February 13, 2018

Michael Sullivan, Director
Office of Campaign and Political Finance
One Ashburton Place
Boston, MA 02108

RE: Comments of Massachusetts Fiscal Alliance on Proposed Amendments to 970 C.M.R. § 1.00 et seq.

Dear Director Sullivan:

The Massachusetts Fiscal Alliance ("Mass Fiscal") appreciates the opportunity to provide these comments on the proposed amendments to the Office of Campaign and Political Finance regulations, 970 C.M.R. § 1.00 et seq. Mass Fiscal is a non-partisan, IRS-recognized 501(c)(4) non-profit organization that advocates for fiscal responsibility, transparency, and accountability in state government, and increased economic opportunity for the people of our Commonwealth.

Mass Fiscal appreciates the thoroughness with which OCPF has approached the task of revising its regulations, and agrees that many of these proposed changes are necessary and appropriate. However, Mass Fiscal has significant concerns about the proposed revisions to 970 C.M.R. § 1.22, the section that governs when nonprofit organizations like Mass Fiscal may be required to publicly disclose their donors.

In specific, Mass Fiscal is concerned that that the proposed changes to 970 C.M.R. § 1.22 would expand the scope of the agency's discretion beyond what is authorized by the campaign finance statute (G.L. c. 55). Mass Fiscal believes that several of the proposed changes are impermissibly vague, preventing both donors and organizations from knowing before the fact whether or not disclosure of a given donation will be required. And Mass Fiscal believes that several of the proposed changes improperly shift the burden of proof from OCPF to the donor, while depriving donors of critical due process protections.

Donors, nonprofit organizations, OCPF, and the general public alike benefit when campaign finance regulations provide clear and objective rules — not vague and subjective ones — for when the identities of donors will and will not be disclosed. For instance, under G.L. c. 55, § 18F, only donations "to make electioneering communications" must be disclosed, meaning that donations to the general treasury of a nonprofit organization need *not* be. Yet the proposed revisions to 970 C.M.R. § 1.22 would effectively insert an asterisk to the statute: That under *some* circumstances, OCPF *would* have regulatory discretion to determine — after-the-fact — that certain general treasury donations *must* be disclosed nonetheless.

If adopted, the proposed revisions to 970 C.M.R. § 1.22 will generate a substantial chilling effect, as nonprofit organizations will be unable to guarantee to their donors *at the time of donation* whether their identity will or will not be disclosed. A nonprofit donor who is uncomfortable with the possibility that her identity may be publicly disclosed — and who makes her donations in the form of general treasury funds (rather than for specific advocacy activities) based on the reasonable understanding that such donations are non-disclosable — may well elect not to donate at *all* under the regulations as proposed, out of concern that an after-the-fact determination by OCPF will force public disclosure of that donation. Where changes to campaign finance law will lead to consequence of this magnitude, those changes should be left to the auspices of the Legislature, not to the regulatory amendments of an executive branch agency.

Fortunately, Mass Fiscal believes that the proposed 970 C.M.R. § 1.22 can be further amended to be consistent with G.L. c. 55, in order to provide objective rules that donors and organizations can follow and that OCPF can objectively enforce. Mass Fiscal provides its proposed revisions in these comments.

I. ABOUT MASS FISCAL

As is true for every 501(c) organization, Mass Fiscal sustains its activities through the generous financial donations, large and small, of individuals and organizations who support our social welfare mission. Our advocacy work centers on encouraging all Massachusetts residents to become active participants in the effort to confront hard fiscal challenges and identify sustainable fiscal solutions for the Commonwealth, by giving residents the tools they need to make the best decisions.

Because our mission involves advocating for fiscal responsibility, transparency, and accountability in state government, our activities frequently include efforts to ensure that governmental agencies and public officials are listening to — and held accountable to — the citizens who employ and elect them. The nature of Mass Fiscal's mission thus means that on occasion, our advocacy activities — in which we engage year-round — occur simultaneously with local and state elections for public officials.

