



Guide to the Revised Proposed Independent Expenditure Disclosure Rules in New York City Municipal Elections

This guide explains the revised proposed independent expenditure disclosure rules published by the Campaign Finance Board on February 16, 2012. The rules, which begin on the seventh page of this document, contain revisions to the proposed rules released in September 2011. Comments on the revised proposed rules will be accepted until Friday, March 2, 2012 and should be sent to IEMail@nyccfb.info or Executive Director, NYC Campaign Finance Board, 40 Rector Street, New York, NY 10006.

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. There are no limits on what may be raised or spent; the independent expenditure rules require disclosure only.

What makes an expenditure “independent” of a candidate?

The New York City Charter states that an independent expenditure is one in which no candidate, agent of a candidate, or political committee of a candidate has “authorized, requested, suggested, fostered or cooperated.” This means that the candidate cannot cooperate with the independent spender in any way concerning the expenditure. Arranging with the candidate to pose for a picture for a poster, discussing where leaflets will be distributed, or having someone with a connection to the candidate plan the expenditure are all examples of factors that would make an expenditure not independent. These expenditures are not covered by the independent expenditure rules. If you are unsure about whether an activity is an independent expenditure, a campaign expenditure, or neither, please contact the Campaign Finance Board.

What kinds of independent expenditures must be reported?

An independent spender must report an expenditure if it meets the 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 proposal, exceeds \$1,000. Once the \$1,000 threshold has been met, all future expenditures of \$100 or more concerning that candidate or proposal must be reported.
- 2) It is for the design, production, or distribution of **covered communications**. Covered communications include TV, radio, and other broadcast communications, all paid political advertising, and mass mailings of 500 or more similar pieces made in a month. They do not include individual phone calls, in-person communications, the placement of content for free on Internet sites, or email, text messages, social media postings, or other forms of electronic communication. If the communication is for express advocacy (see below), then all printed materials, and more than 500 live or recorded phone calls with a similar script made in a month, are also covered.
- 3) The communication is either an **express advocacy** communication made at any time during the election cycle, or an **electioneering** communication made within 30 days of a primary or 60 days of a general or special election.
 - Express advocacy means supporting or opposing a candidate or ballot proposal using words like “vote for,” “reject” or other phrases that can have no reasonable meaning other than advocating for or against the candidate or proposal, such as “Candidate X is who we need” or “Proposal Y would be bad for our city.” As noted above, express advocacy communications via broadcasts, paid advertising, mass mailings, literature and phone banks are all covered.
 - Electioneering means mentioning the name of a clearly identified candidate or ballot proposal just before an election. In order to cover as few materials as possible that simply refer to candidates without

intending to influence an election, electioneering communications include only broadcasts, paid advertising, and mass mailings, and only those distributed shortly before the election; communications via literature and phone banks are not covered. In addition, certain tax-exempt nonprofits (known as 501(c)(3) organizations), which are prohibited by the IRS from advocating for or against candidates, are exempted from the definition of electioneering communications regarding candidates.

Mode of communication	Express advocacy Uses “magic words” or their equivalent at any time	Electioneering communication Uses the name of a candidate or proposal within 30 (Primary) or 60 (General) days of the election
Cable, TV, Satellite, Radio	Covered	Covered
Print ads, Billboards	Covered	Covered
Mass mailings	Covered	Covered
Phone banks	Covered	Not Covered
Leaflets, Fliers, Palmcards	Covered	Not Covered
Paid Internet ads	Covered	Not Covered
In-person	Not Covered	Not Covered
Individual call or letter	Not Covered	Not Covered
Buttons, Pens, Clothing	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.

What information does the independent spender need to report to the CFB?

