

# INDEPENDENT EXPENDITURE REPORTING

### A. Overview

As described in Chapter 8, a payment for a communication that expressly advocates support of or opposition to a candidate or ballot measure, which is not made at the behest of the candidate or measure committee, is an "independent expenditure." Chapter 8 defines in detail "expressly advocates" and "made at the behest of" and provides examples to assist committees in determining whether a payment made for a communication is considered an independent expenditure.

The Political Reform Act ("Act") requires committees making independent expenditures to file reports so that voters are fully informed about who is paying for the communications that urge voters to support or oppose a particular candidate or measure. Because the affected candidate or measure committee will not report the expenditures, the committee making the independent expenditure must file certain reports at the same time the candidate or measure committee is required to file. In addition, a verification form that identifies an individual who is responsible for ensuring that the campaign committee's independent expenditures were not coordinated with the listed candidate or measure committee (or the opponent) must be filed.

This chapter describes how to complete each of the required forms and reviews when and where to file them. In general, a committee that makes an independent expenditure of \$1,000 or more is required to file each of the forms listed below.

- Form 462 (Verification of Independent Expenditures)
- Form 496 (24-Hour/10-Day Independent Expenditure Report)

### Quick Tip

for "member communications" sent solely to an entity or organization's employees, shareholders, or members. See Chapter 8 for information about member communications.

There is an exception

These reports are filed in addition to any required preelection and semi-annual campaign statements (e.g., Form 460). Independent expenditures disclosed on these reports must also be reported on the committee's next Form 460.

# **B.** Filing Deadlines

This chart summarizes the deadlines and filing locations for each of the independent expenditure reports. Additional information is included for each form later in the chapter.

Deadline	Form	Filing Location
Within 24 hours	496	Filing officer where election is
		held
10 days after first IE	462	FPPC by email
		(form462@fppc.ca.gov)

### Notes:

- Form 496 filed in connection with a state election must be filed electronically with the Secretary of State. No paper copies are required.
- Filing deadlines cannot be extended.
- Failure to file a statement on time may result in late filing penalties of \$10 per day for each day the statement is late.
- Failure to file a statement may result in additional penalties of up to \$5,000 per violation.

# C. Valuing Mailings

**Multiple candidates/measures:** The cost of a communication paid for by an independent expenditure that expresses support of or opposition to more than one candidate or ballot measure may be attributed to each featured candidate and ballot measure by

calculating the prorated costs based on the amount of space allotted to each candidate or ballot measure supported or opposed in the mailer.

The value of a mailer that supports or opposes candidates and measures being voted on in different jurisdictions may be prorated based on the number of mailers sent to each candidate's or ballot measure's jurisdiction.

**Political and non-political material:** The cost of a communication paid for by an independent expenditure that contains both express advocacy in support of or opposition to a candidate or ballot measure, as well as non-political material, may be prorated. Costs directly associated with the political message are reportable, including, for example, compensation paid to employees who spend more than 10 percent of their compensated time in a calendar month producing or mailing the political materials, and the pro rata cost of paper, envelopes, and postage. The allocation may be based on the additional weight of the political material or the comparative number of pages between the political and non-political material.

**D. Form 462 (Verification of Independent Expenditures)** 

A state or local general purpose committee that makes an independent expenditure(s) totaling in the aggregate \$1,000 or more in a calendar year to support or oppose a single candidate, single ballot measure, or the qualification of a single ballot measure, must file the Form 462.

The Form 462 identifies an individual who is a principal officer of the committee. Any individual listed as a principal officer on the committee's Statement of Organization (Form 410) may sign the Form 462.

**Ex 11.1** – A PAC produces and mails a one-page flyer urging voters to vote for Proposition 310 and to vote for two statewide candidates. Half of the flyer is devoted to supporting Proposition 310 and the other half equally supports the candidates. The PAC coordinates the mailing with the committee primarily formed to support Proposition 310, but does not coordinate with either candidate's committee. The total cost of producing and mailing the flyer is \$14,400. The PAC has made a nonmonetary contribution to the committee supporting Proposition 310 valued at \$7,200, and has made independent expenditures of \$3,600 apiece supporting the two candidates.

