

*Pursuant to section 91.6(f) of title 13 of the NYCRR, the Department of Law has prepared the following guidance to assist the public in understanding and complying with 13 NYCRR section 91.6, Annual Disclosure of Electioneering Activities by Non-501(c)(3) Registrants. Additional information can be obtained by contacting the Attorney General's Charities Bureau at (212) 416-8401.*

## **GUIDANCE TO THE ANNUAL DISCLOSURE OF ELECTIONEERING ACTIVITIES BY NON-501(C) (3) REGISTRANTS**

### **1. Overview**

Section 91.6 of title 13 of the NYCRR ("the rule") requires certain organizations that must register with the Attorney General pursuant to Article 7-A of the Executive Law or Article 8 of the Estates, Powers and Trusts Law to disclose information with respect to "election-related expenditures" made by the organization. Organizations subject to the rule must file an Electioneering Disclosure Schedule ("EDS"), which will be available online at <http://www.charitiesnys.com>, to the annual financial reports they must file with the Charities Bureau of the Office of the Attorney General ("OAG").

### **2. What organizations are covered by the rule?**

The rule applies to "covered organizations." A "covered organization" is any organization exempt from taxation pursuant to section 501(c) of the United States Internal Revenue Code that (i) must register with OAG under Article 7-A of the Executive Law or Article 8 of the Estates, Powers and Trusts Law, and (ii) is "not prohibited by Internal Revenue Code section 501(c) from participating in, or intervening in, any political campaign on behalf of, or in opposition to, any candidate for public office."

This definition exempts 501(c)(3) organizations from filing the EDS, even if they must otherwise register and file annual financial reports with OAG. However, other registered section 501(c) organizations, including but not limited to section 501(c)(4) and 501(c)(6) organizations, are "covered organizations" under the rule and would have to file the EDS.

Covered organizations that make less than \$10,000 in "New York election related expenditures" in a fiscal year do not have to make itemized disclosures on the EDS. (See sections 6(B) & (C) below.) Covered organizations that have made no election related expenditures during the reporting period may so indicate on the EDS and refrain from making any additional disclosures on the form.

See 13 NYCRR § 91.6(a)(2).

*EXAMPLE #1: CITIZENS FOR GOODNESS IS A REGISTERED 501(C)(3) CHARITABLE ORGANIZATION DEDICATED TO SUPPORTING VOTING RIGHTS AND FREE AND FAIR*

*ELECTIONS. IT DOES NOT HAVE TO FILE THE EDS BECAUSE IT IS NOT A "COVERED ORGANIZATION."*

*EXAMPLE #2: SAME FACTS AS IN EXAMPLE NO. 1 EXCEPT THAT CITIZENS FOR GOODNESS IS A REGISTERED 501(C)(4) ORGANIZATION. THE ORGANIZATION IS A "COVERED ORGANIZATION" AND IS REQUIRED TO FILE THE EDS.*

### **3. What types of "election related expenditures" trigger disclosure requirements?**

A covered organization must disclose information on election related expenditures on the EDS. An "election related expenditure" includes:

- any expenditure made, liability incurred or contribution provided for "express election advocacy" or "election targeted issue advocacy"; or
- any transfer of funds, assets, services or any other thing of value to any individual, group, association, corporation, labor union, political committee, political action committee, or any other entity for the purpose of supporting or engaging in "express election advocacy" or "election targeted issue advocacy" by the recipient or a third party.

See 13 NYCRR § 91.6(a)(5).

### **4. What counts as an "election related expenditure" for "express election advocacy?"**

An election related expenditure for express election advocacy is an expenditure for a "communication" that:

- contains words such as "vote," "oppose," "support," "elect," "defeat," or "reject," which call for the nomination, election or defeat of one or more clearly identified candidates, the election or defeat of one or more political parties, or the passage or defeat of one or more constitutional amendments, propositions, referenda or other questions submitted to voters at any election; or
- refers to or depicts one or more clearly identified candidates, political parties, constitutional amendments, propositions, referenda or other questions submitted to the voters in a manner that is susceptible of no reasonable interpretation other than as a call for the nomination, election or defeat of such candidates in an election, the election or defeat of such political parties, or the passage or defeat of such constitutional amendments, propositions, referenda or other questions submitted to the voters in any election.

See 13 NYCRR § 91.6(a)(6).