When an independent spender makes more than \$1,000 in cumulative independent expenditures of \$100 or more that refer to a given candidate or ballot proposal, it must begin filing periodic disclosure reports. The CFB’s web-based reporting system will advise independent spenders of which information needs to be reported, relieving the need to track the amounts being spent on each candidate or ballot proposal. If there is no activity during a reporting period, no report is required. Each report covers information about:

- **The Independent Spender:** Independent spenders must disclose information about their officers, owners, board members, and treasurer. This information only has to be reported once, unless it changes during the election year.
- **Communications and Expenditures:** When a covered communication is first distributed, a copy of the communication must be filed with the CFB in the next disclosure report, along with information about each expenditure of \$100 or more made in the course of its creation, production and distribution. A copy of each 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 apportioned between them.
- **Contributions:** If an independent spender that is an organization makes more than \$5,000 in independent expenditures of \$100 or more that refer to a single candidate during the 12 months before the election, it must report the source of certain contributions for the duration of the election cycle. Contributions received *from organizations* starting January 1 of the year before the election must be reported; contributions received *from individuals* must be reported only 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 contributions that are restricted from being spent on elections covered by the CFB. In addition, as specified in the City Charter, there is no contribution reporting requirement for independent spenders that work solely on ballot proposals, or that are individuals.

Do communications by organizations to their members and stockholders need to be reported?

Some do; most do not. As shown in the chart below, most communications made directly to members and stockholders are not reportable, as they are not covered communications, are neither express advocacy nor electioneering, or are specifically exempted by the rules. Notably, phone banks and routine newsletters by organizations to their members or stockholders are exempt, even if they contain express advocacy, as are communications that relate to internal deliberations to determine an organization’s endorsements. (These exemptions do not apply to organizations whose primary purpose is to influence elections.) Excluding these routine communications from the disclosure rules recognizes the role that such organizations play in educating and informing their members and stockholders more generally about public policy and other issues, while requiring disclosure for communications that are otherwise similar to typical campaign material.

Other than the newsletters and phone banks noted above, whether a communication is covered has nothing to do with its audience. Organizations do not have to keep track of where materials are sent or disclose mailing lists. For example, if a membership organization produces 10,000 mailers supporting a candidate, the cost of producing those mailers is an independent expenditure, regardless of to whom they are distributed. However, if the same material were printed in a routine newsletter, the expenditure would be exempt.

Type of communication to members or stockholders	Example	Is it reportable as an independent expenditure?
Discussions at meetings or among members/stockholders		No. In-person discussions aren’t covered communications.
Member activation activities	Recruitment mailing or calls for campaign event	No. These activities aren’t covered communications.
Internal deliberations among members or stockholders	Materials advocating for an endorsement	No. Internal deliberations are exempt.*
Emails, text messages, social media postings, clothing, buttons, and individual phone calls and letters		No. These communications aren’t covered.
Phone banks, and routine newsletters and periodicals	October newsletter (election edition). GOTV calls to stockholders.	No. These activities are exempt when directed at members/stockholders.*
Posting for free on a web site	Video on YouTube or organization’s site	No. These communications aren’t covered.**
Electioneering communication flyers	“Come hear Jim Doe at our contract rally”	No. Electioneering communication does not include flyers.
Express advocacy flyers	“Vote for Jim Doe”	Yes. Express advocacy does include flyers.
Mass mailings, except for newsletters	“Vote for Jane Smith” mailer	Yes. (Member/stockholder newsletters are exempt.)
Paid ads in any medium, or express advocacy flyers, targeted at members or stockholders	“Attention all NRA members”	Yes. The fact that the message is targeted at members/stockholders doesn’t prevent it from being received by people who are not members/stockholders.

*This exemption does not apply if the primary purpose of the organization is to influence elections.

**This exemption does not apply if the primary purpose of the website is to influence elections.

What are examples of independent expenditures that are and aren't reportable?