As OCPF is aware, in certain circumstances, advocacy activities that would not otherwise constitute "electioneering communications" as defined by G.L. c. 55 and 970 C.M.R. may nonetheless become subject to those laws, simply because the activities occur within 90 days of an upcoming election. Over the past several years, Mass Fiscal has frequently engaged with OCPF to obtain its advice about whether a given activity might constitute an "electioneering communication," in order to ensure that Mass Fiscal remains compliant with the law.

II. LEGAL BACKGROUND TO COMMENTS

As OCPF is aware, G.L. c. 55, §§ 18A & 18F are criminal statutes: Violation of either "shall be punished by a fine of not more than $5,000 or by imprisonment in a house of correction for not more than 1 year." The Supreme Judicial Court has confirmed that "[i]t is a well-established proposition that criminal statutes are to be construed narrowly," *Commonwealth v. Kerr*, 409 Mass. 284, 286 (1991). The Supreme Judicial Court has also confirmed that that

courts "must resolve in favor of criminal defendants any reasonable doubt as to [a] statute's meaning." *Id*. Given the Supreme Judicial Court's unequivocal holdings in *Kerr*, both G.L. c. 55 §§ 18A & 18F must be construed "narrowly" — and any ambiguity in the statute must be interpreted in favor of the donor and against the government. Equally as important, any regulations promulgated to interpret a criminal statute must be restricted to the same narrow scope as the statute, and conform with the statutory text.

Furthermore, when a statute or regulation that requires or proscribes conduct is impermissibly vague, it is unenforceable and void as a matter of law. As the Supreme Judicial Court held in *Department of Youth Services v. A Juvenile*, 398 Mass. 516, 522 (1986), a law is void for vagueness "if persons of common intelligence must necessarily guess at its meaning and differ as to its application." The Court held that such a result is warranted because otherwise, "individuals do not receive fair notice of the conduct proscribed by a statute and because vague laws that do not limit the exercise of discretion by officials engender the possibility of arbitrary and discriminatory enforcement." *Id*.

III. COMMENTS ON PROPOSED 970 C.M.R. § 1.22

A. COMMENTS ON SUBPARAGRAPH (3)

The proposed 970 C.M.R. § 1.22(3) would establish new rules about the "types of political committees that may be created under 970 CMR 1.22(2)". Mass Fiscal's comments focus on the final sentence of this section, which is proposed to read:

> If an organization raises money to make electioneering communications, it must disclose donors and electioneering communication expenditures in the organization's reports of electioneering communications.

First, Mass Fiscal notes that an organization that engages *only* in electioneering communications is *not* a political committee under 970 C.M.R. § 1.22(2) or G.L. c. 55, § 1. Including the above sentence (referencing electioneering communications) in the proposed 970 C.M.R. § 1.22(3) would create significant and unnecessary confusion, since the sentence refers to circumstances covered by *neither* Section 1.22(2) nor Section 1.22(3). Mass Fiscal encourages OCPF to relocate this sentence to a new subsection to avoid such confusion, or to retitle the section to "Organizational Activities Requiring Disclosure" (or a similar variant) that is inclusive of each of the types of covered activity referenced.

Second, Mass Fiscal notes that the word "raises" in this sentence is inconsistent with G.L. c. 55, § 18F, which expressly states that "any entity not defined as a political committee who makes electioneering communication expenditures in an aggregate amount exceeding $250 during a calendar year who ***receives*** funds to make electioneering communications" shall make certain reports (emphasis supplied). The word "raises" indicates an *active* effort by the organization itself, where the word used by the Legislature — "receives" — indicates the *passive* receipt by the organization of funds provided by a donor and earmarked for that express purpose.

Substituting "raises" for "receives" in 970 C.M.R. § 1.22(3) would thus impermissibly broaden the scope of the statute beyond its plain text. For instance, this substitution could be read to authorize OCPF to require donor disclosure from an organization that *raises* general treasury funds and *subsequently* elects to use those funds for electioneering communications — even when the donors of those funds had only intended to make general treasury donations, which are *not* disclosable. To remain consistent with the statutory text, OCPF should replace "raises" with the word intentionally chosen by the Legislature: "receives".

