



Guide to the CFB Independent Expenditure Disclosure Rules

September 2018

Expenditures that refer to the Charter Revision Commission ballot proposals are subject to the Independent Expenditure rules. As noted below, certain rules apply only to expenditures concerning candidates, not ballot proposals. Please contact the CFB at IEMail@nyccfb.info or 212-409-1853 if you have questions or would like to attend a training.

When an organization or person not affiliated with a candidate (an **independent spender**) makes certain payments or provides certain services that refer to municipal candidates or ballot proposals, it has made an **independent expenditure**. Certain independent expenditures, as well as information about the independent spender and its source of funds, must be reported to the Campaign Finance Board (CFB). There are no limits on what may be raised or spent; the independent expenditure rules require disclosure only.

What makes an expenditure “independent”?

An independent expenditure is one that no candidate has authorized, requested, suggested, fostered, or cooperated in. An independent spender cannot coordinate with a candidate concerning an independent expenditure. An independent spender can be an individual, or an organization of any kind, including a political committee, union, or corporation.

Is any coordination between a candidate and an independent spender permitted?

The following interactions between a candidate and a third party would not be considered to be coordinated activity:

- Appearing, or discussing the logistics of a candidate’s appearance, at an event that does not raise funds for the candidate.
- Communications directly related to an organization’s endorsement process.
- Requesting, obtaining, or republishing a candidate’s photograph, biography, press releases, position papers, or similar materials available to the general public. This exemption does not apply to more substantial or promotional materials produced by candidates or campaigns.

What kinds of independent expenditures must be reported?

An independent spender must report any expenditure that meets all three of the following criteria:

- 1) The amount of the expenditure is \$100 or more and, when combined with all other expenditures made by the independent spender concerning a given candidate or ballot proposal, reaches \$1,000.
- 2) The expenditure is for the design, production, or distribution of covered communications, including TV, radio, and other broadcast communications, all paid electoral advertising, and mass mailings (500 or more pieces). If the communication is for express advocacy (see below), then printed materials and phone banks (500 or more live or recorded calls) are also covered. Personal phone calls, in-person communications, the

placement of content for free on Internet sites, and email, text messages, free/non-promoted social media postings, and other similar forms of electronic communication are not covered.

3) The expenditure is for an express advocacy communication made at any time during the election cycle, or an electioneering communication made within 30 days of a primary or special election or 60 days of a general election.

- **Express advocacy communications** support or oppose a candidate or ballot proposal using “magic words” such as “vote for” or “reject,” or other phrases that can have no reasonable meaning other than advocating for or against the candidate or ballot proposal. Express advocacy communications via broadcasts, paid advertising, mass mailings, literature, and phone banks must be reported.
- **Electioneering communications** mention the name of a clearly identified candidate or ballot proposal shortly before an election. Electioneering communications include only broadcasts, paid advertising, and mass mailings.

Chart: What communication methods are covered by the independent expenditure disclosure rules?

| Communication Method | Express Advocacy Uses “magic words” or their equivalent at any time | Electioneering Communication Uses the name of a candidate or proposal shortly before the election |
|--|---|---|
| Cable, TV, satellite, radio & Internet ads | Covered | Covered |
| Print ads, Billboards | Covered | Covered |
| Mass mailings | Covered | Covered |
| Posters, Lawn signs | Covered | Not Covered |
| Leaflets, Flyers, Palm cards | Covered | Not Covered |
| Live Phone banks/Robo calls | Covered | Not Covered |
| In-person conversation | Not Covered | Not Covered |
| Personal call or letter | Not Covered | Not Covered |
| Buttons, Pens, Clothing | Not Covered | Not Covered |
| Email, Text, Twitter, etc. | Not Covered | Not Covered |
| Posting for free on a website | Not Covered* | Not Covered |

*Express advocacy materials placed on a website whose primary purpose is influencing elections *are* covered.

Are there any exceptions to what is covered?

Yes. The following activities are not considered to be independent expenditures, and do not have to be reported.

- Communications made by an organization directly to its individual members or by a corporation directly to its stockholders. This exemption does not apply to entities organized primarily for the purpose of influencing elections, including party committees, constituted committees, and political clubs.
- Unreimbursed travel and event expenses (up to \$500 each) made by individuals.
- Expenditures made by media outlets in the normal course of business.
- Electioneering communications made by 501c3 organizations that refer to candidates.

What information is reported, and when?

Independent spenders use the Independent Expenditures Disclosure System (IEDS) to report information about themselves, their covered communications, and the sources of their funding. This information is available to the public via the [CFB’s website](#).

