$300.

## **All Subsequent Submissions:**

- Must include at least \$12,500 in contributions received.
- Can consist of new contributions submitted for match, rejected contributions resubmitted for match, or a combination of both new and resubmitted contributions.

# Submissions (Contribution by Credit Card)

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## **An electronic signature will satisfy the signature requirement when certain requirements are satisfied**

- Verification by the credit card processing company
  - Treasurer must provide a certified statement that the credit card processor provides a verification process which compares the cardholder name, credit card number, billing zip code, expiration date and security code. Any discrepancies found will cause the contribution to fail. Documentation by the processor should be provided with the treasurer certification.
- Contributor must certify:
  - The individual is the owner of the card
  - Provide the name as it appears on the card
  - Enter the amount of the contribution
  - Acknowledge that by typing their name on a specified line they are indicating their intent to sign and authorize the contribution utilizing the credit card

(Authorized represented may perform this function for a corporation, association or labor organization)

**Partnerships, LLCs, LLPs – PROHIBITED**

# Resubmissions

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- Committees will receive written notification of rejected items stating the cause for rejection and instructions for remedy
- After correcting a rejected contribution, a candidate committee may resubmit the item on any subsequent submission date

# Receipt and Use of Public Funds

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- Public Funds will be deposited by the Commission in an account established by the Commission for the sole use of the recipient committee
- Public Funds may only be used for the following purposes:
  - Advertising costs
  - Printing and Mailing Campaign Literature
  - Accounting and Legal Costs directly relating to compliance with New Jersey's public financing requirements
  - Telephone deposits, installation fees, and payments

# Examples of Advertising Costs

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- Purchase of time on radio and television stations
- Purchase of rental space on outdoor signs or billboards
- Purchase of advertising space in newspapers and regularly published magazines and periodicals
- Payment of the cost of producing the material aired or displayed on radio, television, outdoor signs or billboards, and in newspapers, regularly published magazines and periodicals
- Public Funds may be used to purchase email lists, send emails and to develop websites which facilitate the delivery of a candidate's message. However, public funds may not be used for the purpose of fundraising

# Personal Use of Campaign Funds

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- Campaign funds, whether public or not, shall not be used for personal use
- Personal use includes, but is not limited to:
  - A mortgage payment on property not owned by a candidate committee,
  - A purchase, loan, or lease payment on a vehicle not owned or leased by the candidate committee
  - The purchase of clothing, household food, and personal hygiene or health items or services
  - A tuition payment, unless made for a course of study specifically related to the candidacy or officeholding duties of the candidate or officeholder who established or who controls the candidate committee
  - A payment for dues, fees or gratuities paid to a country club, fitness club, or other social or fraternal association, to its employees, or to a person working on its premises, unless the payment is part of the cost of a fundraising event held on the premises
  - The payment of a salary to a candidate by that candidate's committee

# Expenditures Not Subject to the Expenditure Limit

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- Reasonable and necessary costs associated with compliance and reporting requirements of the Campaign Contributions and Expenditures Reporting Act
- Travel expenses of the candidate or of any campaign staff members incurred while accompanying the candidate
- Reasonable costs of food and beverage made available at fundraising events
- Election night celebration expenses

# Expenditures Made By Others

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- **Coordinated Expenditure** – any expenditure made by a person or entity other than the gubernatorial candidate to make a communication when the gubernatorial candidate or his or her committee has consented to, authorized, or exercised control over the production or circulation of the communication
- **Independent Expenditure** – any expenditure made by a person or entity other than the gubernatorial candidate made without the cooperation or prior consent of, in consultation with, or at the request or suggestion of, the candidate or any person or committee acting on behalf of the candidate

# Coordinated Expenditures

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- A coordinated expenditure shall be deemed to have been made if:
  - The communication makes a reference to the candidate or opponent in an audio, visual, printed or electronic format;
  - The gubernatorial candidate or his or her campaign committee has consented to, authorized, or exercised control over the production or circulation of the communication; and
  - The expenditure was made on or after the date upon which the gubernatorial candidate or committee applied to receive matching funds or filed a statement of qualification to receive matching funds.
- The amount expended for a coordinated expenditure on behalf of a gubernatorial candidate shall be a contribution by the person or entity to that gubernatorial candidate and shall be reported as such by the candidate

