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MEMORANDUM

To: Interested Persons
From: Michael J. Sullivan, Director *mjs*
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

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

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.

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



expenditure political action committees), and any other entities making independent expenditures of more than \$250 (aggregated) in a calendar year to support or oppose one or more candidates. M.G.L. c. 55, § 18A. If the candidates supported or opposed disclose their activity with OCPF, independent expenditure reports are also filed electronically with OCPF. If the candidates that are supported or opposed 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. *Id.*

Independent expenditure reports are due within seven (7) business days of the date the goods or services were utilized.³ However, if the independent expenditure was made 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 total amount spent for the expenditure; and 6) 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. Filers must register for a user name and password on OCPF's website. Once the filer has obtained a user name and password, he or she should take the following steps to file an IE report:

- 1) Navigate to ocpf.us, click on the "E-File" tab, and select "Independent Expenditures" for individuals, groups, or associations;
- 2) Log in with the user name and password;
- 3) Select "Create a Draft Report" and then "Independent Expenditure Report";
- 4) The filer is automatically directed to the "Filer Information" tab; once on that page, review the Filer Information to ensure the information is correct;⁵
- 5) Select the "Expenditures" tab;

³ Goods or services are utilized, for purposes of the campaign finance law, when they are distributed or made public. For example, if an association independently purchases flyers supporting a candidate on March 1, but the flyers are not distributed to the public 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 The first time a filer uses OCPF's web-based reporting system to file an IE or EC 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 or EC reports filed using the filer's user name 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.

- 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, and the date of utilization;⁶
- 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 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 a single expenditure to ABC Printing Company in the total amount of \$400 on July 5 for flyers supporting 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.

⁶ 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.

Example 3: On August 1, an **association** spends \$30,000 at ABC Printing Company to design, print, and mail postcards 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, all 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 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 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).⁷

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 robocalls and the other half of the robocalls are split between districts represented by Candidates J and K. The PAC is required to electronically file an IE report with OCPF within 7 business days of August 5. The IE report will reflect a total expenditure in the amount of \$800 to ABC Media Company on 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 periodic report.

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 mailed in equal numbers to each candidate's district on September 3, 6 days before the primary. The association is required to electronically file a preliminary independent expenditure report with OCPF no later than September 4. If the

⁷ 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).

aggregate amount of the expenditure and the amount spent per candidate are not available at the time the preliminary report is filed, the association is required to amend its report within 7 business days of September 3 to disclose an expenditure to ABC Printing Company in the total amount of \$30,000 to oppose Candidates K, L, and M. 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 in the total amount of \$400 on March 5 for flyers supporting Candidate N.

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