

COMMITTEE QUALIFICATION

A. What is an Independent Expenditure Committee?

An individual or entity (e.g., corporation, firm, business, or proprietorship) that makes one or more independent expenditures to pay for a communication (e.g., mailing, lawn signs, newspaper ads) totaling \$1,000 or more in a calendar year that is not coordinated with the affected candidate or committee qualifies as a committee and must file reports under the Act. Section C reviews when a multi-purpose organization may qualify as an independent expenditure committee.

What is an Independent Expenditure?

An “independent expenditure” is a payment for a communication that **expressly advocates** the election or defeat of a **clearly identified** California state or local candidate or the qualification, passage, or defeat of a clearly identified state or local ballot measure, **and** the communication is **not coordinated** with or “made at the behest” of the affected candidate or committee. The following information provides an overview of how to determine if the three factors are met for a communication to be considered an independent expenditure. Whether or not a communication does in fact expressly advocate a clearly identified candidate or measure will always depend upon the words and message. The FPPC can offer guidance if a sample communication is provided.

Express Advocacy

A communication *expressly advocates* support or opposition of a clearly identified candidate or ballot measure under the following scenarios:

- The communication uses words such as “vote for,” “elect,” “cast your ballot,” or “defeat.”

Quick Tip

This manual is for individuals or entities making independent expenditures from their own funds. If an individual or entity receives contributions totaling \$2,000 or more in a calendar year for the purpose of making contributions or independent expenditures in connection with California candidates or ballot measures, a recipient committee is formed, and different reporting applies. This includes instances when two or more individuals or entities make separate payments totaling \$2,000 or more for a single communication, they also may qualify as a recipient committee.

- The communication is made within 60 days prior to an election and the communication refers to a clearly identified candidate or ballot measure so that when taken as a whole, unambiguously, suggests only one meaning which is to urge a particular result in an election. The message must not be susceptible to any reasonable interpretation other than as an appeal to vote for or against a specific candidate or ballot measure. Examples include: “Smith’s the One,” or “Only Nancy Brown can clean up City Hall.”

A communication does not expressly advocate if it does not mention an election, candidacy, or the merits of a measure, and it focuses on a legislative, executive or judicial matter. An example may be “Thank you Supervisor Smith for continuing to support our farmers.”

Clearly Identifies

A communication *clearly identifies* a candidate or measure when the candidate’s name, photograph, or status as a candidate or officeholder is used, or the measure’s name, popular title, or official title is used. Some flyers may mention a group of candidates by some well-defined characteristic of the group. Even if no specific names are used, these, too, may be communications which *clearly identify* candidates.

Is the Expenditure Independent or Coordinated with the Campaign?

An independent expenditure committee must be aware that the communication cannot be coordinated with the affected candidate or measure committee. If there is coordination, the payments are reported as contributions, and, among other things, may be subject to contribution limits.

An expenditure is **not considered independent** of a candidate or committee if:

- It is made at the request, suggestion, or direction of, or in cooperation, consultation, or coordination with the candidate or committee for whose benefit the expenditure is made.

Ex 1.1 - In May, Sandra Farmer paid \$4,000 for a mailing that included the statement “Vote No on Measure A.” Sandra, acting on her own, paid for the mailing with her personal funds and qualified as an independent expenditure committee.

In October, MBI Development Corporation paid for a series of automated telephone calls to voters in Southern California that said “Vote for Smith for Governor.” The corporation, acting independently of the candidate’s committee, paid \$12,000 for the calls. The corporation qualified as an independent expenditure committee.

Ex 1.2 - Several individuals contributed funds, and the pooled funds exceeded \$2,000, to a political consultant to develop newspaper ads that will state Vote Yes on Measure C. In this example, the ad may be an independent expenditure but because the individuals pooled their funds for the communication, the group qualified as a primarily formed ballot measure recipient committee to oppose the measure. In these circumstances, use Manual 3 for campaign filing requirements and not this manual.

- The candidate or committee or their agents have made or participated in making any decision about the content, timing, location, mode, intended audience, distribution, or frequency of placing the communication.
- The creator, producer or distributor of the communication, or the person paying for the communication has had discussion and agreement with the candidate or committee, or their agents, regarding the content, timing, location, mode, intended audience, distribution, or placement of the communication.