A "communication" must be in the form of:

- a paid advertisement broadcast over radio, television, cable, or satellite;
- a paid placement of content on the Internet or other electronic communication networks;
- a paid advertisement published in a periodical or on a billboard;
- paid telephone calls to 1,000 or more households;
- mailings sent or distributed to 5,000 or more recipients; or
- printed materials exceeding 5,000 copies.

See 13 NYCRR § 91.6(a)(8).

In quantifying telephone calls to households, mailings sent to recipients, and printed materials produced, include the total aggregate number of calls, mailings or printed materials made or sent during the covered organization's reporting year.

*EXAMPLE #3: CITIZENS FOR GOODNESS IS A REGISTERED 501(c)(4) ORGANIZATION THAT SPENDS SOME OF ITS FUNDS TO BUY A RADIO ADVERTISEMENT IN BUFFALO, NY. THE ADVERTISEMENT URGES LISTENERS TO "SUPPORT" A LOCAL REFERENDUM BANNING SIDEWALK CAFES. THE ORGANIZATION HAS MADE AN EXPENDITURE FOR "EXPRESS ELECTION ADVOCACY."*

*EXAMPLE #4: SAME FACTS AS EXAMPLE NO. 3 EXCEPT THAT THE ANNOUNCEMENT IS PURCHASED FOR A RADIO STATION IN HONOLULU, HI. THE ORGANIZATION HAS MADE AN EXPENDITURE FOR "EXPRESS ELECTION ADVOCACY."*

*EXAMPLE #5: CITIZENS FOR GOODNESS IS A REGISTERED 501(c)(4) ORGANIZATION THAT PAYS FOR A PHONE BANK TO CALL 1,000 OR MORE HOUSEHOLDS IN BUFFALO, NY. CALLERS URGE PEOPLE TO "VOTE FOR ALICIA SMITH." THE ORGANIZATION MAKES NO OTHER POLITICAL EXPENDITURES. THE ORGANIZATION HAS MADE AN EXPENDITURE FOR "EXPRESS ELECTION ADVOCACY."*

*EXAMPLE #6: SAME FACTS AS EXAMPLE NO. 5 EXCEPT THAT CALLERS URGE PEOPLE TO "COME OUT ON ELECTION DAY TO MAKE ALICIA SMITH OUR MAYOR." THE ORGANIZATION HAS STILL MADE AN EXPENDITURE FOR "EXPRESS ELECTION ADVOCACY" BECAUSE IT HAS MADE A "COMMUNICATION" THAT IS SUSCEPTIBLE OF NO REASONABLE INTERPRETATION OTHER THAN AS A CALL FOR THE ELECTION OF A CANDIDATE.*

*EXAMPLE #7: SAME FACTS AS EXAMPLE NO. 5 EXCEPT THAT THE ORGANIZATION CALLS ONLY 999 HOUSEHOLDS IN TOTAL. THE ORGANIZATION HAS NOT MADE AN*

*EXPENDITURE FOR "EXPRESS ELECTION ADVOCACY" BECAUSE IT HAS CALLED FEWER THAN 1,000 HOUSEHOLDS AND THUS HAS NOT MADE A "COMMUNICATION."*

**5. What counts as an "election related expenditure" for "election targeted issue advocacy?"**

***A. Basic Criteria for Election Targeted Issue Advocacy***

An "election related expenditure" for "election targeted issue advocacy" is an expenditure relating to a general, special, or primary election for a federal, state or local office, or any proposition, referendum or other question submitted to the voters in any state or any locality in the United States for a "communication" that is made within forty five days before any primary election (including runoff elections) or ninety days before any general election (including runoff elections) that:

- refers to one or more clearly identified candidates in that election;
- depicts the name, image, likeness or voice of one or more clearly identified candidates in that election; or
- refers to any clearly identified political party, constitutional amendment, proposition, referendum or other question submitted to the voters in that election.

See 13 NYCRR § 96.6(a)(7)(i).

The term "clearly identified" means that the candidate's name, nickname, photograph, or drawing appears, or the identity of the candidate is otherwise apparent, through an unambiguous reference. Such terms as "the Mayor," "your Congressman," "the incumbent," "the Democratic nominee," or "the Republican candidate for County Supervisor" would be examples of such unambiguous references. *Cf.* 11 CFR § 100.17.