Reportable

- Paying someone to create a mailer, ad, or express advocacy poster or flyer.
- Printing a mailer or express advocacy poster or flyer.
- Sending out a mailing.
- Producing or placing a paid advertisement.
- Paying people to hand out express advocacy literature on the street or door to door.
- Maintaining or posting materials to a website created to influence an election.
- Renting or licensing a mailing list used exclusively for a covered mailing.

Not reportable

- Any of the above costs, if associated with a newsletter distributed solely to an organization's members or stockholders.
- Rent, management, and other overhead expenses not directly related to the creation, production, and distribution of a covered communication.
- Blogging, sending out emails or texts, or maintaining websites other than noted above.
- Purchasing, licensing, or renting general use mailing lists, even if used for a covered mailing.
- Services provided by individuals who volunteer their time.
- Expenditures made by media outlets in the normal course of business to cover news stories.
- Any expenditure of less than \$100.

When do reports need to be filed, and for how long?

All reporting is done using the CFB's web-based reporting system. Reports of spending relating to candidates are only filed in election years, with the first report covering any expenditures made in the time prior to the election year (certain ballot proposal spending must be reported in the year before the election). Reports are due about every two months from January through July, and more frequently just before and after the primary and general, for a total of up to ten reports. During the two weeks before each election, communications, expenditures, and contributions must be reported within 24 hours of being made or received. A complete reporting schedule can be found on the CFB website.

Once the \$1,000 per candidate or ballot proposal threshold for the reporting of expenditures has been met, all future communications and expenditures of \$100 or more that refer to that candidate or ballot proposal must be reported. Once the \$5,000 threshold for the reporting of contributions has been met, all future contributions from organizations, and all future contributions totaling \$1,000 or more from individuals, must be reported for the duration of the election cycle. The reporting system will advise independent spenders of what information needs to be reported, relieving the need to track the amounts being spent on each candidate or ballot proposal. If during a given reporting period no reportable expenditures have been made nor reportable contributions received, no report need be filed for that period.

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 notice. The notice must be of a conspicuous size for printed material, must be spoken for radio or telephone communication, and must be both written and spoken for broadcast visual communication. There is no identification requirement for ballot proposal material, although independent spenders are encouraged to include them, particularly if the source of the material is not clear.

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

In addition to informal conversations with the CFB, if an organization or person is unsure whether these rules apply to a particular communication, it may seek written guidance. Guidance will be provided within 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.

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. Two types of Internet communication are covered:

- Paid political advertising. The cost of placing and producing the ad is covered.
- Websites whose primary purpose is the influencing of elections. Anything placed on such a site is considered an ad, even if there is no charge to place it, and cost of maintaining the site is covered as well.

For example, if an organization spends \$3,000 to create a “Vote for Smith” video and places it on its own site (which contains primarily non-electoral content), or uploads it to YouTube for free, no expenditure is reported, since there was no charge to place the video, and the website’s primary purpose is not the election of Smith. However, if the organization pays \$500 to place the video on another site, it is considered paid political advertising. Therefore, the \$3,500 cost of placing and producing the video is covered. If, on the other hand 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 political advertising. In addition, whoever created “VoteForSmith.org” must report the cost of creating and maintaining the site. Please contact CFB with questions about Internet communications.

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 an independent spender pays a firm or consultant to produce a communication (a flyer, for example), the amount charged is, by definition, the fair market value and is what would be reported. However, if the vendor gives a discount outside of the usual course of business, then the amount charged is below the fair market value, so 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.

What records must be kept?

Records of communications, expenditures, and contributions must be kept for three years to verify compliance with these rules. However, once a document has been submitted to and received by the Board, it no longer needs to be kept.

What happens if an expenditure is made in cooperation with a candidate?

Under existing CFB rules, most expenditures made with the cooperation of a candidate are considered to have been made by that candidate, will count against any appropriate expenditure limits, and must be reported as both an expenditure and an in-kind contribution. There are serious potential consequences to a candidate’s campaign for not reporting all of the activity with which it was involved, such as penalties for non-reporting and/or overspending.

