

Disclosure of Independent Expenditures: Revised Proposed Rules (February 2012)

Substantive Changes from Proposed Rules (September 2011) NYC Campaign Finance Board – February 13, 2012

Electioneering communications

- Our definition of electioneering communication has been changed to more closely match the federal definition. The changes are in response to feedback received by the Board concerning materials that might not be intended to influence an election, such as issue advocacy concerning the City budget. The net result is that much less material will be covered. [Note: If the date of the primary is changed, we may choose to revisit the timing of the electioneering communications “window.”]

	Old definition of EC	New definition of EC
Modes of communication	All	Broadcast communications, paid ads, and mass mailings only. Literature and phone calls are no longer covered, as is the case at the federal level.*
When delivered	Within 90 days of an election	Within 30 days of a primary, or 60 days of a general election (federal standard)
By whom	Any speaker	501(c)(3) organizations are exempt from disclosure requirements for candidate-related electioneering communications.
About whom	Candidates only	Candidates and ballot proposals
Content	References a candidate’s character or fitness; comments on his/her public record	Mentions a candidate (federal standard)

**The federal standard does not cover mass mailings. However, based on research showing that a significant percentage of campaign-related spending in NYC is done through mass mailings, we have included them.*

Ballot proposals

- The requirement to disclose spending regarding ballot proposals has been clarified to include expenditures starting with the petitioning period.
- Spending for electioneering communications regarding ballot proposals must be disclosed. This includes spending by 501(c)(3) organizations, because IRS regulations allow these groups to advocate for or against ballot proposals.

Contributions

- Membership dues from individuals and revenue from goods and services are no longer contributions.
- Reporting of contributions received from other entities is now retroactive to January 1 of the year prior to the year of the election (the federal standard), rather than to the first day of the election cycle, shortening the coverage by two years.

Covered Expenditure

- Expenditures of less than \$100 are neither reportable nor counted towards the reporting thresholds. This will relieve spenders from tracking or reporting *de minimis* expenditures for things like photocopies or staff time.
- “Mass mailing” is defined as a mailing of 500 pieces or more similar pieces in a month, the federal standard.
- Expenditures by media outlets made in the ordinary course of business are not covered. This tracks the New York State standard.
- Expenditures to create an email attachment are no longer covered.
- Spending on internet communications is not covered, except for express advocacy expenditures for 1) paid ads and 2) websites whose primary purpose is the influencing of elections.
- Expenditures for “any other form of communication to the general public” has been replaced with “any other form of paid political advertising.” Expenditures for buttons, pens, clothing, and similar paraphernalia are no longer covered.
- Expenditures on candidate-related electioneering communications by 501(c)(3) organizations are exempt from disclosure requirements. This was a concern of many who commented. As section 501(c)(3) precludes spending money on candidate advocacy, it is unlikely that these organizations are engaging in “sham” issue advocacy designed to impact the outcome of an election. Spending on electioneering communications related to ballot proposals is covered, because the IRS allows 501(c)(3)s to advocate for or against ballot proposals.

Reporting

- The semi-annual reports required in the first three years of the election cycle have been eliminated (except for the unlikely event of ballot proposals voted on at special elections). Instead, the first report, due January 15 of the election year, covers any expenditures made before that date.
- Reporting of contributions received from other entities is now retroactive to January 1 of the year prior to the year of the election (the federal standard), rather than to the first day of the election cycle, shortening the coverage by two years.
- The disclosure system does not require an indication of whether a communication supports or opposes a particular candidate or ballot proposal. This was a concern of many who commented, particularly non-partisan groups.
- Invoices for independent expenditures must be reported when they become available, instead of when the expenditure is reported.
- Communications, expenditures and contributions that occurred prior to the effective date of these rules (30 days after adoption by the Board) will not be required to be reported.
- In the unusual instance of a ballot proposal vote taking place at a special election, there is a provision for additional reporting prior to the year of the election.
- Information about the independent spender is reported as part of each disclosure report, rather than in advance or as it changes.

Reporting by candidates

- The rules have been clarified to make it clear that the requirements for disclosure of independent expenditure rules do not change the reporting requirements for candidates, or for actors who are not engaging in independent expenditures.

Document retention

- Once records have been provided to and received by the Board, they no longer need to be maintained by the independent spender.