# Independent Expenditures

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- Independent expenditures do not count towards a publicly funded gubernatorial candidate's expenditure limit
- No State Political Party Committee may make an independent expenditure to aid or oppose a gubernatorial candidate
- Communications and nonpartisan get-out-the-vote drives by a corporate or labor organization directed at its members, stockholders or their families are not considered to be in aid of or on behalf of a gubernatorial candidate

# Expenditures Made by Credit Card

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- If a credit card is established in the name of the candidate committee, the committee shall report the following information for each charge:
  - The name of the lending institution that issued the card
  - The name and address of the vendor from whom the purchase was made
  - The date of the purchase
  - The purpose of the purchase
  - The amount of the purchase
  - Whether or not the expenditure is subject to the expenditure limit (participating candidates only)

# Expenditure Documentation

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- Publicly financed candidates must supply to the Commission a certification from the payee for any expenditure with public funds in excess of \$5,000 for media consultant services or related media advertising purchases containing:
  - A description of the purchase or services provided
  - A statement that the expenditure is a permissible use of public funds as set forth in N.J.A.C. 19:25-16.25 or 15.24
- Any expenditure made from public funds which results in the purchase of time on television or radio must be documented by supplying the Commission with an invoice. The invoice shall:
  - Be prepared by the vendor
  - Be supplied no later than 10 days after the 20-day postelection report is due
  - Detail the amount of media time used by the candidate, and the cost of such purchase to the candidate

# Debate Requirement

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- All publicly financed gubernatorial candidates are required to participate in two ELEC-sanctioned debates for each election in which they are a candidate
- All publicly financed lieutenant gubernatorial candidates must participate in one ELEC-sanctioned debate in the general election
- All participating candidates must submit a Statement of Agreement to Participate in Two Debates by:
  - April 5, 2021 (Primary)
  - September 1, 2021 (General)
- Non-participating candidates who have raised and spent the threshold amount may elect to participate in the debates by:
  - Notifying the Commission in writing no later than April 5, 2021, for the primary debates and/or September 1, 2021, for the general debates;
  - Filing a statement of qualification containing evidence that the applicable threshold has been deposited and expended for the gubernatorial primary and/or general elections

# Ballot Statements

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- All gubernatorial candidates in the general election are entitled to supply the Commission with a statement that will be posted at numerous location on the web
- The statements must not exceed 500 words
- The statements will be translated into Spanish, and other languages as determined by the demographics of individualized counties, by an independent agency
- Statements are due no later than August 20, 2021

# Return of Funds

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- After the date of the election, expenditures may only be made to pay outstanding obligations
- All remaining funds (public and private) must be returned to the State after outstanding obligations are paid 6 months after the date of the election

# Record-Keeping Requirement

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- All committees shall retain records for a period of not less than four years after the submission of a final report, including, but not limited to:
  - All written instruments and other records of contributions and expenditures, and
  - All originals and copies of all documents and instruments submitted to the Commission
- Each publicly funded candidate shall maintain a record of any public funds expended for the purchase of time on radio and television, containing the exact amount of the total expenditure used for:
  - The purchase of time on radio and television stations,
  - The amount of any credit for radio and television time that was not used,
  - The payment of the cost to produce the material aired on radio and television stations,
  - The amount of any commission paid,
  - The amount that is due to be refunded to the candidate

# Postelection Audit

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- After the election, an independent auditing firm will review the activity for each publicly financed campaign
- As part of the review, a verification will be performed that the expenditure limit has been observed, postelection expenditures conform to the applicable restrictions, and any unspent funds have been returned to the State
- Audit Tips:
  - Maintain all bank documentation and vendor invoices
  - Perform frequent bank reconciliations
  - Report each expenditure as subject to or not subject to the expenditure limit
  - Maintain documentation itemizing each transfer between accounts



If you have any questions or would like to schedule an informational session for a gubernatorial campaign, please contact ELEC's Compliance Section:

- **1-888-313-ELEC (toll free in NJ)**
- **(609) 292-8700**

Remember to visit our website at [www.elec.state.nj.us](http://www.elec.state.nj.us) for additional information