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. The CFB will issue penalty guidelines for various violations that take into account the severity of the behavior. 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.

This guide summarizes and explains the independent expenditure provisions of the [City Charter](#) and the revised proposed independent expenditure disclosure rules; it does not replace or supersede them. For assistance, contact Jesse Schaffer, Director of Special Compliance, at jschaffer@nyccfb.info or 212-306-5229.

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Chapter 13 Disclosure of Independent Expenditures

Rule 13-01 Definitions.

Except as otherwise provided, the definitions set forth in Rule 1-02 apply in this chapter. In addition, the following terms shall have the following meanings:

“Ballot proposal” means a municipal ballot proposal, initiative, measure, or referendum. Activities associated with ballot proposals initiated by petition include the circulation of petitions to place the proposal on the ballot. Activities associated with ballot proposals not initiated by petition include those conducted after the measure or language is filed with the City Clerk.

“Clearly identified” means: (1) the name of the candidate or ballot proposal appears; (2) a photograph or drawing of the candidate appears; or (3) the identity of the candidate or ballot proposal is otherwise apparent by unambiguous reference.

“Contribution” means any monetary gift made to an entity. Contributions do not include membership dues paid by an individual or revenue from goods and services.

“Covered communication” means an express advocacy communication or electioneering communication.

“Covered election” means a covered election as defined in Charter § 1052(a)(15)(a)(iii).

“Covered expenditure” means an expenditure directly related to the design, production, or distribution of a covered communication. An expenditure made during the ordinary conduct of business in connection with covering or carrying a news story, commentary, or editorial by any broadcasting station (including a cable television operator, programmer, or producer), website, newspaper, magazine, or other periodical publication, including any Internet or electronic publication, is not a covered expenditure.

“Electioneering communication” means a communication that: (1) is disseminated by means of a radio, television, cable, or satellite broadcast, a paid advertisement such as in a periodical or on a billboard, or a mass mailing; (2) is disseminated within 30 days of a covered primary or special election, or within 60 days of a covered general election; and (3) refers to one or more clearly identified ballot proposals and/or candidates for a covered election. Electioneering communication shall not include a candidate-related communication made by an organization operating and remaining in good standing under Section 501(c)(3) of the Internal Revenue Code of 1986.

“Entity” means an entity as defined in Charter § 1052(a)(15)(a)(ii).

“Express advocacy communication” means a communication that contains a phrase including, but not limited to, “vote for,” “re-elect,” “support,” “cast your ballot for,” “[Candidate] for [elected office],” “vote against,” “defeat,” “reject,” or “sign the petition for,” or a campaign slogan or words that in context and with limited reference to external events, such as the proximity to the election, can have no reasonable meaning other than to advocate the election, passage, or defeat of one or more clearly identified ballot proposals and/or candidates in a covered election, and is disseminated by means of: (1)

radio, television, cable, or satellite broadcast; (2) telephone communication; (3) mass mailing; (4) other printed material; or (5) any other form of paid political advertising. Paid political advertising shall not include communications over the Internet, except for: (1) communications placed for a fee on another individual or entity's website; or (2) websites formed primarily for, or whose primary purpose is, the election, passage, or defeat of a candidate in a covered election or of a ballot proposal.

“Fair market value” means: (1) for goods, the price of those goods at the time received in the market in which they ordinarily would have been purchased; and (2) for services, other than those provided by an unpaid volunteer, the hourly or piecework charge for the services at a commercially reasonable rate prevailing at the time the services were rendered.

“Independent expenditure” means an independent expenditure as defined in Charter § 1052(a)(15)(a)(i).

“Independent spender” means an individual or entity that makes an independent expenditure.

“Mass mailing” means a mailing by United States mail, common carrier, or facsimile of more than 500 pieces of mail matter of an identical or substantially similar nature within any 30-day period.