A "communication" must be in the form of:

- a paid advertisement broadcast over radio, television, cable, or satellite;
- a paid placement of content on the Internet or other electronic communication networks;
- a paid advertisement published in a periodical or on a billboard;
- paid telephone communications to 1,000 or more households;
- mailings sent or distributed to 5,000 or more recipients; or

- printed materials exceeding 5,000 copies.

See 13 NYCRR § 96.6(a)(8).

*EXAMPLE #8: CITIZENS FOR GOODNESS IS A REGISTERED 501(c)(4) ORGANIZATION THAT MAILS PAMPHLETS TO 5,001 BUFFALO, NY RECIPIENTS WHO ARE NOT MEMBERS OF THE ORGANIZATION. THE MAILING IS SENT FORTY-FIVE DAYS BEFORE A BUFFALO PRIMARY ELECTION IN WHICH ALICIA SMITH IS PARTICIPATING AND URGES RECIPIENTS TO "TELL ALICIA SMITH TO SUPPORT OUTDOOR CAFES." THE ORGANIZATION HAS MADE AN EXPENDITURE FOR "ELECTION TARGETED ISSUE ADVOCACY" BECAUSE IT HAS MADE A "COMMUNICATION" (A MAILING TO 5,000 OR MORE RECIPIENTS) WITHIN FORTY-FIVE DAYS OF A PRIMARY ELECTION REFERENCING A CLEARLY IDENTIFIED CANDIDATE IN THAT ELECTION.*

*EXAMPLE #9: SAME FACTS AS EXAMPLE NO. 8 EXCEPT THAT THE MAILING IS SENT AFTER ALICIA SMITH WINS THE PRIMARY ELECTION AND NINETY-ONE DAYS BEFORE THE GENERAL ELECTION. THE ORGANIZATION HAS NOT MADE AN EXPENDITURE FOR "ELECTION TARGETED ISSUE ADVOCACY" BECAUSE ITS COMMUNICATION IS OUTSIDE THE FORTY-FIVE DAY AND NINETY DAY TIME WINDOWS THAT DEFINE "ELECTION TARGETED ISSUE ADVOCACY."*

*EXAMPLE #10: SAME FACTS AS EXAMPLE NO. 8 EXCEPT THAT THE PAMPHLETS ARE SENT TO ONLY 4,999 RECIPIENTS. NO OTHER PAMPHLETS ARE SENT. THE ORGANIZATION HAS NOT MADE AN EXPENDITURE FOR "ELECTION TARGETED ISSUE ADVOCACY" BECAUSE IT HAS NOT SENT MAILINGS TO 5,000 OR MORE RECIPIENTS AND THUS HAS NOT MADE A COMMUNICATION.*

*EXAMPLE #11: SAME FACTS AS EXAMPLE NO. 8 EXCEPT THAT THE PAMPHLET IS SENT TO 4,000 RECIPIENTS. THE SAME (OR A SECOND) PAMPHLET IS PRINTED AND DISTRIBUTED BY CANVASSERS TO 4,000 MORE RECIPIENTS IN BUFFALO THE DAY BEFORE THE PRIMARY. HERE, THE ORGANIZATION HAS MADE AN EXPENDITURE FOR "ELECTION TARGETED ISSUE ADVOCACY" BECAUSE IT HAS MADE A "COMMUNICATION" (PRINTED MATERIALS EXCEEDING 5,000 COPIES) WITHIN FORTY-FIVE DAYS OF A PRIMARY ELECTION THAT REFERS TO A CLEARLY IDENTIFIED CANDIDATE IN THAT ELECTION.*

*EXAMPLE #12: SAME FACTS AS EXAMPLE NO. 8 EXCEPT THAT THE MAILING URGES RESIDENTS TO "SUPPORT CANDIDATES THAT SUPPORT OUTDOOR CAFES." CANDIDATE ALICIA SMITH WANTS TO BAN OUTDOOR CAFES AND HAS PUBLICIZED HER POSITION. THE ORGANIZATION HAS NOT MADE AN EXPENDITURE FOR "ELECTION TARGETED ISSUE ADVOCACY" BECAUSE THE COMMUNICATION DOES NOT REFERENCE A CLEARLY IDENTIFIED CANDIDATE OR PARTY IN THAT ELECTION.*

See 13 NYCRR § 96(a)(7)(i).

A "communication" is "election targeted issue advocacy" only if it is made within forty-five days of a primary election (including runoff elections) or within ninety days of any general election (including runoff elections) that refers to a clearly identified candidate, party, referenda, etc. "in *that election*." There must be a relationship between the communication and the election being held within the relevant time window for the communication to be "election targeted issue advocacy".