There is a rebuttable presumption that an expenditure is coordinated with or “made at the behest of” a candidate or committee under the following circumstances:

- **Committee’s Needs.** It is based on information about the candidate’s or committee’s campaign needs or plans provided to the expending person by the candidate or committee, such as information concerning campaign messaging, planned expenditures, or polling data.
- **Agent.** It is made by or through any agent of the candidate or committee in the course of the agent’s involvement in the current campaign. “Current campaign” means the period beginning 12 months prior to the date of the primary or special election in which the candidate is on the ballot for an elective office and ending on the date of the general or special runoff election for that office. For a measure, “current campaign” means the period beginning 12 months prior to the date of the election in which the measure is on the ballot.
- **Common Consultants.** The person making the expenditure retains the services of a person who provides either the candidate or the committee supporting or opposing the ballot measure with professional services related to campaign or fundraising strategy for the current campaign.
- **Republication.** The communication reproduces, republishes, or disseminates, in whole or in substantial part, a communication designed, produced, paid for, or distributed by the candidate or committee.

- **Fundraising.** The committee making the expenditure is primarily formed to support the candidate or oppose their opponent and in the course of the current campaign, the candidate who benefits from the expenditure solicits funds for or appears as a speaker at a fundraiser for the committee making the expenditure.
- **Former Staff.** The person making the expenditure is established, run, or staffed in a leadership role, by an individual who previously worked in a senior position or advisory capacity on the candidate's or officeholder's staff within the current campaign.
- **Candidate's Family.** The person making the expenditure is established, run or staffed in a leadership role, or principally funded by an individual who is an immediate family member of the candidate.

Coordination Results in Contribution

When a communication is coordinated with or "made at the behest of" the candidate or committee, the payment for the communication will qualify as a contribution.

However, an expenditure will not be considered to be coordinated with a candidate merely because:

- **Interview.** The person making the expenditure interviews the candidate on issues affecting the person making the expenditure.
- **Photograph or Press Release.** The person making the expenditure has obtained a photograph, biography, position paper, press release, or similar material from the candidate or the candidate's agent.
- **General Request for Support.** The person makes the expenditure in response to a general, non-specific request for support by a candidate or committee, provided that there is no discussion with the candidate or committee prior to the expenditure relating to details of the expenditure.

- **Meeting with Members or Employees.** The person making the expenditure has invited the candidate or committee to make an appearance before the person’s members, employees, shareholders, or the families thereof, provided that there is no discussion with the candidate or committee prior to the expenditure related to details of the expenditure.
- **Prior Contribution.** The person making the expenditure has made a contribution to the candidate or committee.
- **Informed after the Expenditure is Made.** A person informs a candidate or committee that the person has made an expenditure, provided that there is not exchange of information, not otherwise available to the public, relating to details of the expenditure.
- **Expenditure Benefits Another Candidate or Committee.** The expenditure is made at the request or suggestion of the candidate or committee for the benefit of another candidate or committee.
- **Hyperlink.** The communication includes a hyperlink to the Internet website or other social media page of a candidate or ballot measure committee.

FPPC Regulations 18225.7 and 18550.1, summarized above, specify when a communication is considered independent or made at the behest of a candidate or committee. Because the determination is based on specific facts, persons may contact the FPPC for guidance.

B. Affiliated and Non-Affiliated Committees

There are certain situations when payments made by two or more persons are aggregated and the persons are treated as a single committee for reporting purposes.

Under the Act, the term “person” includes an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, limited liability company, committee, and association.

Ex 1.3 – In May, Ellen Gomez attended a fundraiser for a candidate and used her personal funds to pay for the \$500 ticket. In June, she made a \$3,000 independent expenditure from her wholly owned business to oppose a ballot measure and qualified as an independent expenditure committee. Because Ms. Gomez directed and controlled all of the payments, she and her business qualify as a single committee and must disclose her personal contributions as well as the independent expenditures made from her business.

Affiliated individuals and entities will qualify as a single independent expenditure committee, if, together, their independent expenditures total \$1,000 or more, in a calendar year.

The following payments are aggregated:

- Contributions or independent expenditures made from an individual's personal funds and from funds he or she directs and controls
- Contributions or independent expenditures made by two or more entities that are directed and controlled by a majority of the same persons
- Contributions or independent expenditures made by entities that are majority owned by any person. Contributions and independent expenditures made by the majority owner and all other entities majority owned by that person are aggregated unless the entities act independently in their decisions to make contributions or independent expenditures.

The examples in this manual provide general guidance. Every case is unique and we encourage you to contact the FPPC for advice.

C. Multi-Purpose Organizations

A nonprofit or other multi-purpose organization that makes political expenditures in California may also qualify as an independent expenditure committee. The following information summarizes the committee qualification rules for such organizations.

Independent Expenditure Reporting

General Treasury Funds. A nonprofit or other multi-purpose organization that receives donations or other payments (e.g., membership dues) for purposes other than making political expenditures in California but nevertheless does, at times, make independent expenditures in California will qualify as an independent expenditure committee if the organization makes independent

Ex 1.4 – Pace Computers contributed a total of \$9,000 to support various legislative candidates. Under the direction of Pace Computers, Global Software, Inc., a company in which Pace Computers has a greater than 50 percent ownership interest, made an independent expenditure of \$7,000 to support a local candidate. Because Global Software, Inc. did not act independently, the companies qualify as a single committee and will file a single Form 461 listing both contributions and independent expenditures.