“Member” means: (1) any individual who, pursuant to a specific provision of an organization's articles or bylaws, has the right to vote directly or indirectly for the election of a director or directors or an officer or officers or on a disposition of all or substantially all of the assets of the organization or on a merger or on a dissolution; or (2) any individual who is designated in the articles or bylaws as a member and, pursuant to a specific provision of an organization's articles or bylaws, has the right to vote on changes to the articles or bylaws, or pays or has paid membership dues in an amount predetermined by the organization so long as the organization is tax exempt under Section 501(c) of the Internal Revenue Code of 1986. Members of a local union are considered to be members of any national or international union of which the local union is a part and of any federation with which the local, national, or international union is affiliated.

“Stockholder” means an individual who has a vested beneficial interest in stock, has the power to direct how that stock shall be voted, if it is voting stock, and has the right to receive dividends.

“Telephone communication” means 500 or more telephone calls, whether live or recorded, of an identical or substantially similar nature within any 30-day period.

Rule 13-02 Disclosure Statements.

Each disclosure statement shall consist of the following information:

(a) **Filer Information.**

- (1) All independent spenders shall provide their:
 - name, mailing address, telephone number, email address, and employer information;
 - authorized liaison's name, mailing address, email address, and telephone number;
 - and
 - other similar information that may be required by the Board.
- (2) Independent spenders that are entities must also provide their:
 - website URL;
 - treasurer name, mailing address, email address, telephone number, and employer information;
 - type of organization;

- name and employer information of principal owners; and
- name and employer information of board members and officers or their equivalents.

(3) Independent spenders that are individuals must also provide their occupation and employer information.

(b) **Communications.**

(1) When an independent spender makes covered expenditures that aggregate in excess of \$1,000 during an election cycle for communications that refer to a specific candidate or ballot proposal, it must report these communications, and each future communication associated with an expenditure of \$100 or more that refers to that candidate or ballot proposal. Expenditures of less than \$100 shall not be covered expenditures for the purposes of this subdivision. Each communication shall be disclosed in the reporting period in which it is first published, aired, or otherwise distributed, except that no communication is required to be disclosed before the \$1,000 threshold has been reached. For each communication, the independent spender shall provide:

- The type of communication;
- Its distribution date;
- The names of the candidates and/or ballot proposals referred to in the communication;
- For a printed communication, an electronic or paper copy of the communication;
- For a broadcast or Internet communication, an audio, video, or source file or script; and
- Such other similar information as the Board may require.

(2) **Member/Shareholder exemption.** When directed solely at an entity's own members or shareholders, routine newsletters or periodicals, telephone calls, and communications relating to the internal deliberations of the entity's endorsements, shall not be required to be reported. This exemption does not apply to party committees, constituted committees, political clubs, or other entities organized primarily for the purpose of influencing elections.

(c) **Expenditures.**

(1) When a covered communication has been reported, each covered expenditure of \$100 or more associated with that communication must be reported. If the communication refers to more than one candidate or ballot proposal, only those expenditures for candidates or ballot proposals that have met the \$1,000 threshold need be reported. Each expenditure shall be disclosed in the reporting period in which the expenditure is incurred, except that no expenditure is required to be disclosed prior to the reporting of its associated communication. For each expenditure, the independent spender shall provide:

- The names of the candidates or ballot proposals referred to by the associated communication;
- The name of the vendor;
- The date, amount, and purpose;
- The names of the individuals or entities paying for the expenditure, if not the independent spender;
- An invoice detailing the expenditure, when it becomes available; and
- Such other similar information as the Board may require.