*EXAMPLE #13: CITIZENS FOR GOODNESS IS A REGISTERED 501(c)(4) ORGANIZATION THAT MAILES PAMPHLETS TO 5,000 NEW YORK RECIPIENTS ACROSS THE STATE WHO ARE NOT MEMBERS OF THE ORGANIZATION. THE MAILING IS SENT NINETY DAYS BEFORE A NEW YORK STATEWIDE GENERAL ELECTION AND URGES VOTERS TO CALL SENATE PRESIDENT SARAH DOE OF BUFFALO, NY, WHO IS RUNNING FOR REELECTION IN BUFFALO, AND TELL HER TO SUPPORT ECONOMIC GROWTH. THE ORGANIZATION HAS MADE AN EXPENDITURE FOR "ELECTION TARGETED ISSUE ADVOCACY," BECAUSE IT SENT OVER 5,000 PAMPHLETS WITHIN NINETY DAYS OF A GENERAL ELECTION THAT REFER TO A CLEARLY IDENTIFIED CANDIDATE WHO IS COMPETING IN THE UPCOMING ELECTION.*

*EXAMPLE #14: SAME FACTS AS NO. 13 EXCEPT THAT THE MAILING IS NOT SENT WITHIN NINETY DAYS OF ANY ELECTION IN WHICH SENATOR DOE IS A CANDIDATE, BUT FIFTY DAYS BEFORE BUFFALO'S COMMON COUNCIL ELECTION. THE ORGANIZATION HAS NOT MADE AN EXPENDITURE FOR "ELECTION TARGETED ISSUE ADVOCACY," BECAUSE THE PAMPHLETS WERE NOT SENT WITHIN NINETY DAYS OF ANY ELECTION IN WHICH SENATOR DOE IS A CANDIDATE. ALTHOUGH THE PAMPHLETS WERE SENT WITHIN FORTY-FIVE DAYS OF BUFFALO'S COMMON COUNCIL ELECTION, THE PAMPHLETS DID NOT CLEARLY REFER TO A CANDIDATE IN "THAT ELECTION" AND THUS ARE NOT "ELECTION TARGETED ISSUE ADVOCACY."*

*EXAMPLE #15: SAME FACTS AS #13 EXCEPT THAT THE MAILING URGES VOTERS TO TELL THE MEMBERS OF A NAMED MAJOR POLITICAL PARTY, WITH CANDIDATES RUNNING FOR OFFICE IN THE UPCOMING ELECTION, TO SUPPORT ECONOMIC GROWTH. THE ORGANIZATION HAS MADE AN EXPENDITURE FOR "ELECTION TARGETED ISSUE ADVOCACY," BECAUSE IT SENT OVER 5,000 PAMPHLETS WITHIN NINETY DAYS OF A GENERAL ELECTION THAT REFER TO A CLEARLY IDENTIFIED POLITICAL PARTY THAT HAS CANDIDATES COMPETING IN THAT ELECTION.*

## ***B. Exceptions to Election Targeted Issue Advocacy***

The following activities do NOT constitute "election targeted issue advocacy":

- *Issue Advocacy to Membership*: Communications containing issue advocacy directed, sent or distributed by the covered organization to individuals who affirmatively consent to be members of the covered organization, contribute funds to the covered organization, or, pursuant to the covered organization's articles or bylaws, have the right to vote directly or indirectly for the election of directors or officers, on amendments to bylaws, disposition of all or

substantially all of the covered organization's assets or the merger or dissolution of the covered organization. (*However, "express election advocacy" communications by a covered organization to its members are "election related expenditures." There is no 'membership-exception' for express advocacy.*)

- *Nonpartisan Debates and Town Halls*: Communications for the purpose of promoting or staging any candidate debate, town hall or similar forum to which at least two candidates seeking the same office, or two proponents of differing positions on a referendum or question submitted to voters, are invited as participants, and which does not promote or advance one candidate or position over another. *Communications mentioning a candidate's name in the context of promoting a non-partisan debate are not "election targeted issue advocacy."*

See 13 NYCRR § 96.6(a)(7)(ii).

