# 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.

**QUICK TIP:** There is an exception for "member communications" sent solely to an entity or organization's employees, shareholders, or members. See Chapter 8 for information about member communications.

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)

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.

**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.

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.

**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 non-political 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.

#### 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.

#### 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 (form462@fppc.ca.gov). The originally signed form must be maintained with the committee's records for four years.

#### Form 462 Verification of Independent Expenditures

CALIFORNIA FORM 462

	This verification form identifies the individual responsible expenditures were not coordinated with the listed candid committee will report all contributions and reimburseme subject to state or local contribution limits.	late (or the	e oppone	ent) or measure committee and that t		in)		
1	1. Name of Committee:							
T	NAME OF RECIPIENT COMMITTEE, ENTITY OR INDIVIDUAL COMMITTEE ID #							
ı	CA Technology PAC, Sponsored by CA Technology	chnology	y Asso	ciation		1358200		
ı	STREET ADDRESS			CITY				
ı	1810 21st Street			Sacramento				
	STATE	ZIP CODI	E	E-MAIL		TELEPHONI	E NUMBER	
1	CA	95814	1	lcooper@cclav	v.com	( 916 )	555-1640	
2	2. Candidate or Measures:							
	This committee has reported an independent expenditur. The reporting of an independent expenditure may occur a Code Sections 84204 and 85500.)			ed if an independent expenditure is m	nade before the 90 day, 24-hour		od of Government	
	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	
2	NAME OF CANDIDATE (First/Last) OR BALLOT MEASURE	SUPPORT	OPPOSE	OFFICE SOUGHT OR HELD/ BALLOT NO./LETTER	JURISDICTION AND DISTRICT, IF ANY		ELECTION DATE	
5	3. Verification:							
	I have not received any unreported contributions or reiml reporting period with the candidate or the opponent of the subject of the expenditure, or with the agents of the cancunder the laws of the State of California that the following	ne candida lidate or tl	ite who i he oppor	s the subject of the expenditure, with nent of the candidate or the state mea	the proponent or the opponent	of the state m	easure that is the	
	Signature [Signature Required]		Printed	Name Corey Silva	Signe	d on 3/	/1/20XX	
L	5,5,10,10,10	_	···inted		Jight .	(mon	th, day, year)	

#### 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.

**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.

## 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.

**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.

#### 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).

## 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.

**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.

**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.

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.

Jurisdiction of Candidate or Measure Supported/Opposed	Location of Filing Form 496
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.

QUICK TIP: 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 of \$500 in May, a second Form 496 is not required.

#### **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).

	6 Independent	Expenditure R	eport				nded to who	ole dollars.			
A NAMI	NAME OF FILER					ate of	2/0	0/VV	Date Stamp	CALIFORNIA	406
CA	CA Technology PAC, Sponsored by CA Technology Association				This Filing			FORM	496		
AREA	A CODE/PHONE NUMBER		I.D. NUMBI	ER (if applicable)				3		For Official U	se Only
(91	6) 555-1640		13582X	13582XX		Report No.				00 01,	
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181	10 21st Street					☐ Amendment to Report No (explain below)  No. of Pages					
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	Jason Reid  OFFICE SOUGHT OR HELD  State Assembly District  26  UNITARIES OPPOSE    X   X		BALLOT NO./LETTER		JURISDICTION	SUPPOR	RT OPPOSE				
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	3/7/XX	Mailer									\$37,550

FPPC Form 496 (Feb/2019) FPPC Advice: advice@fppc.ca.gov (866/275-3772)

www.fppc.ca.gov

#### H. Completing the Form 496



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.

## 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.

**QUICK TIP:** When reporting an independent expenditure on Form 496, also report the cumulative-to-date total independent expenditures the committee has made for that candidate or measure for the relevant election.

**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.

#### 496 Independent Expenditure Report

NAME OF FILER  CA Technolo	gy PAC, Sponsored by CA Technology Association				CALIFORNIA 496 FORM I.D. NUMBER (# applicable) 13582XX
5. Contribut	ons 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)	OTH PTY SCC		\$200,000	If loan, enter interest rate, if any %
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 loan, enter interest rate, if any %
3/3/XX	Advancing Forward PAC (ID# 13298XX) 1401 L Street, Suite 850 Sacramento, CA 95814	IND COM OTH PTY		\$10,000	If loan, enter interest rate, if any%

## 3 c

#### 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, their occupation and the name of their 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. For contributions of \$100 or more from a limited liability company (LLC) that has qualified as an independent expenditure committee or major donor, include the name of the LLC and the full legal name of the LLC's responsible officer as defined in Regulation 18402.2. If the contributor is an LLC that has qualified as a recipient committee, include the name of the committee and its principal officer as defined in Section 82047.6. For an LLC that has not qualified as a committee, include the name of the LLC and the full legal name of the individual primarily responsible for approving the contribution. If more than one individual shares in the primary responsibility of approving a contribution, at least one such individual must be identified. 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.

**QUICK TIP:** See Chapter 15 for information about when a multipurpose organization qualifies as a recipient committee.

**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.

#### . 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: 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 <a href="mailto:advice@fppc.ca.gov">advice@fppc.ca.gov</a>.

### **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.
18250	Street Address.
18402.1	Principal Officers.
18402.2	Limited Liability Companies, Responsible Officer.
18421.10	Reporting Contributions from Limited Liability
	Companies.
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.