- (2) **Valuation.** All expenditures shall be reported at their fair market value. If it is not practicable to obtain an invoice, the independent spender shall use a reasonable estimate of fair market value and shall provide a written record supporting the estimate.
 - (3) **Apportionment.** For reporting purposes, an expenditure associated with a communication that that refers to more than one candidate or ballot proposal shall be apportioned among the candidates or ballot proposals based on the following factors:
 - (i) The focus of the communication;
 - (ii) The geographic distribution or location of the communication;
 - (iii) The subject matter of the communication;
 - (iv) The relative prominence of references to and/or the appearance of a candidate or ballot proposal in the communication, including the size and location of references to the candidate or ballot proposal and any photographs of the candidate;
 - (v) The timing of the communication; and
 - (vi) Other circumstances surrounding the communication.
- (d) **Contributions.**
- (1) When an independent spender that is an entity makes covered expenditures of \$100 or more that aggregate in excess of \$5,000 in the twelve months preceding the election for communications that refer to any single candidate, it is required to report:
 - (i) All contributions accepted from other entities since the first day of the calendar year preceding the year of the covered election; and
 - (ii) All contributions aggregating in excess of \$1,000 accepted from an individual during the 12 months preceding the election.
 - (2) Each contribution shall be disclosed in the reporting period in which it was received. For each contribution, the independent spender shall provide:
 - (i) For each contribution accepted from another entity, the entity's name, address, and type of organization;
 - (ii) For each contribution accepted from an individual, the individual's name, address, occupation, and employer information;
 - (iii) The date of receipt and amount of each such contribution accepted; and
 - (iv) Such other similar information as the Board may require.
 - (3) **Exemption for earmarked contributions.** Contributions that are earmarked for an election that is not a covered election, or for an explicitly stated non-electoral purpose, are not required to be reported; provided, however that records of these contributions must be maintained and may be requested by the Board to verify their qualification for this exemption.

- (e) **Verification.** Each independent spender filing a disclosure statement shall verify that each reported expenditure referring to a candidate was not authorized, requested, suggested, fostered, or cooperated in by such candidate, an agent of such candidate, an opponent of such candidate, or an agent of such opponent. The independent spender shall verify that the disclosure statement is true and complete to the best of the filer's knowledge, information, and belief. The disclosure statement shall contain such signatures or notarizations as may be required by the Board.
- (f) **Format.** All disclosure statements shall be submitted electronically as specified by the Board. Supporting documents shall be submitted electronically, by hand, or by common carrier.

Rule 13-03 Disclosure Dates.

- (a) **Filing dates.** The Board shall publish a schedule of disclosure statement filing dates and reporting periods based on the following:
 - (1) **Primary and general elections.**
 - (i) Disclosure statements are due on January 15, March 15, May 15, and July 15 of the election year.
 - (ii) Additional disclosure statements are due:
 - (A) For a primary election: 32 and 11 days before and 10 days after the election.
 - (B) For a general election: 32 and 11 days before and 27 days after the election.
 - (C) For a runoff election: 10 days after the election.
 - (iii) During the 14 days before a primary or general election, or a related runoff election, an independent spender shall submit a disclosure statement to the Board within 24 hours of distributing any reportable communication, making any reportable expenditure, or receiving any reportable contribution.
 - (2) **Special elections.**
 - (i) Disclosure statements are due 32 and 11 days before and 27 days after the election.
 - (ii) For a runoff special election, a disclosure statement is due 27 days after the election.
 - (iii) During the 14 days before a special or runoff special election, an independent spender shall submit a disclosure statement to the Board within 24 hours of distributing any reportable communication, making any reportable expenditure, or receiving any reportable contribution.

(3) **Ballot proposals.**

- (i) Disclosure statements for ballot proposals shall be made in accordance with paragraph (1) of this section.
- (ii) For ballot proposals anticipated to be voted on at a special election, additional disclosure statements are due on January 15 and July 15 of the year prior to the year of the election.

- (4) An independent spender that has not distributed any reportable communications, made any reportable expenditures, or received any reportable contributions within a reporting period is not required to file a disclosure statement for that period. The Board's published schedule of disclosure statement filing dates shall reflect that if a disclosure statement is due to be submitted on a Saturday, Sunday, or legal holiday, submission shall be considered timely if made on the next business day.