*EXAMPLE #16: SAME FACTS AS EXAMPLE NO. 8 EXCEPT THAT INSTEAD OF MAILING THE PAMPHLET TO 5,001 NON-MEMBER RECIPIENTS, CITIZENS FOR GOODNESS MAILS THE PAMPHLET TO 5,001 OF ITS OWN MEMBERS. THE ORGANIZATION HAS NOT MADE AN EXPENDITURE FOR "ELECTION TARGETED ISSUE ADVOCACY" BECAUSE IT HAS ONLY COMMUNICATED WITH ITS OWN MEMBERS.*

*EXAMPLE #17: SAME FACTS AS EXAMPLE NO. 16 EXCEPT THAT IT MAILS THE PAMPHLET TO 3,001 OF ITS OWN MEMBERS AND 2,000 NON-MEMBER RECIPIENTS. IT HAS NOT MADE AN EXPENDITURE FOR "ELECTION TARGETED ISSUE ADVOCACY," BECAUSE THE 3,001 PAMPHLETS SENT TO MEMBERS ARE NOT "ELECTION TARGETED ISSUE ADVOCACY." THE 2,000 PAMPHLETS SENT TO NON-MEMBERS ARE NOT A "COMMUNICATION" BECAUSE THE PAMPHLETS WERE SENT TO FEWER THAN 5,000 RECIPIENTS.*

*EXAMPLE #18: SAME FACTS AS EXAMPLE NO. 17 EXCEPT THAT THE PAMPHLET SAYS "VOTE FOR ALICIA SMITH." THE ORGANIZATION HAS MADE AN EXPENDITURE FOR EXPRESS ELECTION ADVOCACY BECAUSE IT HAS SENT A MAILING TO 5,000 OR MORE RECIPIENTS. THE MEMBERSHIP EXCEPTION DOES NOT APPLY TO "EXPRESS ELECTION ADVOCACY."*

## **6. What information must be disclosed to the Attorney General on the EDS?**

### ***A. Non-Itemized Information on United States Election Expenditures.***

The rule requires *all* "covered organizations" to disclose:

- the total dollar amount of "election related expenditures" made in the reporting period; and

- the percentage of total expenses during the reporting period that are “election related expenditures.”

For this purpose, a “covered organization” must disclose its “election related expenditures” as defined by the rule, whether such expenditures were made in state, local, or federal elections, and whether made in relation to an election held in New York or elsewhere in the United States.

*Note:* “Covered organizations” that have made no “election related expenditures” during the reporting period may so indicate on the EDS and refrain from filling out the remainder of the form.

See 13 NYCRR §§ 91.6(a)(3), 91.6 (b)(1).

*EXAMPLE #19: CITIZENS FOR GOODNESS IS A REGISTERED 501(c)(4) ORGANIZATION THAT BOUGHT BILLBOARDS IN NEW YORK AND HAWAII URGING VOTERS TO VOTE FOR A NAMED POLITICAL PARTY. THE ORGANIZATION’S EDS, MUST DISCLOSE THE AMOUNT AND PERCENTAGE OF ITS TOTAL EXPENSES THAT ARE “ELECTION RELATED EXPENDITURES.” EXPENSES FOR BOTH THE NEW YORK AND HAWAII BILLBOARDS MUST BE INCLUDED IN CALCULATING THE ORGANIZATION’S TOTAL “ELECTION RELATED EXPENDITURES.”*

A “covered organization” must report the total amount of its “election related expenditures” and the percentage of its total expenses reflected by those expenditures, even if it also must report this information to another public agency.

*EXAMPLE #20: SAME FACTS AS NO. 19 EXCEPT THAT THE ORGANIZATION HAS REPORTED INFORMATION RELATED TO THE HAWAII BILLBOARDS TO A GOVERNMENT AGENCY IN HAWAII THAT DISCLOSES THE INFORMATION TO THE PUBLIC. THE ORGANIZATION’S EDS MUST INCLUDE EXPENSES FOR BOTH THE NEW YORK AND HAWAII BILLBOARDS IN CALCULATING THE ORGANIZATION’S TOTAL “ELECTION RELATED EXPENDITURES.”*

### **B. Itemized Information on “New York Election Related Expenditures.”**

The rule requires covered organizations that make “election related expenditures” exceeding \$10,000 on state and local elections in New York State (this does not include federal elections) to itemize on the EDS specific information related to each “New York election related expenditure” exceeding fifty dollars in value. For each expenditure, the EDS must include:

- the dollar amount or fair market value of any funds, services or assets provided, and any liabilities incurred;

- the date that such funds, services or assets were provided, or that any liabilities were incurred;
- the name and address of the recipients of the expenditure; and
- a clear description of the expenditure and its purpose, including but not limited to support for or opposition to a candidate, political party, referendum or other question put before the voters in an election.