B. COMMENTS ON SUBPARAGRAPH (6)

This section of the proposed amendment focuses on an organization's statements regarding the sources of funds it receives. It would revise the current 970 C.M.R. § 1.22(4) and renumber it as 970 C.M.R. § 1.22(6). Mass Fiscal has three comments on the proposal.

First, Mass Fiscal is concerned by the last two sentences of the proposed 970 C.M.R. § 1.22(6), which are proposed to read as follows:

> If a statement is not provided to the committee in response to its request, or if a statement that is provided is determined by OCPF to not be credible, OCPF may require the committee to return the contribution. OCPF shall assess the statement's credibility, after providing an opportunity for the entity submitting the statement to also submit evidence and argument to support the credibility of the statement.

As noted, G.L. c. 55, §§ 18A & 18F are criminal statutes: Violation of either "shall be punished by a fine of not more than $5,000 or by imprisonment in a house of correction for not more than 1 year." Apart from the requirement that such statutes must be construed narrowly, where the penalties for violation of a statute are criminal, the legal presumption is — and must be — that the actions of a donor organization are *consistent* with the law, with the legal burden resting with the government (here, OCPF or the Attorney General) to demonstrate otherwise. The proposed revisions above would reverse this fundamental presumption, placing the burden on the *donor organization* to demonstrate why his or her donation *is* permissible, *even after the donor organization has provided a statement "under the penalties of perjury*."

The proposed revisions would grant OCPF unfettered discretion to determine whether a statement provided to OCPF is "credible" or not. The regulation neither provides objective criteria upon which OCPF will assess the statement's credibility, nor establishes the legal standard that OCPF's evidence is required to meet to reach such a conclusion. "[V]ague laws that do not limit the exercise of discretion by officials engender the possibility of arbitrary and discriminatory enforcement." *Department of Youth Servs. v. A Juvenile*, 398 Mass. 516, 522 (1986). In order to ensure due process, Mass Fiscal urges OCPF to delete the last two sentences of the proposed 970 C.M.R. § 1.22(6) and replace them with the following:

> If a statement is not provided to the political committee in response to its request, OCPF may require the committee to return the contribution. If a statement is provided, the entity submitting the statement shall be entitled to a presumption that the statement is accurate, and the entity may (but shall not be required to) submit additional evidence and

argument in support of that statement. OCPF shall be entitled to request or subpoena evidence from the entity with respect to the accuracy of the statement, but OCPF may conclude that the statement is inaccurate and require that the contribution be returned only upon a written finding based on clear and convincing evidence, and only after having provided the entity both notice and an opportunity to be heard.

Second, the proposed 970 C.M.R. § 1.22(6) repeatedly uses the phrase "solicited or received." Both G.L. c. 55, § 18A (independent expenditures) and § 18F (electioneering communications) use only the word "received" in this context, and the word choice imposed by the statute should be respected and reflected in the regulation. The Legislature's decision also makes logical sense: While response to a solicitation may indeed be an *indicia* of the purpose of the received funds, solicitation *alone* is not dispositive — a fact the Legislature clearly understood by intentionally choosing to use only the word "received." For instance, a nonprofit organization may send *multiple* solicitations to a potential donor, each for a specific purpose. This fact does not preclude that donor from nonetheless eschewing an earmark for a specific purpose when making a donation, and instead making a general treasury donation to the organization.

Indeed, this is exceptionally common in the nonprofit world, particularly where the donor trusts the recipient organization to use the donated funds in whatever manner the organization views to be most effective. For example, an alumna of a non-profit university may be solicited to give funds to endow a specific professorship or construct a specific building, but she may nonetheless decide to give to the university's general treasury fund instead, confident that the university will use the unrestricted funds received where they are most needed. The amendment should be revised in 970 C.M.R. § 1.22(6) (and elsewhere in Section 1.22 generally) to remove the words "solicited or" to ensure both consistency with the statute and internal uniformity within the regulation.