(b) **Reporting periods.**

- (1) The reporting period for the first disclosure statement containing communications and/or expenditures related to candidates in a primary or general election shall begin on the first day of the election cycle. The reporting period for the first disclosure statement in a special election, or containing communications and/or expenditures related to ballot proposals, shall begin when the first communication is distributed or expenditure is made.
- (2) The reporting period for each subsequent disclosure statement shall begin on the third day before the deadline for the submission of the previous disclosure statement.
- (3) The reporting period for all disclosure statements shall conclude on and include the fourth day before the deadline for the submission of that disclosure statement.
- (4) The Board's published schedule of reporting period dates shall reflect that if a disclosure statement is due to be submitted on a Saturday, Sunday, or legal holiday, the reporting period will conclude on and include the fourth day before the next business day.

Rule 13-04 Identification of Communications.

- (a) When an independent spender makes covered expenditures of \$100 or more that aggregate in excess of \$1,000 during an election cycle, the communication associated with the expenditure that exceeds the \$1,000 threshold and all subsequent communications, regardless of dollar value, shall include the words "paid for by" followed by the name of the independent spender.
- (b) The identification shall be in the following form:
 - (1) For printed material, an Internet advertisement, or a website, the identification shall be in a font of conspicuous size and style;
 - (2) For a communication broadcast on radio, the identification shall be clearly spoken at the beginning or end of the communication;
 - (3) For a communication broadcast by television, satellite, cable, or similar medium, the identification shall be both written and clearly spoken at the beginning or end of the communication; and

- (4) For a telephone communication, the identification shall be clearly spoken at the beginning or end of the communication.
- (c) This requirement shall not apply to items upon which identification would be impractical, or to member/shareholder communications described in Rule 13-02(b)(2).

Rule 13-05 Non-Independent Expenditures.

An expenditure by an individual or entity referring to a candidate, that was authorized, requested, suggested, fostered by, or cooperated in by such candidate or the opponent of such candidate, or their agents, is not an independent expenditure and is not governed by this Chapter. Factors used by the Board to determine whether an expenditure is independent or non-independent are referenced in Rule 1-08(f).

Rule 13-06 Guidance for Independent Spenders.

Prior to dissemination of a communication, an individual or entity may seek guidance regarding whether the communication would be subject to the rules of this chapter by submitting a written request in the form and manner prescribed by the Board, including a description or sample of the proposed communication and a description of its proposed dissemination. If the request is received more than 14 days before the election, guidance shall be provided within seven days, and if such request is received during the 14 days prior to the election, guidance shall be provided within 24 hours. Such guidance applies only to the communication exactly as submitted and disseminated exactly as described, and constitutes neither approval nor disapproval of the content, appropriateness, or accuracy of the communication.

Rule 13-07 Document Retention.

Independent spenders must maintain for three years after the date of the election to which they apply: (1) records that enable the Board to verify the accuracy of disclosure statements, including bills for goods or services used to produce and disseminate a communication, as well as records of all contributions received by independent spenders that are entities; and (2) copies of all advertisements, pamphlets, circulars, flyers, brochures, and other printed communications disseminated, and a schedule of all radio or television time purchased, and scripts used therein or the audio or video source files. Documents previously provided to and received by the Board do not need to be maintained by the independent spender.

Rule 13-08 Complaints and Investigations; Board Determinations.

- (a) The following procedures shall apply for complaints and investigations regarding potential violations of Charter § 1052(a)(15):
 - (1) Initiation of proceeding. A proceeding pursuant to Charter § 1052(a)(15)(e) may be commenced when: (1) the Board receives a written complaint sworn to or affirmed, alleging the commission or omission of acts in violation of the Charter or this chapter, or (2) the Board, on its own initiative, undertakes an investigation of a possible violation of the Charter or this chapter.