See 13 NYCRR §§ 96.1(b)(2).

*EXAMPLE #21: CITIZENS FOR GOODNESS IS A REGISTERED 501(c)(4) ORGANIZATION THAT MAKES NO "ELECTION RELATED EXPENDITURES" OTHER THAN EXPENDITURES FOR FIVE \$1,000 BILLBOARDS IN SCHOHARIE, NY, AND FIVE \$1,001 BILLBOARDS IN BUFFALO, NY, URGING VOTERS TO SUPPORT A NAMED POLITICAL PARTY IN STATE LEGISLATIVE ELECTIONS. ASSUME THESE EXPENDITURES ARE NOT REQUIRED TO BE REPORTED UNDER ANY NEW YORK STATE OR LOCAL LAW. THE ORGANIZATION HAS MADE MORE THAN \$10,000 IN "NEW YORK ELECTION RELATED EXPENDITURES" AND MUST ITEMIZE EACH OF THE BILLBOARD EXPENDITURES ON THE EDS.*

*EXAMPLE #22: SAME FACTS AS NO. 21 EXCEPT THAT THE BILLBOARDS IN BUFFALO COST ONLY \$1,000. THE ORGANIZATION DOES NOT HAVE TO ITEMIZE THESE EXPENSES ON THE EDS BECAUSE IT HAS NOT MADE MORE THAN \$10,000 IN "ELECTION RELATED EXPENDITURES" RELATED TO NEW YORK ELECTIONS.*

*EXAMPLE #23: SAME FACTS AS NO. 22 EXCEPT THAT IN ADDITION TO THE BILLBOARDS, THE ORGANIZATION ALSO BOUGHT A FIFTY-ONE DOLLAR RADIO AD IN BUFFALO, NY URGING LISTENERS TO VOTE FOR THE NAMED POLITICAL PARTY. THE ORGANIZATION MUST ITEMIZE EACH OF THE EXPENSES FOR THE BILLBOARDS AND THE BUFFALO RADIO AD ON THE EDS BECAUSE IT HAS MADE MORE THAN \$10,000 IN "NEW YORK ELECTION RELATED EXPENDITURES" AND EACH EXPENDITURE WAS OVER FIFTY DOLLARS.*

*EXAMPLE #24: SAME FACTS AS NO. 23 EXCEPT THAT THE BUFFALO RADIO AD COST ONLY FIFTY DOLLARS. THE ORGANIZATION MUST STILL ITEMIZE THE EXPENSES FOR THE BILLBOARDS BECAUSE IT HAS SPENT MORE THAN \$10,000 ON "NEW YORK ELECTION RELATED EXPENDITURES." HOWEVER, THE ORGANIZATION DOES NOT HAVE TO ITEMIZE THE EXPENDITURE FOR THE RADIO AD BECAUSE THAT EXPENDITURE DID NOT EXCEED FIFTY DOLLARS.*

*However, an organization need not itemize information on particular expenditures on the EDS if:*

- information regarding the expenditure is required by law or rule to be disclosed to another government agency that makes such information available to the public, and

- the covered organization is in compliance with the requirements of such law or rule at the time it files the EDS with the OAG.

For example, if a covered organization has disclosed itemized expenditure information on reports made publicly available by any of the following agencies, it need not itemize those expenditures on the EDS:

- The New York City Campaign Finance Board
- The New York State Board of Elections
- The Joint Commission on Public Ethics

See 13 NYCRR § 96.1(d).

