



Lawyers Alliance
for New York

Connecting lawyers, nonprofits, and communities

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NYC Campaign Finance Board rules on disclosure of independent expenditures in NYC elections to take effect May 16, 2012

On March 15, 2012 the Campaign Finance Board (CFB) voted to adopt the final rules for the disclosure of independent expenditures in New York City Elections. 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 now be reported to the CFB. The rules will take effect on May 16, 2012.

The rules require disclosure of two specific types of spending: express advocacy communications, which contain phrases that can have no reasonable meaning other than to advocate for or against the election of candidate or ballot proposal; and electioneering communications, which refer to a candidate or ballot proposal within 30 days of a primary election or within 60 days of a general election.

The rules adopted by the CFB modify earlier proposed rules by exempting 501(c)(3) organizations from disclosure requirements for electioneering communications. In creating this exemption, CFB recognized that 501(c)(3) organizations are prohibited by the Internal Revenue Code from engaging in partisan political activities to support or oppose candidates of office. The revision is responsive to Lawyers Alliance's concern that the definition of electioneering in the original draft proposed rules might subject 501(c)(3) organizations engaged in legislative advocacy to duplicative or onerous reporting.

Additionally, the final rules clarify and narrow the content of covered communications that must be reported as independent expenditures as well as narrow the window of time such communications are considered electioneering communications. Lawyers Alliance understands that the CFB is attempting to issue rules that reflect New York City voters' desire for public disclosure of independent expenditures without restricting the ability of groups to communicate about significant issues being debated by elected officials within 60 days of a general election and 30 days before a primary election.

Activities of 501(c)(3) groups meant to influence the outcome of a city ballot proposal are subject to disclosure under the final rules. This reporting requirement is consistent with voter and CFB intent to capture independent spending on NYC ballot initiatives because advocacy surrounding ballot initiatives is permissible for 501(c)(3) organizations and is not currently reportable to other governmental agencies.

Lawyers Alliance intends to assist CFB in training 501(c)(3) organizations that may be unfamiliar with CFB's reporting scheme in order to support to ensure compliance.

Background: In November 2010, City voters approved a proposed amendment to the City Charter requiring disclosure of independent expenditures meant to influence the outcome of City elections. CFB is responsible under the City Charter for promulgating rules governing such disclosure. CFB held a public hearing on this topic on March 10, 2011; issued initial proposed rules in September 2011; held a second public hearing on October 27, 2011; and issued revised proposed rules in February 2012. Lawyers Alliance presented oral and written testimony at the fall 2011 hearing and March 1, 2012 written comments on the revised proposed rules (www.lawyersalliance.org/news_legal_alerts.php#3).

CFB Final Rules: <http://www.nyccfb.info/PDF/rulemaking/Final-Proposed-IE-Rules.pdf>.

CFB Report on independent expenditures in New York City elections:

http://www.nyccfb.info/PDF/issue_reports/Disclosure-of-Independent-Expenditures-in-NYC-Elections.pdf.

Lawyers Alliance staff is available to answer questions about the laws related to lobbying and political activity by nonprofit organizations.

This alert is meant to provide general information only, not legal advice. Please contact Elizabeth M. Guggenheimer, Deputy Executive Director at (212) 219-1800 ext. 231, eguggenheimer@lawyersalliance.org or visit our website www.lawyersalliance.org.

Lawyers Alliance for New York is the leading provider of business and transactional legal services for nonprofit organizations that are improving the quality of life in New York City neighborhoods. Our network of pro bono lawyers from law firms and corporations and staff of experienced attorneys collaborate to deliver expert corporate, tax, real estate, intellectual property, and other legal services to community organizations. By connecting lawyers, nonprofits and communities, we help nonprofits to develop affordable housing, stimulate economic development, promote community arts, and operate and advocate for vital programs for children and young people, the elderly, and other low-income New Yorkers.

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