Ex 11.2 – A local association of realtors is holding a golf tournament, which will be featured as a networking and marketing event for its members. The association sends invitations, which include an option for attendees to donate an additional sum earmarked for the association's sponsored committee. Because the invitations include nonpolitical material as well as political material (i.e., the portion of the invitation that solicits contributions for the association's sponsored committee), the costs may be prorated.

### Who is a Principal Officer?

A principal officer is an individual primarily responsible for approving the political activity of the committee such as:

- Authorizing the content of communications.
- Authorizing independent expenditures.
- Determining the committee's campaign strategy.

### When to File

File within 10 days from the date of an independent expenditure that totals, in the aggregate, \$1,000 or more to support or oppose a candidate or measure in a calendar year. A candidate or measure is only required to be listed once for each election.

### Where to File

The Form 462 must be filed via email with the FPPC (<u>form462@fppc.ca.gov</u>). The originally signed form must be maintained with the committee's records for four years.

#### Form 462 Verification of Independent Expenditures

This verification form identifies the individual responsible for ensuring that a campaign committee's independent expenditures were not coordinated with the listed candidate (or the opponent) or measure committee and that the committee will report all contributions and reimbursements as required by law. An independent expenditure is not subject to state or local contribution limits.

Amendment (Explain)

CALIFORNIA FORM 462

	subject to state or local contribution limits.							
	L. Name of Committee:							
1	NAME OF RECIPIENT COMMITTEE, ENTITY OR INDIVIDUA	L			COMMITT	EE ID #		
	CA Technology PAC, Sponsored by CA	A Technology	y Assoc	ciation	135820	1358200		
	STREET ADDRESS							
	1810 21st Street			Sacramento				
	STATE	STATE ZIP CODE E-MAIL						
	CA	95814	۱.	lcooper@cclav	v.com (S	916)555-1640		
2	2. Candidate or Measures:							
	This committee has reported an independent exper The reporting of an independent expenditure may of Code Sections 84204 and 85500.)							
	NAME OF CANDIDATE (First/Last) OR BALLOT MEASURE	SUPPORT	OPPOSE	OFFICE SOUGHT OR HELD/ BALLOT NO./LETTER	JURISDICTION AND DISTRICT, IF ANY	ELECTION DATE		
	Jason Reid		✔	State Assembly	District 26	6/04/XX		
	NAME OF CANDIDATE (First/Last) OR BALLOT MEASURE	SUPPORT	OPPOSE	OFFICE SOUGHT OR HELD/ BALLOT NO./LETTER	JURISDICTION AND DISTRICT, IF ANY	ELECTION DATE		
	NAME OF CANDIDATE (First/Last) OR BALLOT MEASURE	SUPPORT	OPPOSE	OFFICE SOUGHT OR HELD/ BALLOT NO./LETTER	JURISDICTION AND DISTRICT, IF ANY	ELECTION DATE		
	NAME OF CANDIDATE (First/Last) OR BALLOT MEASURE	SUPPORT	OPPOSE	OFFICE SOUGHT OR HELD/ BALLOT NO./LETTER	JURISDICTION AND DISTRICT, IF ANY	ELECTION DATE		
6	3. Verification:							
	I have not received any unreported contributions or reporting period with the candidate or the opponer subject of the expenditure, or with the agents of th under the laws of the State of California that the fol Signature[Signature Required]	nt of the candida e candidate or th	ite who is ne oppon	the subject of the expenditure, with ent of the candidate or the state mea t.	the proponent or the opponent of the st	ate measure that is the		

# E. Completing the Form 462

# 1 Name of Committee

Enter the name and street address of the committee that is making the independent expenditure(s). The address should be the same as the address listed on the committee's Statement of Organization (Form 410).

# **2** Candidates or Measures

List the candidate(s) and measure(s) supported or opposed. If the committee files this form and later makes independent expenditures in connection with other candidates or measures, subsequent forms do not need to repeat the previously identified candidates and measures. Once a candidate or measure is listed on the Form 462, no further Form 462 filings are required for that candidate or measure for that election.

# **3** Verification

The form must be reviewed and signed by the committee's principal officer. If the committee has more than one principal officer, only one individual must sign the Form 462. The individual must be listed on the committee's Statement of Organization (Form 410). The same principal officer is not required to sign each Form 462.