*EXAMPLE #25: SAME FACTS AS IN NO. 23 EXCEPT ASSUME THAT THE EXPENDITURES IN BUFFALO HAPPEN TO BE COVERED BY A LOCAL LAW REQUIRING THE ORGANIZATION TO DISCLOSE INFORMATION RELATED TO THE EXPENDITURES. THE CITY MAKES THE INFORMATION PUBLIC, AND THE ORGANIZATION HAS COMPLIED WITH THIS LOCAL LAW AT THE TIME OF FILING ITS EDS WITH OAG. THE ORGANIZATION ONLY HAS TO ITEMIZE THE SCHOHARIE EXPENDITURES ON THE EDS.*

*EXAMPLE #26. SAME FACTS AS NO. 25 BUT ASSUME THAT THE LOCAL LAW IN BUFFALO ONLY REQUIRES THE COVERED ORGANIZATION TO ITEMIZE EXPENDITURES OVER \$500. THE ORGANIZATION HERE MUST ITEMIZE THE EXPENDITURES ON THE EDS FOR THE BUFFALO RADIO AD, AS WELL AS THE SCHOHARIE BILLBOARDS, WHICH WERE NOT DISCLOSED PURSUANT TO THE BUFFALO LOCAL LAW. IT DOES NOT HAVE TO ITEMIZE THE EXPENDITURES FOR BUFFALO BILLBOARDS ON THE EDS BECAUSE THOSE HAVE BEEN ITEMIZED AND DISCLOSED PURSUANT TO THE BUFFALO LOCAL LAW.*

### **C. Itemized Information on Donations.**

The rule requires “covered organizations” that make “election related expenditures” exceeding \$10,000 in connection with state or local elections in New York State to provide an itemized schedule disclosing specific information related to certain donations. The itemized schedule must include information related to “covered donations,” which the rule defines as “any contribution, gift, loan, advance, or deposit of money or anything of value made to a covered organization unless such donation is deposited into an account the funds of which are not used for making New York election related expenditures.”

The information on this itemized schedule must include, for each covered donation:

- the name and address of each donor who made covered donations in an aggregate amount of one thousand dollars or more during the reporting period;
- the employer of each such individual donor, if known to the covered organization; and
- the date and dollar amount of each such covered donation.

Accordingly, if a covered organization makes “New York election related expenditures” exceeding \$10,000, but (1) keeps one or more segregated bank accounts containing funds used solely for these New York election related expenditures, and (2) makes all of its New York election related expenditures from such accounts, the organization’s schedule EDS need only include information on donations that were deposited into these segregated accounts.

If, on the other hand, a covered organization does not keep segregated accounts and makes “New York election related expenditures” exceeding \$10,000, the organization’s annual financial report must include information on all of the donations received by the organization during the reporting period.

See 13 NYCRR §§ 96.1(c)

*EXAMPLE #27: CITIZENS FOR GOODNESS IS A REGISTERED 501(C)(4) ORGANIZATION THAT HAS THREE DONORS, ADAM, BOB AND CARLOS, EACH OF WHOM IN TOTAL GAVE \$150,000 THAT WAS DEPOSITED INTO THE SAME BANK ACCOUNT. THE ORGANIZATION USED FUNDS FROM THAT BANK ACCOUNT TO BUY A \$10,001 TELEVISION AD IN BUFFALO, NY, URGING VOTERS TO VOTE FOR ALICIA SMITH FOR GOVERNOR OF NEW YORK. THE ORGANIZATION DID NOT MAKE ANY OTHER “ELECTION RELATED EXPENDITURES.” (INFORMATION RELATED TO THE \$10,001 EXPENDITURE WAS NOT REQUIRED TO BE DISCLOSED BY ANY OTHER LAW). BECAUSE DONATIONS FROM ADAM, BOB AND CARLOS WERE DEPOSITED INTO A BANK ACCOUNT THAT WAS USED FOR “NEW YORK ELECTION RELATED EXPENDITURES,” THE ORGANIZATION MUST DISCLOSE DONOR IDENTITY AND OTHER INFORMATION ON ADAM, BOB AND CARLOS ON THE EDS.*

*EXAMPLE #28: SAME FACTS AS NO. 27 EXCEPT THAT BOB ONLY DONATED A TOTAL OF \$999. THE ORGANIZATION’S EDS MUST DISCLOSE DONOR IDENTITY AND OTHER INFORMATION FOR ADAM AND CARLOS BUT NOT BOB BECAUSE BOB GAVE LESS THAN \$1,000.*

*EXAMPLE #29: SAME FACTS AS NO. 27 EXCEPT THAT THE DONATIONS FROM ADAM AND BOB WERE PUT INTO A DIFFERENT ACCOUNT THAN THE DONATION FROM CARLOS. THE ORGANIZATION PAID FOR THE TELEVISION AD OUT OF THE ACCOUNT INTO WHICH CARLOS’ DONATION HAD BEEN PLACED, AND DID NOT MAKE ANY OTHER ELECTION RELATED EXPENDITURE FROM THE OTHER ACCOUNT. BECAUSE ONLY CARLOS’S DONATION WAS DEPOSITED INTO AN ACCOUNT THAT WAS USED TO MAKE NEW YORK*