Ex 1.5 – Southwest Telecom has a greater than 50 percent ownership interest in American Telecom. Each entity, entirely on its own and with separate decision-making bodies, made independent expenditures of \$1,000 or more. Southwest Telecom made an independent expenditure in connection with a state ballot measure, while American Telecom made independent expenditures in connection with a local ballot measure. Because Southwest Telecom and American Telecom acted completely independently in their decisions, a Form 461 would be filed separately by each company listing only that company's expenditures.

expenditures in a calendar year between \$1,000 and \$50,000. An organization that makes political expenditures of more than \$50,000 in a 12-month period or more than \$100,000 in four consecutive calendar years will qualify as a recipient committee.

Non-Donor Funds. A nonprofit or other multi-purpose organization that uses only non-donor funds for independent expenditures in California will qualify as an independent expenditure committee in each calendar year that the organization's independent expenditures total \$1,000 or more. Examples of non-donor income include interest payments and sales revenue.

A multi-purpose organization that qualifies as an independent expenditure committee is subject to the same campaign disclosure provisions reviewed in this manual as a business entity, including the filing of Form 496 (24-Hour/10-Day Contribution Report), Form 462 (Verification of Independent Expenditures), and Form 461 (Major Donor/Independent Expenditure Report).

Recipient Committee Reporting

A multi-purpose organization that solicits and receives payments from donors totaling at least \$2,000 in a calendar year for the purpose of making contributions or expenditures in California will not qualify as an independent expenditure committee, but will instead qualify as a recipient committee.

A multi-purpose organization will also qualify as a recipient committee if the organization:

- Accepts payments from donors totaling at least \$2,000 subject to an agreement or understanding with the donor that all or a portion of the funds will be used for making contributions or expenditures in California;
- Has existing funds and a subsequent agreement or understanding is reached with the donor that \$2,000 or more of the funds will be used for contributions or expenditures in California; or

Quick Tip

If your 501(c)(4) nonprofit organization makes independent expenditures from general funds of \$50,000 or less in a 12-month period to support or oppose a candidate or ballot measure, even though it does not qualify as a recipient committee that reports donors, the organization must file independent expenditure reports.

Quick Tip

The FPPC website has information about the reporting requirements for multi-purpose organizations.

Quick Tip

A federal or out-of-state political action committee qualifies as a recipient committee when \$2,000 or more in a calendar year is used for expenditures and contributions in California.

- Makes contributions or expenditures in California totaling more than \$50,000 in a 12-month period or more than \$100,000 in four consecutive calendar years using general treasury funds or membership dues.

See information on the FPPC website for recipient committee filing requirements, which are distinctly different from the filing requirements for independent expenditure committees.

Ex 1.6 – A multi-purpose organization provides a variety of services to its members, including insurance services, that result in income to the organization. The organization makes political expenditures from the income producing account and not from its membership dues account. Therefore, the organization does not qualify as a recipient committee. The organization is required to file reports as an “independent expenditure” committee if it makes, in a calendar year, \$1,000 or more in independent expenditures.

Ex 1.7 –A trade association of city businesses raises money for charitable events in the community. One year, the association makes a \$45,000 independent expenditure, 30 days before the election, to oppose a city tax measure on the ballot. The association had not raised the money for political purposes and did not reach an agreement with donors that their payments may be used for political purposes. The association qualifies as an independent expenditure committee and must file the following reports: Form 496, Form 462, and Form 461. If the association had made an independent expenditure of more than \$50,000, it must register as a recipient committee, file related reports and identify donors whose membership dues were used to make the independent expenditures.

D. Other Types of Payments

An entity that makes independent expenditures in California should be aware of the following types of payments that are addressed in the Political Reform Act.

Internet Activity – Uncompensated Individuals

When an individual or group of individuals sends communications that expressly advocate a candidate or measure conducted over or related to the Internet, such as emails, social networking, blogging, website postings, and hyperlinks, this is not reportable activity so long as the individual sending the communication is uncompensated.

Electioneering Communications Identifying State Candidates (No Express Advocacy)

An individual or business entity that makes a payment or promise of payment totaling \$50,000 or more for a communication that 1) clearly identifies a state candidate; but 2) does not expressly advocate the election or defeat of the candidate; and 3) is disseminated, broadcast, or otherwise published within 45 days of the candidate's election, is required to file Form E-530. (See Chapter 3.)

Member Communications

Payments made by an entity (including a business entity) for a communication that supports or opposes a candidate or ballot measure are not contributions or independent expenditures as long as the communication is sent only to the organization's members, employees, shareholders, or their families. The payments may not be for general public advertising, such as billboards, newspaper, radio, or television ads.