The individual acknowledges, under penalty of perjury, that the committee's independent expenditures were not coordinated with the listed candidate or measure committee (or the opponent) and that the committee will report all contributions and reimbursements as required by law.

# F. Amending the Form 462

To amend a previously filed Form 462, file a new Form 462 with the corrected information, check the "Amendment" box, and provide a brief explanation of the amendment. Amendments must be filed within 10 days of the change. Like the original, the amendment must be signed and dated. The Form 462 amendment must be filed via email with the FPPC (form462@fppc.ca.gov).

**Ex 11.3** –A general purpose committee made independent expenditures to oppose a candidate in the primary election and filed a Form 462 listing the candidate. If the committee makes independent expenditures to oppose the same candidate in the general election, a new Form 462 must be filed since it is a different election.

Ex 11.4 – A general purpose committee made independent expenditures to oppose a candidate in the November general election and filed a Form 462 listing the candidate. The committee then made independent expenditures to support a different candidate in the same election. A new Form 462 must be filed for the second candidate, but the first candidate is not listed again since a Form 462 was already filed for that candidate for that election.

# G. Form 496 (24-Hour/10-Day Independent Expenditure Report)

### **90-Day Election Period**

In addition to the Form 462, a state or local general purpose committee that makes an independent expenditure totaling in the aggregate \$1,000 or more to support or oppose a single candidate or ballot measure during the 90 days prior to a candidate's or measure's election, or on the date of the election, must file **within 24 hours** a separate Form 496 for each candidate or measure.

The 24-hour reports are the most important of the independent expenditure disclosure reports because they provide "real time" information before the election about who is spending money to influence voters about candidates and measures in a particular jurisdiction.

All independent expenditures must also be disclosed on the committee's next campaign statement (Form 460).

Additionally, a Form 496 is required to be filed within 10 business days when a committee makes independent expenditures that total in the aggregate \$5,000 or more to support or oppose the qualification of a single local initiative or referendum ballot measure.

### When to File Form 496

**State Elections:** Committees that make an independent expenditure of \$1,000 or more to support or oppose a single state candidate or a single state ballot measure during the candidate or measure's 90-day election cycle must file a separate Form 496 within 24 hours for each candidate or ballot measure supported or opposed. The report must be filed **electronically** within 24 hours, regardless of the day of the week.

Fair Political Practices Commission advice@fppc.ca.gov

**Local Elections:** Committees that make an independent expenditure of \$1,000 or more to support or oppose a single candidate or single ballot measure during the 90 days prior to the local candidate's or measure's election or on the date of the election must file a separate Form 496 for each candidate or ballot measure supported or opposed. The report must be filed within 24 hours regardless of the day of the week and must be filed by fax, guaranteed overnight delivery, or personal delivery. Regular mail may not be used. Check with the local jurisdiction about possible electronic filing requirements. Local agencies that have an approved electronic filing program may eliminate the filing of a paper Form 496.

A general purpose committee that makes independent expenditures totaling \$5,000 or more to support or oppose the qualification of a single local ballot measure must file Form 496 within 10 business days.

### Where to File Form 496

The Form 496 is filed in the same location(s) that a committee primarily formed to support or oppose the candidate or measure identified in the communication would file. This allows the voters in the jurisdiction where the election is taking place to have access to reports showing who has spent funds attempting to influence them. File a separate report for each candidate or ballot measure supported or opposed.

If the Form 496 is filed electronically with the Secretary of State, no paper copies are required. (Exception: As noted in the chart below, if independent expenditures are made to support or oppose a candidate for the CalPERS or CalSTRS board, a copy must be filed with the relevant board office.) If the Form 496 is required to be filed with a local jurisdiction, an original and one copy must be filed.

Ex 11.5 – Within 90 days of a county election, or on the date of the election, a state general purpose committee makes an independent expenditure of \$4,000 to support a San Joaquin County ballot measure. The committee must file the Form 496 within 24 hours with the San Joaquin County elections office, where the measure is being voted on. If the same committee makes an independent expenditure to support a city council candidate in Stockton within 90 days of the election, or on the date of the election, the committee must also file the Form 496 within 24 hours with the Stockton city clerk's office.