- (2) Service of complaints. A complaint shall be filed by mailing it to, or by personally serving it on, the New York City Campaign Finance Board.
 - (3) Contents of complaint. A complaint shall specify times, places, and names of witnesses to the acts charged as violations of the Charter or this Chapter to the extent known. A complaint shall be based on personal knowledge, if possible. If a complaint is based on information and belief, the complainant shall state the source of that information and belief. Copies of all documentary evidence available to the complainant shall be attached to the complaint.
 - (4) Initial complaint processing. Upon receipt of a complaint, the Board will review the complaint for substantial compliance with the requirements of paragraph (3), and if the complaint complies with those requirements, the Board shall within 10 days after receipt mail to each respondent notification that the complaint has been filed, and enclose a copy of the complaint. If a complaint does not comply with the requirements of paragraph (3), or the Board deems it to be facially lacking in merit, the Board shall dismiss the complaint and shall so notify the complainant.
 - (5) Opportunity to respond to complaint. Within 20 days from mailing by the Board of a copy of the complaint to a respondent, or within such lesser time as may be specified by the Board for complaints received less than 40 days before the election, the respondent may submit an answer sworn to or affirmed, which may set forth reasons why the Board should dismiss the complaint. If, based upon its review of the complaint and any answer filed, the Board determines the complaint to be lacking in merit, the Board shall dismiss the complaint.
 - (6) Investigation. Following receipt of a complaint, or at any time, if acting on its own initiative, the Board may conduct an investigation into possible violations of the Charter or this Chapter. In its investigation, the Board may use its investigative powers pursuant to Charter § 1052(a)(5). An investigation may include, but is not limited to, field investigations, desk and field audits, the issuance of subpoenas, the taking of sworn testimony, the issuance of document requests and interrogatories, and other methods of information gathering.
- (b) The following procedures shall apply to determinations regarding potential violations of Charter § 1052(a)(15):
- (1) Determination that complaint lacks merit. Following an investigation, the Board may determine that a complaint is lacking in merit or that violations of the Charter and this chapter have not been substantiated and dismiss the complaint or terminate the investigation.
 - (2) Notice and opportunity to contest.
 - (i) If the Board has reason to believe that a violation of Charter § 1052(a)(15) or this chapter has occurred, the Board shall notify the individual or entity in writing of the alleged violation and proposed civil penalty. Such notice shall:
 - (A) Set forth in detail the legal basis for the Board's reason to believe there is a violation of Charter § 1052(a)(15) or this chapter;

- (B) Notify the individual or entity of the opportunity to submit information and documentation for the Board’s consideration within a reasonable time period to be specified in such notice;
 - (C) If sent prior to the election, notify the individual or entity of the opportunity to appear before the Board or its designee at a hearing to contest the alleged violation and proposed civil penalty; and
 - (D) If sent after the election, notify the individual or entity of the opportunity to appear before the Board or its designee at a hearing, or to appear before a hearing officer, to contest the alleged violation and proposed civil penalty. Adjudications conducted after an election shall meet the requirements set forth in Charter § 1046 unless such procedures are waived by the individual or entity.
- (ii) Unless the individual or entity is specifically notified to the contrary by the Board, the opportunity to submit information and documentation described in the notice shall be the only such opportunity, and any information and documentation that is not timely received by the Board may, at the Board’s sole discretion, be disregarded.
 - (iii) Following this opportunity to submit information and documentation, consideration of any information and documentation submitted, and consideration of any appearance before the Board or its designee, the Board may determine the amount of civil penalties for any violations it determines to have occurred, and shall provide notice setting forth in detail the legal basis of the Board’s determination. If these amounts, as determined by the Board, are not paid by the payment deadline set forth in the notice, they may be sought through appropriate enforcement action.

Rule 13-09 Implementation.

This chapter shall not apply to communications or expenditures made, or contributions received, prior to the effective date of this chapter.