Third, 970 C.M.R. § 1.22(6) is the only instance in 970 C.M.R. § 1.22 where the word "committee" is used without modification. Mass Fiscal encourages OCPF to clarify that the references in 970 C.M.R. § 1.22(4) to "a committee" or "the committee" refer to a "*political* committee," and thus does *not* implicate organizations whose sole covered activity is electioneering communications.

C. COMMENTS ON SUBPARAGRAPH (8)

Mass Fiscal's most serious concerns with the proposed 970 C.M.R. § 1.22 are with respect to this section, 970 C.M.R. § 1.22(8), which pertains to the public disclosure of donors to nonprofit organizations like Mass Fiscal. Mass Fiscal has five specific concerns with the language as drafted, but also believes that the language can be revised to ensure consistency with G.L. c. 55 and to ensure appropriate safeguards for donors and recipient organizations.

First, the proposed 970 C.M.R. § 1.22(8) improperly conflates donors and organizations for purposes of disclosure under G.L. c. 55. The statute is clear: the disclosure obligation under G.L. c. 55 is on the recipient organization, not on the donor. Yet the proposed 970 C.M.R. § 1.22(8) is phrased in a manner that requires the *organization* to disclose the donation if the *donor*

"knows or has reason to know" that the donation will be used for a covered activity. This phrasing requires the recipient organization to be telepathic: To be able to discern what a *donor* "knows or has *reason* to know" in order to determine whether the *organization* must disclose a donation it receives. As a practical matter, in many instances nonprofit organizations have *no idea* why certain donations were made, as they arrive both unsolicited and unrestricted in use. The regulation cannot be phrased in a manner that imposes a literally impossible legal compliance burden upon an organization. To remain consistent with the statute, the regulation must be limited to the *organization's* knowledge of the donor's intent.

Second, while the proposed 970 C.M.R. § 1.22(8) speaks of whether the donor "knows" that a donation will be used for a covered activity (and proposes to expand this to whether the donor also "has reason to know"), the concept of "donor knowledge" appears nowhere in § 18F. The words of the statute are plain and clear: only an entity "who receives funds to make electioneering communications" is required to disclose the name of the donor of those funds. The only way the *recipient organization* will know whether the funds were given for the purpose of having the recipient organization "make electioneering communications" is if the donor a) affirmatively informs the recipient organization that this is the purpose of the donation, or b) if the funds are received in direct response to a solicitation by the recipient organization for electioneering communications donations. Whether the donor silently *wished* that the funds would be used in a certain manner is legally irrelevant — the statute, at best, requires disclosure by the recipient organization only in the limited circumstances where the *recipient organization* knows that the funds are being provided for a limited covered activity. The proposed revision of 970 C.M.R. § 1.22(8) provided below reflects these principles, consistent with the statutory limitations of G.L. c. 55.

Third, the proposed expansion of 970 C.M.R. § 1.22(8) to encompass when the donor "has *reason* to know" has a drastic adverse practical effect: Authorizing OCPF to make a unilateral determination — *without ever speaking to the donor* — that the donor "had reason to know" how his or her donation would be used by the recipient organization, and to order the public disclosure of that donor's name and address as a result. Particularly in the context of a general treasury donation, such an outcome is antithetical to not only the donor's reasonable expectations at the time of the donation, but raises grave due process concerns about the propriety of disclosing on a public database the name and address of an individual who had every reasonable expectation that their personal information would not be disclosed without first providing that individual with notice and an opportunity for a hearing.

Separate and apart from both the chilling effect on speech that such an outcome could have, and the due process issues it raises, there are serious practical concerns raised by the possibility of unilateral disclosure. For instance, consider a donor holding a lawful abuse protection order issued by a court of the Commonwealth. Such a donor may not have made the donation in the first place if they knew that their address might subsequently be publicly disclosed, out of fear that such disclosure would endanger their personal safety. Similarly, if the donor's employer requires preclearance of certain contributions to ensure compliance with laws intended to preclude "pay-to-play" contributions, there could be serious employment consequences for having a nonprofit general treasury donation reclassified after-the-fact as an "electioneering communication" donation. In short, the proposed expansion to allow OCPF to

mandate disclosure on a "had reason to know" standard has serious legal and practical consequences that do not appear to have been contemplated or addressed in the draft as proposed.

