

COVID-19: FEDERAL ELECTION COMMISSION MAKES ADJUSTMENTS TO OPERATIONS AMID VIRUS MITIGATION MEASURES

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Like many other government agencies, those responsible for implementing state and federal campaign finance disclosure requirements are adjusting their operations in light of the unprecedented physical distancing and office closures implemented across the country. In this busy presidential election year, previously established filing deadlines are fast approaching or have already arrived. Many agencies, including the Federal Election Commission ("FEC") are announcing new protocols or policies to accommodate those obligated to file reports during the COVID-19 crisis.

Despite these adjustments, filers should continue to make every effort to meet existing deadlines where practical, but agencies may decide to toll deadlines or refrain from taking enforcement actions against filers who cannot meet deadlines due to the far-reaching impacts of the pandemic.

FEDERAL ELECTION COMMISSION

On March 17, 2020, the FEC announced that it had closed its offices to visitors and was "strongly encourage[ing]" its employees to telework in an effort to limit the spread of COVID-19. On March 24, this announcement was updated to state the agency was now "mandating" telework. During this disruption, the FEC will be receiving — but not processing — mail. While most filers submit their campaign finance reports electronically, this change in operations will quite obviously affect all documents submitted by mail. Such documents may include non-electronically filed reports, requests for advisory opinions, enforcement complaints, and court case documents. Those with new or pending business before the FEC should contact staff electronically or by phone.

Even though the FEC will not process campaign finance reports filed on paper while its staff is telecommuting, all filers should continue to make every effort to submit their reports on time, and should take the additional step of using mail that can be tracked. Reports sent by registered mail, overnight delivery, or certified mail are considered filed as of the date of the postmark. Reports submitted by first-class mail or by delivery service "will be considered filed within 24 hours after the Commission resumes normal mail operations."

Notably, the FEC does not have the statutory authority to extend filing deadlines, but states that it "may choose not to pursue administrative fines against filers prevented from filing by reasonably unforeseen circumstances beyond their control." When reminding filers of this position, the FEC cites to a regulation that lists permissible grounds for challenging a determination by the FEC, including a challenge to a proposed civil penalty. Under this provision, circumstances that "will be considered reasonably unforeseen and beyond the control of the respondent" include "severe weather or other disaster-related incident."

The FEC has also announced that as states postpone their congressional and presidential primary elections, it will update reporting period dates and deadlines associated with those elections. To date, nine states have postponed their primaries. The FEC maintains a list of dates and deadlines [here](#), although it has not yet been updated to reflect the primary schedule changes.

[1] Filers who receive contributions or make expenditures exceeding \$50,000 in a calendar year, or have reason to expect to do so, are required to file electronically.

[2] The FEC has provided specific email contacts for the electronic delivery of many types of communication other than campaign finance reports. Those email contacts are contained [here](#). The FEC's general contact information page can be found [here](#).

[3] 11 C.F.R. 111.35(b)(3)(i), permitting a respondent to an action taken by the FEC to claim it was "prevented from filing in a timely manner by reasonably unforeseen circumstances that were beyond the control of the respondent; . . ."

[4] 11 C.F.R. 111.35(c)(3).

[5] To date, 14 states and Puerto Rico have postponed their primaries. These states include Alaska, Connecticut, Delaware, Georgia, Hawaii, Indiana, Kentucky, Louisiana, Maryland, New York, Ohio, Pennsylvania, Rhode Island, and Wyoming.

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