



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

ONE ASHBURTON PLACE, ROOM 411
BOSTON, MASSACHUSETTS 02108

TEL : (617) 979 - 8300
(800) 462 - OCPF
EMAIL : OCPF@CPF.STATE.MA.US

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MEMORANDUM

To: Interested Persons
From: OCPF
Subject: Reports of Independent Expenditures Made by Individuals or Entities Other than Independent Expenditure PACS

M.G.L. c. 55, § 18A requires “every individual, group, association, corporation, labor union, political committee, or other entity that makes independent expenditures in an aggregate amount exceeding \$250 during any calendar year” to file reports of independent expenditures. OCPF promulgated regulations at 970 CMR 2.17 to govern the disclosure of independent expenditures. This memorandum is intended to explain the statutory and regulatory requirements that apply where such entities (*excluding independent expenditure political action committees*) make an independent expenditure.¹

I. INDEPENDENT EXPENDITURES DEFINED

M.G.L. c. 55, § 1 defines an independent expenditure as “an expenditure made or liability incurred by an individual, group, association, corporation, labor union, political committee, or other entity as payment for goods or services to expressly advocate the election or defeat of a clearly identified candidate; provided, however, that the expenditure is made or incurred without cooperation or consultation with any candidate or a nonelected political committee organized on behalf of the candidate or an agent of the candidate and is not made or incurred in concert with or at the request or suggestion of the candidate, a nonelected political committee organized on behalf of the candidate or agent of the candidate.”²

¹ Independent expenditures made by independent expenditure political action committees (“IEPACs”) are disclosed on IEPAC reports, not IE reports. Where IEPACs make independent expenditures referencing multiple candidates, IEPACs must also apportion expenditures in the same manner as individuals or groups making IEs, as described in this memorandum. See IB-10-03. Independent expenditures made by traditional PACs are disclosed in the monthly reports of expenditures filed by the PAC’s bank. (PACs should clarify expenditures by noting that the expenditures were IEs). Traditional PACs making IEs must *also* file IE reports.

² Activities that may constitute “coordination,” i.e., activities in “cooperation or consultation” with a candidate, are discussed in detail in OCPF’s Interpretive Bulletin, IB-06-01.

II. INDEPENDENT EXPENDITURE REPORTS

Independent expenditure reports (“IE reports” or “18A reports”) are filed by individuals, groups, associations, corporations, labor unions, and political committees (excluding independent expenditure political action committees), and any other entities making independent expenditures of more than \$250 (aggregated) in a calendar year to support or oppose a candidate. M.G.L. c. 55, § 18A. If the candidates supported or opposed by the independent expenditure (“IE”) disclose their activity with OCPF, the independent expenditure reports are filed electronically with OCPF. If the candidates that are supported or opposed by the IE disclose their activity with a local election official, a paper IE report is filed with the local election official in the city or town in which the election is taking place. *If an expenditure of more than \$250 is made for a communication that supports or opposes multiple candidates, then an IE report is required, even if the pro rata value for each candidate referenced in the communication is less than \$250.*

Independent expenditure reports are due within seven (7) business days of the date the goods or services are utilized.³ However, if the goods or services are utilized after the 10th day, but more than 24 hours before the date of any election, a 24-hour report must be filed within 24 hours of utilization. Id. See Example 7, below.

IE reports must disclose the following: 1) the name of the individual or entity making the expenditures; 2) the individual’s or entity’s address; 3) the candidates referenced in the expenditures and whether the expenditure supports or opposes the named candidates; 4) the date, vendor, vendor address, purpose, and amount of any expenditure made or liability incurred; 5) the date the goods or services are utilized; 6) the total amount spent for the expenditure; and 7) the amount spent per candidate.⁴

III. FILING AN INDEPENDENT EXPENDITURE REPORT

Individuals or entities making independent expenditures to support or oppose candidates who file with OCPF must electronically file an independent expenditure report, using OCPF’s web-based reporting system. Any entity other than an IE PAC, that makes independent expenditures, must register to file reports disclosing the independent expenditure, by following this link: <https://www.ocpfreporter.us/Account/Register>.⁵ Once the filer has obtained a user name and password, he or she should take the following steps to file an IE report:

³ The date of utilization is the date items are distributed or made public. Mailings are considered “utilized” for purposes of Section 18A on the date they are deposited at the post office. For example, if an association independently purchases flyers supporting a candidate on March 1, but the flyers are not brought to the post office until April 1, the utilization date is April 1 and the 18A report is due within 7 business days of April 1. If those flyers are never distributed, the association is not required to file an 18A report.

⁴ A 24-hour report must include the same information as an independent expenditure report that would be filed within seven business days of utilization, except it may exclude the amount of an expenditure if that information is not available at the time the 24-hour report is due. However, if that information is not included on the 24-hour report, it must be provided in an amendment to the 24-hour report filed within 7 business days of the date the expenditure was utilized.

⁵ A traditional PAC, even though it has an existing CPF ID number and password used to file PAC reports, must, in order to disclose independent expenditures, register with OCPF and create a password to file independent expenditure reports. Click the link for OCPF’s video tutorial on how to register: <https://www.youtube.com/watch?v=4vTGA5NQUGs>.