Fourth, the proposed 970 C.M.R. § 1.22(8) would significantly expand what *constitutes* whether a "donor knows or has reason to know" that his or her funds will be used for a covered activity. Mass Fiscal agrees with option (a), in that if a donor makes a donation in direct response to a solicitation indicating the organization's intent to use the donation for a covered activity, it is reasonable to conclude that the donor knows that the donation will be used for this purpose. Mass Fiscal also encourages OCPF to include in Section 1.22(8) the most obvious way in which an organization would know the donor's intent: The donor affirmatively informs the organization of that intent.

However, Mass Fiscal ***strongly*** encourages OCPF to reconsider options (b) and (c), as these exceed the scope of G. L. c. 55, exceed the discretion granted by the Legislature to its agencies, and are impermissibly vague under Massachusetts law.

Under option (b), OCPF would be permitted to infer donor knowledge "if other circumstances, including the timing and context of the donations, indicate that a donor knew or had reason to know that the donation would be used for such purpose." This proposal is concerning for two reasons. First, this provision is vague to the point of being highly vulnerable to legal challenge as being arbitrary and capricious. It grants OCPF the discretion to determine that *any* donation could be deemed made for a covered activity, and allows OCPF to dispense with the notion that the donor even had to have had actual knowledge of the covered activity. As the Supreme Judicial Court held in *Department of Youth Services v. A Juvenile*, 398 Mass. 516, 522 (1986), a law is void for vagueness where "individuals do not receive fair notice of the conduct proscribed by a statute and because vague laws that do not limit the exercise of discretion by officials engender the possibility of arbitrary and discriminatory enforcement." *Id*. Nor is such a broad-ranging grant of discretion to OCPF to determine *ad hoc* which "other circumstances" could constitute knowledge (or a presumption of knowledge) found in the statutory text of G. L. c. 55.

Furthermore, and particularly where 970 C.M.R. § 1.22 is a regulation under a criminal statute, option (b) provides neither donors nor organizations with any standards or indications *ex ante* of what conduct is either allowed or proscribed. In addition to the impermissibly vague "other circumstances," even the categories of "timing and context" are similarly impermissibly vague. Neither term is defined in G. L. c. 55 or 970 CMR, leaving OCPF the discretion to determine whether "timing" means a day before, a month before, or a year before, and to apply different standards in different circumstances at its own discretion. The undefined and amorphous word "context" fares even worse, as "context" by definition changes with the circumstances, thus granting OCPF discretion to treat similar cases differently depending on a subjective view of the context in which the donation arose. In short, option (b) is impermissibly standardless and fails to provide "fair notice of the conduct proscribed," and should not be adopted in the final regulation.

As to option (c), the proposed definition is circular – it would allow OCPF to make a determination that a donor "knows or has reason to know" that a donation will be used for a covered activity if "the donor has been identified as having such knowledge in accordance with 970 C.M.R. § 1.22(9)." Yet 970 C.M.R. § 1.22(9) defines such donors as "those who are presumed to have had reason to know that all or part of their payments would be used [for a covered activity]." In other words, OCPF will be allowed to make a determination that a donor "knows or has reason to know" that a donation will be used for a covered activity if the donor is "presumed to have had reason to know" that a donation will be used for a covered activity. This is not an enforceable legal standard, nor does it give donors or organizations sufficient indication *ex ante* of what conduct is either allowed or proscribed. Option (c) should not be finalized.