*ELECTION RELATED EXPENDITURES, THE ORGANIZATION'S EDS MUST DISCLOSE DONOR IDENTITY AND INFORMATION ABOUT CARLOS ONLY.*

*EXAMPLE #30: SAME FACTS AS NO. 29 EXCEPT THAT THE ORGANIZATION ALSO SPENT \$40,000 ON TELEVISION ADS EXPRESSLY ADVOCATING THE ELECTION OF A NEW YORK CONGRESSMAN OUT OF THE ACCOUNT INTO WHICH DONATIONS FROM ADAM AND BOB WERE DEPOSITED. BECAUSE EXPENDITURES ADVOCATING THE ELECTION OF A CONGRESSMAN IS AN EXPENDITURE FOR A FEDERAL ELECTION - AND NOT A NEW YORK STATE OR LOCAL ELECTION - THE ORGANIZATION DOES NOT NEED TO DISCLOSE INFORMATION RELATED TO THAT EXPENDITURE. THE ORGANIZATION'S EDS MUST DISCLOSE DONOR IDENTITY AND INFORMATION ABOUT CARLOS ONLY.*

However, an organization need not itemize information on particular contributions on the EDS if:

- information regarding the contribution is required by law or rule to be disclosed to another government agency that makes such information available to the public, and
- the covered organization is in compliance with the requirements of such law or rule at the time it files the EDS with the OAG.

For example, if a covered organization has disclosed itemized contribution information on reports made publicly available by any of the following agencies, it need not itemize those contributions on the EDS:

- The New York City Campaign Finance Board
- The New York State Board of Elections
- The Joint Commission on Public Ethics (as "single source" contributions on Client Semi-Annual reports)

See 13 NYCRR § 96.1(d)

*EXAMPLE 31: SAME FACTS AS NO. 27 EXCEPT ASSUME THAT A BUFFALO LOCAL LAW REQUIRES THE ORGANIZATION TO DISCLOSE DONOR INFORMATION RELATED TO THE EXPENDITURE; THE CITY MAKES THE INFORMATION PUBLIC; AND THE ORGANIZATION HAS COMPLIED WITH THIS LOCAL LAW AT THE TIME OF FILING THE EDS WITH OAG. THE ORGANIZATION DOES NOT HAVE TO ITEMIZE THAT DONOR INFORMATION ON THE EDS.*

## **7. Are there any exemptions from the donor disclosure requirements?**

OAG may grant an exemption and refrain from disclosing to the public any information related to any "covered donation." Such an exemption does not relieve the covered organization of its obligation to disclose donor information on the EDS.

Either a donor or a "covered organization" may apply to OAG for an exemption. The applicant must apply online to OAG at <http://www.charitiesnys.com>, or send a letter to OAG, showing that the primary activities of the relevant organization involve areas of public concern that create a reasonable probability that disclosure of the information requested will cause undue harm, threats, harassment or reprisals to any person or organization. Acceptable harms do not include "business harm," such as loss of contributions to a "covered organization."

The burden of proof is on the applicant seeking an exemption. Proof that could support the granting of an exemption might include, for example, specific evidence of past or present harassment of members or donors of the "covered organization" due to their associational ties, or of harassment directed against the "covered organization" itself. A pattern of threats or specific manifestations of public hostility may be sufficient.

An application for exemption must be submitted to OAG no later than forty-five days prior to the due date for the "covered organization's" annual filing. OAG will inform the applicant in writing that the application for exemption has been granted or denied. Any denial issued by OAG shall include reasons or basis for the denial. A pending application for exemption does not relieve the "covered organization" of its obligation to timely file annual financial reports, including the EDS.

OAG will not take action to notify donors of their ability to seek exemptions from disclosure. Donors may apply for an exemption on their own initiative, or "covered organizations" may take action to notify donors of the rule's exemption provisions.

Individual donors who seek an exemption from disclosure of donations to a "covered organization" should notify that "covered organization" of their application. If an exemption from disclosure is granted, the individual donor should provide the "covered organization" with a copy of any letter from OAG granting the requested exemption and the "covered organization" should retain these letters.

The EDS must indicate, for each donor, whether an application for exemption is pending or has been granted.