Congressional Research Service

527 Organizations and Campaign Activity: Timing of Reporting Requirements under Tax and Campaign Finance Laws

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January 29, 2009

Congressional Research Service
7-5700
www.crs.gov
RS20918

CRS Report for Congress
Prepared for Members and Committees of Congress

Summary

One way that federal law regulates groups participating in election activities is by requiring them to report information on such things as their contributions and expenditures. Reporting requirements are imposed on “political organizations” by the Internal Revenue Code (IRC) and “political committees” by the Federal Election Campaign Act (FECA). Some of the requirements are similar; in which case, entities are generally subject to either the ones in the IRC (and report to the Internal Revenue Service) or those in FECA (and report to the Federal Election Commission). Included in the entities that report to the IRS are those colloquially known as “527s” or “527 groups.” No legislation has yet been introduced in the 111th Congress that would affect the timing of the reporting requirements under the IRC or FECA.

Section 527 of the Internal Revenue Code (IRC) provides tax-exempt status to "political organizations," while the Federal Election Campaign Act (FECA) regulates "political committees." The definitions of the two terms are similar, but they do not perfectly coincide.[1] The term "political organization" includes entities intending to influence federal, state, and local elections, along with the selection of non-elective offices. The term "political committee" is narrower, covering only those entities participating in federal election activities.[2] While political committees are a type of political organization, not all political organizations are political committees.

In general, Section 527 political organizations are required to report tax-related information to the Internal Revenue Service (IRS).[3] Other information, such as disclosure of contributions and expenditures, is reported to either the IRS or the Federal Election Commission (FEC) depending on whether the political organization is also a political committee. Those that are political committees report to the FEC; while political organizations that are not political committees report to the IRS.

Section 527 political organizations include the entities colloquially known as "527s" or "527 groups" that have been controversial during recent election cycles. These groups, which benefit from Section 527 tax-exempt status, seemingly intend to influence federal elections in ways that may place them outside the FECA definition of "political committee."[4] Because these groups are not registered as political committees under FECA, they are required to report information to the IRS, instead of the FEC.

The following chart compares the timing of election activity reporting requirements imposed by the Internal Revenue Code and the Federal Election Campaign Act.

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[1] *See* I.R.C. § 527(e) (defining "political organization" as "any party, committee, association, fund, or other organization" that is "organized and operated primarily" to accept contributions and/or make expenditures for the "influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any Federal, State, or local public office or office in a political organization, or the election of Presidential or Vice-Presidential electors ..."); 2 U.S.C. § 431(4)(A) (defining "political committee" as "any committee, club, association, or other group of persons which receives contributions aggregating in excess of $1,000 during a calendar year or which makes expenditures aggregating in excess of $1,000 during a calendar year").

[2] For further discussion of the differences between the two terms, *see* CRS Report RS22895, *527 Groups and Campaign Activity: Analysis Under Campaign Finance and Tax Laws*, by (name redacted) and (name redacted).

[3] For more information on the tax code's provisions affecting political organizations, *see* CRS Report RS21716, *Political Organizations Under Section 527 of the Internal Revenue Code*, by (name redacted).

[4] For more information, *see* CRS Report RS22895, *527 Groups and Campaign Activity: Analysis Under Campaign Finance and Tax Laws*, by (name redacted) and (name redacted).

Table 1. Timing of Election Activity Reporting Requirements under the IRC and FECA

	Political Organizations that are not Political Committees under FECA (includes "527s")	Political Committees under FECA
Notice of Formation	File **Form 8871** with the IRS within 24 hours of formation.[a] I.R.C. § 527(i)	File **Form 1** with the FEC within 10 days of appropriate triggering event.[b] 2 U.S.C. § 433(a)
Annual Information Return	File **Form 990** with the IRS; the form is due on the 15th day of the fifth month after the close of the applicable period.[c] I.R.C. § 6033(g)	Exempt from this requirement. I.R.C. § 6033(g)(3)(F)
Annual Tax Return	File **Form 1120-POL** with the IRS if the organization has more than $100 of taxable income; the return is due on the 15th day of the third month after the close of the taxable year. I.R.C. § 6012(a)(6)	
Periodic Disclosure of Contributions and Expenditures during Election Years	File **Form 8872** with the IRS.[d] Organizations elect one of two schedules: monthly or non-monthly. *If monthly*: monthly reports (beginning with the first month of the calendar year in which a contribution is accepted or expenditure is made) due on the 20th day after the end of each month; except that a year-end report is due on January 31 and the reports due in November and December are replaced with: a pre-general election report is due 12 days (or posted by registered or certified mail no later than the 15th day) before the election, covering the period ending 20 days before the election, and a post-general election report is due 30 days after the election, covering the period ending 20 days after the election. *If non-monthly:* quarterly reports (beginning with the first quarter in which a contribution is accepted/expenditure is made) due by the 15th day after the end of the calendar quarter; except that the final quarterly report is due January 31. A pre-election report covering a period ending 20 days before the election is due 12 days (or posted by registered or certified mail no later than the 15th day) before any election with respect to which a contribution/expenditure is made. A post-general election report is due 30 days after the general election, covering the period ending 20 days after the election. I.R.C. § 527(j)(2)	File **Form 3** series with the FEC for House candidate committees, Presidential candidate committees, and non-candidate committees (e.g., parties and political action committees); but file with the Secretary of the Senate for Senate candidate committees and non-candidate committees that support/oppose only Senate candidates. *Congressional candidate committees*: 6 filings. Quarterly reports due by the 15th day after the end of each calendar quarter, except that the final report is due on January 31. A pre-election report covering a period ending 20 days before any election in which the candidate is seeking election or nomination for election. The report must be filed by the 12th day (or posted by registered or certified mail not later than the 15th day) before the election. A post-general election report is due 30 days after the general election, and it must cover the period ending 20 days after the election. *Presidential candidate committees*: Those with actual or anticipated receipts or expenditures of over $100,000 during the year: monthly reports due by the 20th day after the end of each month. In lieu of the reports due in November and December, a pre-general election report is due 12 days (or posted by registered or certified mail no later than the 15th day) before the election, covering the period ending 20 days before the election; a post-general election report is due 30 days after the election, covering the period ending 20 days after the election; and a year end report is due on January 31.