Ex 1.8 – If a candidate's neighbor sends emails to his family and friends and posts on his personal social networking site communications supporting the campaign, the communications are not reportable even though the candidate may have provided the neighbor with campaign materials.

Ex 1.9 – A corporation sends a mailing supporting a ballot measure to the corporation's shareholders. The mailing is not a contribution to the ballot measure committee whose position is supported and is also not considered an independent expenditure. The mailing does not trigger disclosure reports.

Local Agency Formation Commission (LAFCO) Proposals

Payments made in connection with Local Agency Formation Commission (LAFCO) proposals may be reportable independent expenditures. These questions are very fact specific, so contact the FPPC for guidance.

CalPERS/CalSTRS Candidates

An individual or business entity that makes independent expenditures of \$1,000 or more in a calendar year to support or oppose candidates seeking certain offices for the California Public Employees' Retirement System or the California Teachers' Retirement System will qualify as an independent expenditure committee.

Government Agency Communications

A state or local agency making payments for campaign activities may become a committee subject to reporting if the payments qualify as contributions or independent expenditures.

Governmental agencies must refer to FPPC Regulation 18420.1 concerning payments for communications that expressly advocate the election or defeat of a clearly identified candidate or measure, or taken as a whole and in context, unambiguously urge a particular result in an election. The rules are somewhat different from those provided for non-governmental entities. For example, the factors a governmental entity will use to determine if a communication unambiguously urges a particular result in an election include either of the following: 1) The agency prepared campaign material such as bumper stickers or television or radio spots; or 2) The style, tenor and timing of the communication can be reasonably characterized as campaign material and is not a fair presentation of facts serving only an informational purpose.

Agencies should refer to FPPC Regulation 18420.1 if there is a question as to whether a communication is considered a campaign communication as the determination will always be based upon the

words used in the particular communication. Note: Laws outside the Act generally prohibit the use of public moneys for campaign activities by a governmental agency.

Payments for Governmental, Legislative, or Charitable Purposes

Behested Payments. This term refers to payments made by a person for a governmental, legislative, or charitable purpose, such as a job or health fair, a charity fundraiser, or a conference on educational issues, when the payment was coordinated or requested by an elected official. This includes payments behested by the official or by his or her agent or employee on the official's behalf.

The source of the behested payment is not required to file a FPPC report. However, the official must disclose the payments on Form 803 if they total \$5,000 or more in a calendar year. The FPPC posts payments made at the behest of state elected officials and members of the Public Utilities Commission on its website.

Ex 1.10 – At Councilmember Stark's request, Diamond Dairy made a \$10,000 donation to the Boys' and Girls' Club. Councilmember Stark will file a Form 803 with the city clerk disclosing the donation and donor's name and address. Diamond Dairy is not required to report the payment.

Answering Your Questions

A. May corporations make independent expenditures in California?

Yes. The Act does not ban independent expenditures by corporations. However, there are restrictions for foreign corporations. See Government Code Section 85320.

B. May a candidate or officeholder make independent expenditures out of personal funds to support or oppose other candidates?

Yes.

C. A property development company has offered to pay the costs of placing an advisory measure on the ballot concerning a new city residential development. The company is not coordinating the expenditures with any other committee. Will the company incur any reporting obligations?

Yes. Payments of \$1,000 or more made to the city to defray the costs of an election are reportable independent expenditures.

D. A multi-purpose organization will use its income producing funds that are held in its general treasury to make a series of independent expenditures in connection with a candidate election. Is a separate bank account required?

No. However, the organization must make the independent expenditures from the income producing funds. The organization must maintain clear records.

Authority

The following Government Code sections and Title 2 regulations provide authority for the information in this chapter:

Government Code Sections

- 82004.5 Behested Payment.
- 82013 Committee.
- 82015 Contribution.
- 82031 Independent Expenditure.
- 82041.3 Made at the Behest of.
- 84224 Behested Payment Disclosure.
- 85310 Communications Identifying State Candidates.
- 85312 Communications to Members of an Organization.

Title 2 Regulations

- 18215 Contribution.
- 18215.2 Uncompensated Internet Activity by Individuals that is not a Contribution or Expenditure.
- 18225.4 Independent Expenditures; When Aggregated.
- 18225.7 Made at the Behest of.
- 18420 Reporting of Campaign Contributions and Expenditures by State or Local Government Agencies.
- 18420.1 Payments by State or Local Agencies for a Campaign Related Communication.
- 18422 Nonprofit and Multipurpose Organization Political Activity Transparency.
- 18531.7 Payments for Communications—Section 85312.
- 18531.10 Communications Identifying State Candidates.
- 18550.1 Independent and Coordinated Expenditures.