Fifth, the proposed 970 C.M.R. § 1.22(8) would delete the phrase in the existing regulation (970 C.M.R. § 1.22(7)) that limits reporting to the "full amount of the donor's payment or donation to the organization . . . if the aggregate value of the amount given by the donor exceeds $250 during a calendar year, by the organization receiving the donation." By deleting this phrase, the proposed amendment suggests that *any* donation, in *any* amount, that a donor "knows or has reason to know" will be used for a covered activity must be disclosed. This goes well beyond the plain language of G.L. c. 55, § 18F, which expressly limits disclosure of funds donated for electioneering communications purposes to "funds in excess of $250." At least as to funds for electioneering communications, the regulation should clarify that the statutorily-mandated exception applies for funds donated in the amount of $250 or less.

In light of the above, Mass Fiscal encourages OCPF to strike the proposed 970 C.M.R. § 1.22(8) and replace it with the following language:

> (8) **Identification of Contributors**. If a donor to an organization knows or has reason to know that the donor's money will be used to make a contribution or an independent expenditure to support or oppose a Massachusetts candidate or ballot question, or an electioneering communication referencing a Massachusetts candidate, the donation shall be disclosed in accordance with M.G.L. c. 55, §§ 18 or 18A, or 18F in the event the donation is for electioneering communications and is in excess of $250. For purposes of 970 C.M.R. § 1.22, a donor "knows or has reason to know" that a donor's funds will be used to make a contribution, independent expenditure, or electioneering communication, if (a) the donor makes the donation in response to a solicitation indicating the organization's intent to make a contribution, independent expenditure, or electioneering communication, or (b) the donor otherwise indicates to the organization that the donation be used by the organization to make a contribution, independent expenditure, or electioneering communication.

In the event OCPF remains committed to including a "timing" provision in 970 C.M.R. § 1.22(8), Mass Fiscal strongly encourages OCPF to 1) establish an objective, rather than a subjective, standard, enabling donors and organizations to understand clearly *ex ante* when a donation could be subject to disclosure, 2) establish the objective standard as a rebuttable presumption, and 3) provide opportunity for the donor and/or the organization to present evidence to rebut that presumption. For instance, a provision with respect to electioneering communications might state:

> There shall be a rebuttable presumption that a donor "knows or has reason to know" that a donor's funds will be used to make an electioneering communication if a) such donations are made within seven calendar days prior to an organization's expenditure on an electioneering communication, and b) the organization's general treasury account as of the date of the donation contained insufficient funds to cover the expenditure. Prior to requiring disclosure of said donation, OCPF shall provide the donor and/or the organization with an opportunity to provide evidence and argument to rebut the presumption and to establish that it is more likely than not that the donor did not know the general treasury account balance of the organization and/or did not intend that the donation be used to make an electioneering communication.

D. COMMENTS ON SUBPARAGRAPH (9)

Mass Fiscal understands the general intent of 970 C.M.R. § 1.22(9) to be ensuring that when organizations with limited general organizational income make expenditures for covered activities in excess of their general treasury accounts, that such organizations are required to disclose the donors who assisted in covering the difference.

However, Mass Fiscal is significantly troubled by the proposal to require that in such circumstances, the organization must report "*all*" donors, not just those who knew that their donations would be used for covered activities. The fact that the organization has overspent its existing treasury funds is irrelevant to the intent of the donor, and requiring disclosure of a donor who donates general treasury funds in such a circumstance is inconsistent with the plain language of G.L. c. 55, § 18F, which requires disclosures only of donations where the donor's intent was to have the organization "make electioneering communications."

A simple example should suffice to illustrate. Presume that Donor A intends to give $300 in unrestricted general treasury funds to Organization X. On Monday, Organization X has a general treasury balance of $600. On Tuesday, Organization X expends $650 on an electioneering communication. There is no logical reason why if Donor A gives his $300 in unrestricted treasury funds on Monday that his donation is *not* disclosed, but that if he gives the same amount for the same purpose on Wednesday his donation *is* disclosed. Nothing as to Donor A's intent to donate *solely for general treasury purposes* has changed, nor does anything in G.L. c. 55, § 18F remotely indicate that the Legislature intended to penalize Donor A for the state of the recipient organization's balance sheet at the moment of his donation, of which he is likely entirely unaware.