- **The Independent Spender:** Independent spenders that are organizations must disclose information about their leadership, including all officers, owners, partners and board members. Independent spenders who are individuals must disclose information about their employment.
- **Communications and Expenditures:** When a covered communication is first distributed¹, an accurate copy of the communication as it was distributed to the public (not a draft) must be filed in the subsequent disclosure report, along with information about each expenditure of \$100 or more directly related to its design, production, or distribution. An itemized invoice must also be submitted, when it becomes available. Any future expenditures that relate to the communication, such as a reprint or re-airing, must be reported as they are incurred. Discounts and payments by third parties must be reported. If a communication refers to more than one candidate or ballot proposal, expenditures must be allocated among them.
- **Contributions Received:** If an organizational spender makes \$5,000 in expenditures that refer to a single candidate during the 12 months before the election, it must report the source of contributions it receives, both retroactively and for the remainder of the election cycle, from *organizations* starting January 1 of the year before the election, and from *individuals* if they total \$1,000 or more and were received within the 12 months before the election. Membership dues from individuals and revenue from goods and services do not need to be reported, nor do earmarked contributions that cannot be spent on elections covered by the CFB. Organizations that make contributions must disclose their officers, owners, partners, and board members. Contribution reporting is required through the final disclosure period of the election cycle (generally 27 days after the election). A spender that, as of the date of the general or special election, has reported total contributions greater than or equal to its total expenditures, is not required to report contributions received on or after Election Day, unless subsequent expenditures cause total expenditures to exceed reported contributions.
 - **Contributions of \$50,000 or more:** When an organization gives \$50,000 or more to an independent spender (a “major contributor”), the independent spender must disclose additional information about the major contributor’s “major funders.” A major funder is an individual or organization that has given \$25,000 or more to the major contributor in the 12 months preceding the election.

[Disclosure deadlines](#) for independent spenders follow the same reporting schedule that applies to candidates, but only in the year of the election. Independent spenders also follow the same reporting schedule as candidates in special elections. Reporting begins when independent expenditures referring to a specific candidate or ballot proposal total \$1,000. Expenditures made within two weeks of an election must be reported within 24 hours.

The IEDS advises spenders of what information needs to be reported. If during a given reporting period no reportable expenditures have been made nor reportable contributions received, no report needs to be filed.

What about outside communications that *aren't* independent?

Independent spenders cannot coordinate with candidates concerning an independent expenditure. Discussions between a candidate and an outside group about the content or distribution of a leaflet, or the involvement of a candidate’s staff member or agent in planning an outside advertisement, are examples of factors that would make an expenditure not independent, and therefore not covered by the independent expenditure rules. Such *coordinated* activities may be subject to the CFB rules and limits on in-kind contributions. There are serious potential consequences to a candidate’s campaign for not reporting all of the relevant activity with which it was involved, including penalties for non-reporting and/or overspending. If you are unsure whether an expenditure should be reported by a campaign, please contact the CFB, preferably prior to making it.

¹ A communication that is mailed shall be considered to have been distributed on the date which it was postmarked.

Does an independent spender need to register with the CFB in advance?

No. The spender can submit all required information about itself at the time of its first report. However, we encourage spenders to establish an IEDS account well ahead of time so they can become familiar with the software and obtain any needed guidance before they file. The information entered into the IEDS is not transmitted to the CFB until an independent spender files its first report.

What materials require a “paid for by” notice?

Once \$1,000 has been spent on any combination of expenditures that refer to any candidates, all future communications that refer to any candidates, including those costing less than \$100, must include a “paid for by” identification notice². Different communication methods require different content to be displayed in the notice, and spenders that are organizations must list their top donors. Spenders can use the IEDS to generate a “paid for by” notice that will reflect the communication method and all contributions entered into the system as having been received by the communication distribution date. If the spender anticipates receiving additional large contributions before the communication distribution date, the generated notice should be revised to add those contributions.

The notices must contain the following information (*information in italics only applies to independent spenders that are organizations*):

For all printed materials and static Internet ads

- “Paid for by” [name of independent spender]
- *The name of the independent spender’s CEO or equivalent, and principal (>50%) owner, if one exists*
- *“Top Three Donors:” [names of the spender’s top three donors in descending order; see note]³*
- “Not authorized by any candidate or candidate committee. More information at nyc.gov/FollowTheMoney.”

For all video communications (both broadcast and online):

(Spoken) “Paid for by” [name of independent spender]

(Written)

- “Paid for by” [name of independent spender]
- *“The top three donors to the organization responsible for this advertisement are” [names of the spender’s top three donors in descending order; see note]*
- “Not authorized by any candidate or candidate committee. More information at nyc.gov/FollowTheMoney.”