Jurisdiction of Candidate or	Location of Filing Form 496
Measure Supported/Opposed	
Statewide	Secretary of State (electronically)
Senate or Assembly District	Secretary of State (electronically)
CalPERS/CalSTRS	Secretary of State (electronically)
	Also file a copy at CalPERS/
	CalSTRS board office
Multi-County	County with the largest number of
	registered voters in the jurisdiction
	(original and one copy)
County	County in which the candidate or
	measure will appear on the ballot
	(original and one copy).
	LAFCO proposals: County where
	measure likely to appear on the
	ballot and the LAFCO (one copy).
City	City in which the candidate or
	measure will appear on the ballot
	(original and one copy).

Quick Tip

A state general purpose committee that makes independent expenditures to support or oppose local candidates or ballot measures may trigger reporting as a city or county committee instead of a state committee. Similarly, a local general purpose committee that makes independent expenditures to support or oppose state candidates or ballot measures may trigger reporting as a state committee. See Chapter 1 for information on how to determine if the committee is a state, county, or city committee.

If subsequent independent expenditures of \$1,000 or more are made to support or oppose the same candidate or ballot measure, another Form 496 is required to be filed. For example, a committee files a Form 496 in April to disclose an independent expenditure of \$1,500 made to oppose a candidate on the June ballot. In May, the committee makes another independent expenditure of \$1,500 to oppose the same candidate. The committee must file a second Form 496 within 24 hours to report the subsequent independent expenditure. However, if the committee made a \$1,500 independent expenditure in April and made its last independent expenditure of \$500 in May, a second Form 496 is not required.

# Quick

### **Outside the 90-Day Election Cycle (Ballot Measure Reports)**

### **State Elections Only**

In addition to the 90-day, 24-hour reports discussed above, at all times other than the 90-day election cycle, a state general purpose committee that is required to file electronically with the Secretary of State must file **within 10 business days** a Form 496 each time it makes independent expenditures totaling \$5,000 or more to support or oppose the qualification or passage of a **single state ballot measure**. The report must be filed electronically with the Secretary of State.

A general purpose committee that makes independent expenditures totaling \$5,000 or more to support or oppose the qualification of a **single local ballot measure** must file Form 496 within 10 business days.

All independent expenditures must also be disclosed on the committee's next campaign statement (Form 460).

AME OF FILER					Jate of	3/8/XX		Date Stamp	CALIFO	RNIA	106
CA Technology PAC,	Sponsored by CA Te	echnology Ass	ociation		This Filing		_		FOR		496
AREA CODE/PHONE NUMBE	2	I.D. NUME	BER (if applicable)			3			For C	Official Use	e Only
(916) 555-1640		13582>	X		Report No	)	-				,
STREET ADDRESS		•			Amend	ment					
1810 21st Street					to Report	No	_				
CITY		STATE	ZIP CODE		(explain below	· 2					
Sacramento		CA	95814		No. of Pag	ges					
1. List Only One Ca	ndidate or Ballot Me	asure									
NAME OF CANDIDATE S	UPPORTED OR OPPOSED					AME OF BALLOT ME	ASURE SU	PPORTED OR OPPOSE	D		
Jason Reid							00112 001				
OFFICE SOUGHT OR HE	LD	DISTRICT NO.	SUPPORT	OPPOSE		ALLOT NO./LETTER		JURISDICTION		SUPPORT	OPPOSE
State Assembly D	istrict	26		X							
2. Independent Exp	enditures Made Attac	h additional inforn	nation on appro	opriately lab	eled continuat	ion sheets.					
DATE			DE	SCRIPTION C	F EXPENDITU	RE				AMOUNT	
	Mailer Design										
3/7/XX											\$2,100
	Mailer										
3/7/XX											\$37,550
									FPPC Fo advice@fppc.ca.		(Feb/2019

fppc.ca.gov (866/275-3772)/ www.fppc.ca.gov

# H. Completing the Form 496

# A Filer Information

Provide the committee's full name, address, and telephone number as listed on the Statement of Organization (Form 410).

# **B** Date, Report Number, Number of Pages

Indicate the date the report is being filed; assign a unique number to each Form 496, such as 1, 2, 3, PR-1, PR-2, PR-3, etc.; and, indicate the number of pages included in the report.

