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**MEMORANDUM**

To: Statewide Political Parties  
From: Michael J. Sullivan, Director *MJS*  
Subject: Use of Federal and State Bank Accounts

One of the many issues addressed by the Bipartisan Campaign Reform Act (BCRA) was federal election activity by state political parties and the concurrent relationship with state and local campaign activity undertaken by state parties. As background to this discussion, note that federal law allows individuals to donate \$10,000 per year to a state party's federal funds account and Massachusetts law allows individuals to donate \$5,000 to the state party's non-federal (or state) account. In many, if not most, states, individuals may donate more than \$10,000 to a state party's state (or non-federal) account. Generally speaking, funds donated to the state account traditionally have been used to support state and local candidates. BCRA, however, requires the Office of Campaign and Political Finance (OCPF) to review how BCRA impacts the operations of state party committees in Massachusetts that maintain both state and federal bank accounts.

BCRA and its subsequent regulations address the use of funds raised into the federal account of a state party for federal activity. By broadly defining federal election activity to include expenditures occurring when a candidate for federal office is on the ballot, the law requires that many expenditures be made from the federal account of the state party. The concept behind the FEC provisions is to prevent large unregulated sums of money raised in most states into state (non-federal) accounts from being used to influence federal elections.

The consequences for parties in Massachusetts, however, are different than for parties in most states. Since the amount an individual can contribute to the state account of the party in Massachusetts is lower than the federal contribution limit, state parties in Massachusetts would conceivably have more federal funds available. When a federal candidate is on the ballot, many expenditures made by the party are considered federal election activity, even if, in part, the effect of the expenditure would support state or local candidates. Federal law and regulations (see 11 CFR 100.24 and 11 CFR 106.7) often require such expenditures to be made from the federal account. If, however, the expenditure by the party is made solely to support or oppose the state or local candidate, and does not trigger the federal requirement that federal funds be used, state law and regulation require such expenditure to be made from the state account. This issue is addressed in OCPF's regulation 970 CMR 2.16(2), which states, in essence, that expenditures made by the party to support state or local candidates must be made from the state account of the party unless federal law and regulation preempt state law and regulation.



Under BCRA and FEC regulations, salaries for all personnel paid by the state party must be paid from the federal account for those employees who spend more than 25% of their compensated time in a given month on Federal election activities or on activities in connection with a Federal election. Employees who spend 25% or less of their compensated time on such activities must be paid from the state account. Committees must keep a monthly log of such activity. See 11 CFR 106.7(d). This regulation is straight-forward and does not provide for any type of allocation of costs. Federal regulations require that administrative costs such as rent, utilities, office equipment, postage, etc. be paid entirely from the federal account, but a percentage may be allocated from the state account in accordance with federal rules identified in example #5 below.

To elaborate further on the expenditure rules, we list several scenarios and note which account is responsible for making the expenditure.

1. An ad that simply states "Vote Republican" or "Vote Democratic" and does not mention any candidates on the ballot must be paid for from the federal account of the state party. This is defined as generic campaign activity and is defined by federal regulation as federal election activity. Federal rules require that federal election activity be paid from the federal account.
2. An ad that states "Vote Republican in 2004, Vote Smith for State Senator" must be paid for entirely from the state account. Federal law does not control here because the ad does not clearly identify a federal candidate, while it does clearly identify a state candidate.
3. An ad that states "Vote Democratic, elect Jones for Congress and Bird for State Representative must be paid for entirely from the federal account of the state party. Federal regulations require that any ad that mentions an on the ballot federal candidate by name must be paid from the federal account.
4. An ad that states "Vote Jones for State Senate" or "Vote Jones for State Senate on November 2" and does not mention a clearly identified federal candidate must be paid for entirely from the non-federal (or state) account. No federal candidate is mentioned; therefore, this is a state account expenditure.
5. Voter ID costs, GOTV costs, and voter registration costs may be allocated between federal and non-federal accounts of a party committee using the percentage method defined by FEC regulations. See 11 CFR 106.7(d). Because the ratio changes based on the composition of the ballot in any given election year, the FEC should be contacted for guidance regarding the ratio that is in effect for a particular allocable expenditure.
6. Direct monetary contributions from the state party to a state or local candidate are limited by state law to \$3,000. Such contributions must be made from the non-federal account. Monetary contributions to state or local candidates from the federal account are prohibited. Monetary contributions to federal candidates from the state account are permissible to the extent that federal law and regulation allow.

If you have questions on this issue or potential scenarios you would like to discuss further, we strongly encourage you to call the office and speak to Brad Balzer or me.