Radio and Internet audio ads of more than 30 seconds, and automated phone calls:

- “Paid for by” [name of independent spender] *“...with funding provided by” [names of the spender’s top three donors in descending order; see note].* “Not authorized by any candidate or candidate committee. More information at nyc.gov/FollowTheMoney.”

Radio or Internet audio lasting 30 seconds or less:

- “Paid for by” [name of independent spender] “...and not authorized by any candidate or candidate committee. More information at nyc.gov/FollowTheMoney.”

² For communications with the same vendor and distribution date, the paid for by notice requirement is based on the aggregate value of the expenditures. If this value exceeds \$1,000, all of the communications must include a notice.

³ Top donors have made the largest aggregate contributions of at least \$5,000 in the 12 months preceding the election up to the day that the content of the communication is finalized. If there are only two such contributors, “top three donors” is replaced by “top donors”; if there is only one such contributor, “top donor.” If there are no such contributors, then the top donors section is omitted. If the third- and fourth-highest contributors have given the same amount, the spender may decide which of the contributors that contributed that amount (there could be more than two) to list.

Live phone calls (non-automated) of more than ten seconds:

- “This call is paid for by” [name of independent spender] “...and is not authorized by any candidate or candidate committee. More information at nyc.gov/FollowTheMoney.”

All text must be displayed in a conspicuous size and style and the entire notice must be contained in a box within the borders of the communication. Spoken notices must be stated in a clear pitch and tone substantially similar to the rest of the advertisement. For video communications, the written and spoken notices must be featured simultaneously. For example, a notice featured on a printed communication might read:

Paid for by Independent Spender 123. CEO Jane Smith, Owner John Doe. Top Three Donors: Jason Rodriguez, Joe Catania, Francis Bartlet. Not authorized by any candidate or candidate committee. More information at nyc.gov/FollowTheMoney.

When a communication is primarily in a language other than English, the notice must be in that language. However, the web address must be in English.

There are no identification requirements for ballot proposal materials, although independent spenders are encouraged to include such notices.

What constitutes conspicuous size and style for the text of a “paid for by” notice?

The following design elements are considered in determining whether the text of a notice satisfies the conspicuous size and style requirements:

- **Size:** The paid for by notice must be large enough that it is readily apparent to the recipient. The notice should generally not be the smallest type on the communication.
- **Sufficient contrast from background:** If the paid for by notice is placed in front of a picture or other graphic element, the notice must have suitable contrast from the background that it is easily legible.
- **Orientation:** The notice must be oriented in the same direction as the text of the portion of the communication in which it appears, not at 90⁰ or upside down.

In addition, this text must be included in a box within the border of the communication. For mailed materials, this box cannot be within the address panel.

Are Internet and other electronic communications covered?

Most Internet and electronic communications, such as email, text messages, social media postings, and material placed at no charge on non-campaign websites, are not covered. Three types of Internet communication are covered:

- Paid electoral advertising, including promoted content. The cost of producing and placing the ad is covered.
- Content placed on a free site and linked to by paid advertising or promoted content. The cost of the ad or promoted content, as well as the production cost of the linked content, are covered.
- Websites whose primary purpose is influencing elections. Anything placed on such a site is considered an ad and its production is covered, even if there is no charge to place it, as is the cost of maintaining the site.

For example, if an organization whose primary purpose is not the influencing of elections spends \$3,000 to create a “Vote for Smith” video and places it on its own site or uploads it to YouTube for free, no expenditure is reported. However, if the organization pays \$500 to place the video on another site, it is considered paid electoral advertising and the \$3,500 cost of placing and producing the video is covered. If the organization places the video

for free on “VoteForSmith.org,” the \$3,000 production cost is covered, since anything placed on a website whose primary purpose is the influencing of elections is considered paid electoral advertising. In addition, whoever created “VoteForSmith.org” must report the cost of creating and maintaining the site.

Are ads featured on search engines or social media sites required to have a “paid for by” notice?

Yes. All paid ads must include a “paid for by” notice as shown for printed materials above. The notice may be in either the text or image portion of the ad. If it is impractical to display a clearly readable notice, the following alternatives will be accepted:

- If the ad links to the spender’s website, that page can have the notice.
- If the ad links to content on an external page, such as a YouTube video, the content can have the notice.
- If the ad links to the spender’s profile page on a free social media site, that page can have the notice (for example, the notice can be on the cover photo of a Facebook page).
- If a promoted ad on Twitter is generated by the spender’s account in the spender’s own name, no additional identification is required.