# 1 Name of Candidate or Ballot Measure Supported or Opposed

Disclose the name, office sought or held, and the district number, if applicable, of the candidate supported or opposed in the communication. Or, disclose the name, ballot number or letter, if assigned, and jurisdiction of the ballot measure supported or opposed. Check the box indicating whether the candidate or ballot measure was supported or opposed by the independent expenditure. **Note:** When filing a \$5,000 ballot measure report (state committees only – see above) outside of the 90-day election cycle, if the measure has not yet been assigned a ballot number or letter, include the title of the measure if the title has been issued by the Attorney General. If the title has not yet been issued, include the subject of the measure.

# 2 Independent Expenditures Made

Disclose the date the committee made the independent expenditure. In the "Description of Expenditure" column, include a description of the independent expenditure (e.g., printing, postage, mail house) and the cumulative-to-date total of independent expenditures relating to each candidate or measure. List the amount of the specific expenditure in the "Amount" column.

The cumulative-to-date total includes independent expenditures made in connection with a candidate or measure's upcoming election. When a committee has made independent expenditures in connection with a candidate's prior election, do not include the amount in the current report. For example, independent expenditures made in connection with a general election would not include the amount of independent expenditures made in connection with the primary election or a prior year's election. The cumulative-to-date total must be accurate on the most recent report filed, but the committee is not obligated to amend the cumulative amount on previous reports.

**Note:** The cumulative-to-date total is not required when filing a \$5,000 ballot measure report (state committees only – see above) outside of the 90-day election cycle.

When reporting an independent expenditure on Form 496, also report the cumulativeto-date total independent expenditures the committee has made for that candidate or measure for the relevant election.

Quick

#### 496 Independent Expenditure Report

NAME OF FILER CA Technolo	ogy PAC, Sponsored by CA Technology Association				LD. NUMBER (If applicable) 13582XX
3. Contribut	ions of \$100 or More Received*				
DATE RECEIVED	FULL NAME, STREET ADDRESS AND ZIP CODE OF CONTRIBUTOR (IF COMMITTEE, ALSO ENTER I.D. NUMBER)	CONTRIBUTOR CODE**	IF AN INDIVIDUAL, ENTER OCCUPATION AND EMPLOYER (IF SELF-EMPLOYED, ENTER NAME OF BUSINESS)	AMOUNT RECEIVED	INTEREST RATES
2/28/XX	CA Technology Association 450 Mill Valley Way, Cupertino, CA 95015 (Intermediary: no donors of \$100 or more)	IND COM OTH PTY SCC		\$200,000	If loan, enter interest rate, if a %
3/2/XX	Jenna Martinez 562 Clarkson Court Santa Clara, CA 95051	X IND COM OTH PTY SCC	Professor Bay Area Technical Institute	\$500	If Ioan, enter interest rate, if a
3/3/XX	Advancing Forward PAC (ID# 13298XX) 1401 L Street, Suite 850 Sacramento, CA 95814	IND COM OTH PTY SCC		\$10,000	If loan, enter interest rate, if a %

# **3** Contributions of \$100 or More Received

Disclose contributions of \$100 or more received since the closing date of the last campaign statement (e.g., Form 460) through the date of the independent expenditure. If no statement has been filed in the current calendar year, start with January 1.

Disclose the name and street address of the donor and, if the donor is an individual, his or her occupation and the name of his or her employer. If the individual is self-employed, disclose the name of the business. Also disclose the date and amount of the contribution and if the contribution is a loan, the interest rate. Once you have disclosed a contribution on the Form 496, it is not necessary to report that contribution on any additional Form 496 filings; however, it must be reported on the committee's next regular campaign statement (e.g., Form 460). .....

### Multipurpose Organizations

A multipurpose organization (e.g., nonprofit) that qualifies as a recipient committee identifies its donors as contributors using the "last in, first out" (LIFO) accounting method if it did not receive the funds for political purposes. It must only itemize contributors of \$1,000 or more instead of \$100 or more as required for contributors that made a payment for political purposes. See Chapter 15 for additional information.

**Note:** If the funds used for an independent expenditure include both funds received for political purposes and LIFO funds, the Form 496 will list donors at both the \$100 and the \$1,000 threshold.