	Political Organizations that are not Political Committees under FECA (includes "527s")	Political Committees under FECA
		Otherwise, the committee files four quarterly reports, a pre-election report, and a post-general election report. *Political committees other than authorized candidate committees (e.g., PACs and parties):* Committee elects one of two schedules: monthly or non-monthly. National committees of political parties must file according to the monthly schedule. Schedules for filing are identical to those for Form 8872 filings with IRS. 2 U.S.C. § 434(a)(2),(3),(4)
Periodic Disclosure of Contributions and Expenditures during Non-Election Years	If on a *monthly* schedule for election years, must continue on monthly schedule with reports due by the 20th day after the end of each month and the final report due on January 31. If on a *non-monthly* schedule for election years, must file 2 reports that each cover half the year and are due on July 31 and January 31. I.R.C. § 527(j)(2)	*Congressional candidate committees:* Quarterly, due by the 15th day after the close of each calendar quarter, with the fourth quarter due on January 31. *Presidential candidate committees:* choice of monthly filings due on the 20th day after the close of each month or quarterly filings due by the 15th day after the close of each calendar quarter. *Political committees other than authorized candidate committees (e.g., PACs and parties):* If on a *monthly* schedule for election years, must continue on monthly schedule with reports due by the 20th day after the end of each month and the final report due on January 31. If on a *non-monthly* schedule for election years, must file 2 reports that each cover half the year and are due on July 31 and January 31. 2 U.S.C. § 434(a)(2),(3), (4)

a. Exceptions exist for organizations that report to the FEC as political committees, anticipate annual gross receipts of less than $25,000, or are political committees of a state or local candidate or state or local committees of a political party.

b. For principal campaign committees, the appropriate triggering event is the candidate's designation of the committee on the Statement of Candidacy; for committees sponsored by corporations, labor organizations or trade associations, it is the committee's establishment; for local party committees, it is meeting a contribution/exempt payment/expenditure threshold; and for other political committees, it is receiving contributions or making expenditures in connection with a federal election aggregating in excess of $1,000 during a calendar year.

c. The requirement applies to organizations with gross receipts of at least $25,000 ($100,000 if a qualified state or local political organization). Exceptions exist for organizations that are not required to file the Form 8871 (see endnote 1) and caucuses or associations of state or local officials.

d. Exceptions exist for organizations not required to file the Form 8871 (see endnote 1) and qualified state or local political organizations. Additionally, the requirement does not apply to independent expenditures (i.e., expenditures that expressly advocate for a candidate but are made without the candidate's cooperation). Organizations, other than political committees, that make independent expenditures aggregating more than

$250 for a given election during a calendar year must report them to the FEC, using FEC Form 5 or a signed statement. The expenditures are reported on a quarterly basis, with special rules for larger expenditures. Political committees report the expenditures on Form 3X, Schedule E.

Selected Legislation

No legislation has yet been introduced in the 111th Congress that would amend the timing of the reporting requirements in the IRC or FECA.

In the 110th Congress, H.R. 1204 (527 Transparency Act of 2007) would have no longer allowed Section 527 political organizations to file the periodic contribution and expenditure reports with the IRS on a non-monthly basis. Instead, all political organizations that report to the IRS would have been required to file monthly reports, in addition to pre-election, post-general election, and year-end reports. An organization that failed to file in a timely fashion would have faced a penalty equal to 30% of the expenditures and contributions that were not adequately reported, with the organization's managers jointly and severally liable for the penalty. Additionally, contributions to that organization would have been subject to the gift tax. The organizations would have been required to notify their contributors about the failure within 90 days of the IRS's final determination that the failure had occurred. Finally, the bill would have required that the reports be simultaneously filed with the FEC.

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