Compounding this concern is the proposal to *delete* the final sentence of 970 C.M.R. § 1.22(9), which currently reads:

> An organization need not report a donor as a contributor if the organization has evidence clearly establishing that the donor did not intend that a payment would be used to fund a contribution, electioneering communication or independent expenditure.

Mass Fiscal cannot emphasize strongly enough: This provision is a <u>*critical*</u> due process safeguard for donors, and should be reinstated. Turning back to the example of Donor A, under the current 970 C.M.R. § 1.22(9) this clause gives Donor A the opportunity to provide evidence to OCPF that his donation was for general treasury purposes, and *not* for a covered activity. Yet the proposed amendments would eliminate Donor A's opportunity to do so. Under the proposed revisions, not only would disclosure of Donor A be required due to no fault of Donor A, but Donor A would be stripped of the opportunity to demonstrate that Organization X did *not* "receive[his] funds to make electioneering communications" —the *only* circumstance under which G.L. c. 55, § 18F requires donor disclosure. The OCPF proposal would thus mandate disclosure of donors in a circumstance not contemplated by the plain language of G.L. c. § 18F, and would eliminate the due process rights of donors like Donor A to demonstrate that their activities are *consistent* with the statute and do *not* require disclosure.

Finally, OCPF should amend the proposed 970 C.M.R. § 1.22(9) to provide certainty to organizations as to when they will be subject to its provisions. In specific, OCPF should insert express language stating that if an organization holds sufficient general treasury funds on the date of an expenditure, that unless shown otherwise, there is a presumption that the expenditure was made from general treasury funds. While this principle is implied in the proposed 970 C.M.R. § 1.22(9), it should be expressly articulated to minimize confusion and to increase certainty.

In light of the above, Mass Fiscal encourages OCPF to revise the proposed 970 C.M.R. § 1.22(9) to read as follows (new provisions underlined, proposed deletions struck through):

> **(9) Identification of Contributors When General Treasury Funds are Insufficient.** <u>There shall be a presumption that if an organization provides evidence to OCPF that its general organizational funds available on the date of a contribution, electioneering communication, or independent expenditure exceed the value of the contribution, electioneering communication, or independent expenditure, that said contribution, electioneering communication, or independent expenditure was made with general organizational funds.</u> If an organization makes a contribution, electioneering communication, or independent expenditure that is not fully paid from general organizational income, it must identify additional donors to the extent that general treasury funds and those donors described in 970 C.M.R. § 1.22(8) did not provide the full balance of the funds used to make the contribution, electioneering communication, or independent expenditure. In such cases the organization shall identify and report ~~**all**~~ donors~~**, including those**~~ who are presumed to have had reason to know that all or part of their payments would be used to make contributions, electioneering communications or independent expenditures, using a "last in, first out" accounting method, until a sufficient number of donors have been identified and reported to account for the full balance of the contribution, electioneering communication or independent expenditure. <u>An organization need not report a donor as a contributor if the organization has evidence clearly establishing that the donor did not intend that a payment would be used to fund a contribution, electioneering communication or independent expenditure.</u>

IV. CONCLUSION

Mass Fiscal reiterates that it appreciates the thoroughness with which OCPF has approached the task of revising its regulations, and agrees that many of these proposed changes are necessary and appropriate. However, Mass Fiscal's comments highlight its significant concern about the potential legal and practical consequences of certain proposed amendments to 970 C.M.R. § 1.22.

Mass Fiscal encourages OCPF to adopt the revisions to 970 C.M.R. § 1.22 proposed in these comments, to ensure that the regulations are consistent with G.L. c. 55, to ensure that donors and organizations have clear and objective rules to follow, and to ensure that OCPF has clear and objective rules that it can enforce.

Mass Fiscal would be pleased to provide further clarification or elaboration upon any of its comments if doing so would be beneficial to OCPF as it incorporates the comments upon the proposed revisions to 970 C.M.R. § 1.00 et seq.

Sincerely,

Paul D. Craney