**Ex 11.6** – A multipurpose organization receives \$10,000 from donors for a specific political campaign. The organization makes independent expenditures of \$60,000, using the \$10,000 received specifically for political purposes and \$50,000 from the organization's general membership dues account. The Form 496 will list the donor names that contributed \$100 or more toward the initial \$10,000 and will list the names of LIFO donors at \$1,000 for the remaining \$50,000.

**Ex 11.7** – A multipurpose organization's only payment in California was a \$40,000 independent expenditure using funds only from its general membership dues account. Since the organization does not qualify as a recipient committee, it is not required to list donors in Part 3.

### I. Amending the Form 496

To amend a previously filed Form 496, file a new Form 496 with the corrected information, a new Report Number, the "Amendment" box checked, and a brief explanation of the amendment. The Report Number assigned to the original report being amended should be entered on the "Amendment to Report No." line. There is no deadline for filing amendments. However, amendments should be filed as soon as practicable. File the amendment in the same location(s) as the original.

Quick Tip

See Chapter 15 for information about when a multipurpose organization qualifies as a recipient committee.

> Quick Tip

### Significant

amendments to the Form 496 known before the election should be made as soon as possible. Filers reporting minimal independent expenditures before an election and filing amendments after the election to disclose substantial independent expenditures could be referred to the FPPC's Enforcement Division for nondisclosure.

### **Answering Your Questions**

A. If a state general purpose committee makes an independent expenditure to support a San Diego County candidate, is the Form 496 filed with the Secretary of State or with the San Diego County elections office?

The Form 496 is filed with the San Diego County elections office; it is filed in the same location that a committee primarily formed to support or oppose the candidate or ballot measure identified in the communication would file.

B. Before the primary election, a general purpose committee filed a Form 462 with the FPPC when it made an independent expenditure to oppose a candidate for the state Senate. If the committee makes another independent expenditure after the primary election to oppose the same candidate in the general election, is the committee required to file another Form 462?

Yes. Only one Form 462 is required for each candidate or measure per election, but the primary and general elections are considered to be separate elections.

C. A general purpose committee plans to send out several flyers that expressly support a candidate. If the committee obtains a photograph from the candidate, is the payment for the communication considered to be "made at the behest of" the candidate?

Not necessarily. A payment for a communication is not considered to be "made at the behest of" the candidate merely because the committee obtained a photograph from the candidate. However, the issue of whether a payment is made at the behest of a candidate or committee is fact-specific. For assistance from the FPPC, an email with the pertinent facts may be sent to <u>advice@fppc.ca.gov.</u>

# Authority

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

### **Government Code Sections**

- 81004 Reports and Statements; Perjury; Verification.
- 81004.5 Reports and Statements; Amendments.
- 81005 Reports and Statements; Filing Deadline on Weekend or Holiday.
- 81007 Mailing of Report or Statement.
- 82031 Independent Expenditure.
- 82036.5 Late Independent Expenditure.
- 82044 Payment.
- 82046 Period Covered.
- 82047.6 Principal Officer.
- 84200 Semi-Annual Statements.
- 84200.5 Preelection Statements.
- 84200.6 Special Campaign Statements and Reports.
- 84204 Late Independent Expenditures; Reports.
- 84204.5 Ballot Measure Contributions and Expenditures; Reports.
- 84211 Contents of Campaign Statement.
- 84213 Verification.
- 84215 Campaign Reports and Statements; Where to File.
- 84605 Who Shall File Online.
- 84615 Campaign Reports and Statements -Electronic Filing for Local Agencies.
- 85500 Independent Expenditures; 24-Hour Disclosure; Coordination.

### **Title 2 Regulations**

- 18225.7 Made at the Behest; Independent Versus Coordinated.
- 18227.5 General Purpose Committees.
- 18402.1 Principal Officers.
- 18422 Multipurpose Organization Political Activity Transparency.
- 18423 Payments for Personal Services as Contributions and Expenditures.
- 18428 Reporting of Contributions and Independent Expenditures Required to be Aggregated.
- 18431 Reporting of Expenditures by an Agent or Independent Contractor.
- 18465.1 Verification of Online Filers.