- 1) Log in with the username and password.
- 2) Select “Create a Draft Report.”
- 3) Select “Create a Draft 18A Report.”
- 4) The filer is automatically directed to the “File an Independent Expenditure Report” tab; once on that page, review the Filer Information to ensure the information is correct.⁶
- 5) Select the “Expenditures” tab.
- 6) On the Expenditures tab, select the candidate to whom this expenditure relates from a drop-down menu and enter the vendor information, specific purpose information (i.e., “mailing”), the amount of the expenditure, whether the expenditure supports or opposes the selected candidate, the date of the expenditure, and the date the goods or services are utilized.⁷
- 7) Once all fields in the Expenditures tab are complete, click “Save” - the “Total Expenditures” box at the bottom of the page will update to include the entered expenditures.
- 8) Continue to add entries until all expenses related to a particular independent expenditure are represented in the Total Expenditures box.
- 9) Once all relevant expenses have been entered into the Expenditures tab and the Total Expenditures box accurately reflects the total cost of the independent expenditure, filers *must check the acknowledgement at the bottom of the page and then click “E-File” to file the report.*

If an independent expenditure supports or opposes more than one candidate, the filer is required to break down the total expenditure based upon the proportionate amount spent on materials referencing each candidate and whether the materials were distributed in that candidate’s district. See Examples 3 and 7, below. The filer is required to disclose the expenditure attributed to each candidate, even if an attribution to a particular candidate does not exceed \$250, if the expenditure, in the aggregate, exceeds \$250. See Example 6, below. If an independent expenditure requires payments to more than one vendor, the filer is required to file one report with separate expenditures for each vendor. See Example 5, below.

As noted in Section II, any individuals or entities making independent expenditures to support or oppose candidates who disclose their activity with a local election official must file an independent expenditure report on paper with the local election official in the city or town in which the election is taking place. The paper form, Form M18A, may be obtained from local election officials or on OCPF’s website at ocpf.us.

IV. EXAMPLES

Example 1: On July 1, an individual designs a flyer supporting Candidate A, a candidate for state representative, and spends \$400 at ABC Printing Company to make copies. The individual

⁶ The first time a filer uses OCPF’s web-based reporting system to file an IE report, the filer will be asked to provide the filer type (individual, corporation or organization, or governmental unit) and the filer’s name, address, and, if applicable, the filer’s officer or treasurer, on the “Filer Information” tab. That information will be saved and pre-filled for any future IE reports filed using the filer’s username and password. The information may be changed at any time by logging in to the reporting system and updating the information entered on the Filer Information tab.

⁷ If the expenditure relates to candidate who is not registered with OCPF, the filer may select “Unregistered Candidate” from the drop-down menu. A field will then appear in which the filer may enter the name of the unregistered candidate.

distributes the flyers to neighbors by hand on July 5. The individual is required to electronically file an independent expenditure report with OCPF within 7 business days of July 5. The independent expenditure report will reflect utilization on July 5 of flyers purchased from ABC Printing Company for \$400, and indicate that the flyers supported Candidate A.

Example 2: On August 1, an organization spends \$50,000 at ABC Printing Company to design, print, and mail postcards opposing Candidate B, a candidate for governor. The postcards are mailed statewide on August 6. The organization is required to electronically file an independent expenditure report with OCPF within 7 business days of August 6. The independent expenditure report will reflect a single expenditure to ABC Printing Company in the total amount of \$50,000 on August 6 for the design, printing, and mailing of postcards opposing Candidate B.

Example 3: On August 1, an association spends \$30,000 at ABC Printing Company to design, print, and mail post cards opposing Candidates C, D, and E, all candidates for state representative. The postcards are mailed as follows: 50% are sent to Candidate C's district; 30% are sent to Candidate D's district; and the remaining 20% are sent to Candidate E's district. The post cards are brought to the post office on August 6. The association is required to electronically file an independent expenditure report with OCPF within 7 business days of August 6. The independent expenditure report will reflect an expenditure to ABC Printing Company in the total amount of \$30,000 on August 1 and utilization of the goods or services on August 6. The association will attribute the amount of the expenditure for each candidate based upon the percentage of the communication that was sent to each candidate's district. Therefore, the association would attribute the costs of the mailing by entering the following as three separate entries on the Expenditures tab of the IE Report: \$15,000 (50%) for postcards for Candidate C; \$9,000 (30%) for postcards for Candidate D; and \$6,000 (20%) for postcards for Candidate E.

Example 4: On July 1, an individual spends \$400 to make copies of a flyer supporting Candidate F, a candidate for state representative. The individual subsequently decides not to distribute the flyers and instead discards them. Because the flyers were not utilized, no disclosure is required.