If the ad uses the alternatives above and links to a page that contains the paid for by notice, the relevant links must be included in the communication documentation submitted to the CFB.

Are “promoted” or “sponsored” posts sent out from my social media account reportable communications?

Yes. Independent spenders must report all of their paid social media advertising. While the information you place on your profile page is not covered, any information that you pay to “promote” or “suggest” to users is considered paid Internet advertising.

There are two ways this information can be reported to the CFB:

1. Each promoted or suggested post, paid advertisement, promoted hash tag, promoted account, or similar paid content that is distributed through a social media site can be reported as an individual communication if it has met the reporting threshold.
2. In each disclosure period, a single communication can be reported, showing all paid material that was posted through a particular social media site. This includes, but is not limited to, promoted or suggested posts, paid advertisements, promoted hash tags, promoted accounts, and similar paid content. Independent spenders must also submit a link to the page that this information is being distributed from.

For example, if an independent spender opens a \$5,000 advertising campaign with Facebook to run a month-long campaign that calls for a daily budget of \$150 per day on various posts and runs five ads during the month, the independent spender would file one communication titled “Facebook Ads,” with a single document containing a copy or screen shot of all paid posts or ads, along with a link to the independent spender’s profile page. This communication would have one \$5,000 expense for online advertising associated with it.

In the situation described above, if the spender’s Facebook campaign ran through multiple disclosure periods, the spender would report one communication in each disclosure period containing all paid posts or ads run during the period. To report the expenditure, the spender would report the amount spent in each period. So if the overall campaign was \$5,000 and the spender spent \$3,000 in the first period and \$2,000 in the second period, the spender would report a \$3,000 expenditure associated with the first round of communications in the first statement period and \$2,000 in expenditures associated with the second round of communications in statement period two.

These two options exist for daily disclosure as well, with each day being its own disclosure period.

How are discounted and in-house expenses reported?

All expenditures must be reported at their fair market value – what it would typically cost to obtain the good or service in the marketplace. If a firm or consultant charges an independent spender its standard rate to produce a flyer the amount charged is the fair market value. However, if the vendor gives a discount outside of the usual course of business, the amount of the discount must be reported as well. If the flyer is produced in-house, there may be no invoice because no money has changed hands. In this case, the independent spender must estimate the fair market value and report it. Note however, that 1) expenditures of less than \$100 do not have to be reported, and the cost of designing a simple flyer in-house may fall below this threshold, and 2) services provided by individuals who volunteer their time do not have to be reported.

Can a candidate also be an independent spender?

Yes, depending on how the candidate mentions another candidate. If a campaign engages in joint work with another campaign (where each campaign pays for its share of the benefit), or if a campaign lists other candidates as endorsers – without identifying them as candidates or promoting their election – then no independent expenditure has been made. But if a campaign independently uses the names or pictures of other candidates and identifies them by the office they are running for or promotes their candidacy, then an independent expenditure has been made and may have to be reported. In addition, independent expenditures by candidates can affect the amount of public funds the campaign can receive. Contact the CFB for more information.

What records must be kept?

Records of communications, expenditures, and contributions – including those that do not trigger reporting – must be kept for three years to verify compliance with these rules. However, once a document has been submitted to and received by the CFB, it no longer needs to be kept.

How can an organization or person obtain guidance on whether an expenditure is reportable?

In addition to informal conversations with the CFB staff, if an organization or person is unsure whether these rules apply to a particular communication or circumstance, it may seek written guidance. Guidance will be provided within no more than seven days; during the two weeks before the election, guidance will be provided within 24 hours. Obtaining guidance is voluntary, and applies only to the exact communication submitted to the CFB, and distributed exactly as described.

What are the penalties for non-compliance with these rules?

The City Charter authorizes the Board to assess civil penalties on the independent spender of up to \$10,000 for each violation of these regulations, and intentional or knowing violations may also be punishable as misdemeanors. Independent spenders are encouraged to consult with the CFB ahead of time if they are in doubt about the timing and content of reports, or to obtain guidance in advance as noted above.

Does reporting with the CFB satisfy the New York State Board of Elections reporting requirements?

No. The Board of Elections and the CFB have different reporting requirements for independent spenders. Please contact the Board of Elections for additional information.

This guide summarizes and explains the independent expenditure provisions of the [New York City Charter](#) and the [CFB Rules](#); it does not replace or supersede them. For assistance, contact the CFB at IEMail@nyccfb.info or 212-409-1853.

9/21/18
For Ballot Proposals