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**New Disclosure Requirements for Communications That Support,
Oppose or Mention a NY Candidate or Ballot Proposal**

On June 5, 2013, the New York Attorney General published a new regulation requiring disclosure of “electioneering activities.” The regulation defines election-related activities so broadly that a mass communication issued several months prior to an election will be covered if it simply mentions the name of a candidate, political party, or ballot proposal. This Legal Alert describes which organizations and activities are covered, how covered activities must be reported, how to obtain protection from public disclosure of sensitive information, how the regulation compares to similar requirements established by the New York City Campaign Finance Board, and where to find additional information.

I. Covered organizations

The regulation applies to all organizations that are required to register with the Attorney General’s Office because they solicit charitable contributions within the state, are incorporated in New York, or are administering assets for charitable purposes in New York only. Organizations recognized by the IRS as 501(c)(3)s are exempt, but 501(c)(4)s are covered.

II. Covered activities

The regulation covers two types of activities: “express election advocacy” and “election targeted issue advocacy.” An activity is deemed “express election advocacy” if it uses words that can only be interpreted as supporting or opposing a candidate or ballot proposal (such as “vote for,” “defeat,” or “reject”). An activity is deemed “election targeted issue advocacy” if it is issued within 45 days of primary or special election or 90 days of a general election and: a) refers to, or depicts the name, image, likeness or voice, of one or more clearly identified candidates, or b) refers to any clearly identified political party, constitutional amendment, proposition, referendum or other question submitted to the voters in that election.

Both types of activity are covered by the regulation if they involve any of the following types of mass communication:

1. paid advertisements broadcast over radio, TV, cable or satellite
2. paid advertisement on the Internet or other electronic communication network
3. paid advertisement in a magazine or on a billboard
4. paid telephone communications to 1,000 or more households
5. mailing a hard copy to 5,000 or more recipients

The following types of communications are not covered by the regulation:

1. members/contributors: communication solely to members or contributors are not covered
2. debate or forum: communication to promote a candidate debate, town hall or other forum is not covered, if:

- two candidates or people with opposing positions on a ballot proposal are invited to participate, and
 - the forum does not promote or advance one candidate or position over another
3. information that must be disclosed to any other government agency: if the information must be disclosed to another government agency that makes the information available to the public (e.g. New York State Board of Elections, JCOPE, New York City Campaign Finance Board), you still need to disclose the amount and percentage of total expenses spent on covered activity during the reporting period, but don't have to comply with other disclosure requirements

III. What you must do if you engage in a covered activity

1. All organizations

All organizations engaged in any covered activity must include on the annual financial report to the Attorney General the amount and percentage of total expenses spent on covered activity during the reporting period. This requirement applies regardless of: a) how much money the organization spent on covered activity, and b) whether the activity related to a NY election or to an election held in another state or for a federal office.

2. Organizations reaching \$10,000 threshold

Organizations that spend more than \$10,000 on covered activity related to a NY state or city election during the reporting period must report on certain expenditures and donations. For all covered expenditures that cost more than \$50 and are related to a NY election, they must itemize the following in the annual financial report to the Attorney General:

- a. amount or fair market value of any funds, services, or assets provided, and any liabilities incurred
- b. date that funds, services, or assets were provided, and liabilities were incurred
- c. name and address of the recipients of the expenditures
- d. clear description of the expenditure and its purpose, including but not limited to whether the expenditure supports or opposes a candidate, political party, referendum, or other ballot question

For all donations that are not deposited into an account, the funds of which are never used for making NY election related expenditures, an organization must itemize the following in the annual financial report to the Attorney General:

- a. name and address of each donor who made total covered donations of \$1,000 or more during the reporting period
- b. employer of each such donor, if known
- c. date and amount of each such donation

If you set up a segregated account that receives all funds used for NY election related expenses, and that is used only for NY election related expenses, you only need to report on donations deposited to that account.

IV. Harassment exception

The Attorney General will make public the information you report. Organizations and donors may ask the Attorney General to refrain from disclosing information about a covered donation

by showing that the organization's primary activities involve areas of public concern that create a reasonable probability that disclosure will cause undue harm, threats, harassment, or reprisals to any person or organization.

V. Relationship to other similar disclosure requirements

This regulation and New York City Campaign Finance Board Rule 13-02 are similar. However, there are many important differences. Here are a few:

1. Elections covered: The Attorney General regulation requires reporting of the aggregate amount of covered expenditures in relation to any election anywhere in the country, and of itemized expenditures and donations in relation to state, county and municipal elections in New York State. The Campaign Finance Board regulation requires reporting only of covered expenditures in relation to New York City elections.
2. Timing and definition of election targeted issue advocacy: Both regulations cover communications that clearly identify a candidate or ballot proposal (although the Campaign Finance Board calls that activity "electioneering"). However, this Attorney General regulation covers a longer period of time than the NYC Campaign Finance Board independent spending regulation, which applies only 30 days before a primary or 45 days before a general election. Additionally, this Attorney General regulation covers communications that mention a political party, while the Campaign Finance Board regulation apparently does not.
3. Methods of communication covered: Both regulations apply only to mass communications. However, each has its own list of activities that count as mass communications. To name just one example, a hard copy mailing must be sent to 5,000 recipients to be covered by the Attorney General regulation, while a mailing to only 500 recipients would be covered by the Campaign Finance Board regulation.
4. Small expenditures: Individual expenditures of less than \$50 need not be included on the itemized schedule submitted to the Attorney General. Individual expenditures of less than \$100 need not be reported to the NYC Campaign Finance Board.
5. Reporting thresholds: Organizations do not have to provide the Attorney General with an itemized schedule of expenditures until they have made \$10,000 in covered expenditures. In contrast, organizations must provide the Campaign Finance Board with a list of itemized expenditures once they have made \$1,000 in covered expenditures.

VI. Where to find more information

- The regulation itself is [13 NYCRR 91.6](#).
- The Attorney General has issued [Guidance to the Annual Disclosure of Electioneering Activities by Non-501\(c\)\(3\) Registrants](#).

This alert is meant to provide general information only, not legal advice. For help determining whether and what you need to report pursuant to this regulation, please contact Laura Abel at (212) 219-1800 x283 or visit our website www.lawyersalliance.org for further information.

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