Example 5: On August 1, an association spends a total of \$100,000 to produce and air a television advertisement opposing Candidate G, a gubernatorial candidate: \$20,000 is spent for production with ABC Media Company, and \$80,000 is used to purchase air time on two local TV stations at \$40,000 each. The advertisement first airs on October 5. The association is required to electronically file an IE report with OCPF within 7 business days of October 5. The IE report will reflect total expenditures in the amount of \$100,000 on August 1 and utilization of the goods or services on October 5, with three separate expenditure entries – one for ABC Media Company (in the amount of \$20,000 for production of an ad opposing Candidate G) and one for each of the two local TV stations (in the amount of \$40,000 each for a media buy/air time for that same candidate).⁸

Example 6: On August 1, a political action committee ("PAC") spends \$800 with ABC Media Company for robocalls supporting 3 candidates (H, I, and J) for state representative. The robocalls are made in one afternoon on August 5: Candidate H's district receives one half of the

⁸ If the association contracts with a consulting or media company to purchase air time (e.g., the association pays ABC Media Company \$100,000, and ABC Media Company uses \$80,000 of that to purchase air time with two local television stations), the association is required to file a subvendor report in addition to an IE report. For more information on subvendor reporting, please see OCPF Interpretive Bulletin 10-04 (Subvendor Reports).

robocalls and the other half of the robocalls are split between districts represented by Candidates I and J. The PAC is required to electronically file an IE report with OCPF within 7 business days of August 5 (the date of utilization). The IE report will reflect a total expenditure in the amount of \$800 to ABC Media Company on August 1, and must also reference the date of utilization, August 5, with three separate expenditure entries attributing \$400 (50%) to Candidate H, \$200 (25%) to Candidate I, and \$200 (25%) to Candidate J. The PAC is also required to disclose the expenditure for robocalls on its monthly bank report (by appending the report to itemize the portion of the robocalls attributable to each candidate and by noting that the expenditures were IEs).

Example 7: On September 1, an association spends \$30,000 at ABC Printing Company to design, print, and mail postcards opposing Candidates K, L, and M, all candidates for state representative. The postcards are brought to the post office on September 3, 6 days before the primary and then sent in equal numbers to each candidate's district. The association is required to electronically file a preliminary independent expenditure report with OCPF no later than September 4 (i.e., within 24 hours of utilization). Because the postcard was sent to each candidate's district in equal numbers, the association will attribute the amount of the expenditure equally among the candidates - \$10,000 for a mailing for Candidate K, \$10,000 for a mailing for Candidate L, and \$10,000 for a mailing for Candidate M – by entering each item separately on the Expenditures tab of the IE report.

Example 8: On March 1, an individual spends \$400 at ABC Printing Company to make copies of a flyer supporting Candidate N, a candidate for school committee, and distributes them to neighbors by hand on March 5. The individual is required to file an independent expenditure report on paper with the local election official within 7 business days of March 5, disclosing an expenditure to ABC Printing Company for flyers supporting Candidate N in the total amount of \$400 on March 1, and utilization on March 5.

Example 9: The \$400 flyer referenced in Example 8 supports four candidates for school committee. The individual paying for the flyer is required to file an independent expenditure report with the local election official within 7 business days of the distribution of the flyer.

Example 10: An individual spends \$200 for a flyer supporting school committee candidate A and distributes the flyer in March. The same individual spends another \$200 in April to distribute a flyer supporting school committee candidate B. No independent expenditure report is required because neither the amount spent on a single expenditure/communication, nor the amount spent to support any candidate, exceeds \$250.

Example 11: An association spends \$9,000 to support two non-federal candidates in Massachusetts and one federal candidate. The portion of the total expenditure relating to the federal candidate would not be reported to OCPF but instead would be regulated by the Federal Election Commission (FEC). The portion of the expenditure relating to the support of non-federal candidates, however, would be disclosed in an independent expenditure report filed with OCPF. If the association is mailing 6,000 pieces at a cost of \$9,000, and the mailing treats each candidate equally (i.e., each gets 1/3 of the mailing), and is distributed equally to people who might vote for the candidates (i.e., 2,000 pieces are sent to each candidate's district), then 1/3 of the total value (or \$3,000) would be attributed to each candidate. The \$3,000 expenditure for each non-federal candidate- for a total of \$6,000 (not \$9,000) – would be reported to OCPF, and the \$3,000 spent to support the federal candidate would be reported to the FEC, if that is required by federal law.

Example 12: If the association referred to in Example 11 distributes a 2-sided mailing referencing the federal candidate on one side, and the other side is split equally between the two non-federal candidates, then $\frac{1}{2}$ of the value of the total cost would be attributed to the federal candidate, and the two non-federal candidates would split the remaining $\frac{1}{2}$ of the value at $\frac{1}{4}$ each (assuming that the mailings are equally distributed in the non-federal candidates' respective districts). So, in this example, for a mailing that costs \$9,000, but is distributed evenly between districts for each of the candidates, \$4,500 (or $\frac{1}{2}$) would be attributed to the federal candidate. The remaining \$4,500 in value would be attributed to the non-federal candidates in an independent expenditure report filed with OCPF, disclosing a total of \$2,250 for each of the two non-federal candidates.

For further information and guidance with respect to this memorandum, please contact OCPF at 617-979-8300.