

POLICY ALERT

BUNDLING BY LOBBYISTS

On February 3, 2009, the Federal Election Commission (FEC) issued an explanation and justification for the regulations implementing the bundling disclosure provisions of the Honest Leadership and Open Government Act of 2007 (HLOGA). Under HLOGA, certain political committees are required to disclose information about each registered lobbyist or registrant (lobbyist/registrant) and each PAC established or controlled by a lobbyist or registrant (lobbyist/registrant PAC) that bundles contributions. The new disclosure rules primarily impact candidate committees, leadership PACs and party committees (collectively, “reporting committees”). Lobbyists, lobbyist/registrants and lobbyist/registrant PACs do not have new reporting or disclosure obligations under the new rules but must amend their Statement of Organization (Form 1) to identify themselves as a lobbyist/registrant PAC.

What is a bundled contribution?

A bundled contribution is any contribution that is either (1) forwarded to a reporting committee by a lobbyist/registrant or lobbyist/registrant PAC or (2) received by the reporting committee and credited to a lobbyist/registrant or lobbyist/registrant PAC through records, designations or other means of recognizing that a certain amount of money has been raised. Bundled contributions do not include contributions made from the personal funds of the lobbyist/registrant who forwards or is credited with raising those contributions, nor do they include the personal funds of the lobbyist/registrant’s spouse. Similarly, a contribution made from a lobbyist/registrant PAC is not considered a bundled contribution. Only those contributions that a lobbyist/registrant PAC forwards or is credited with raising for a reporting committee should be considered a bundled contribution. Bundling covers not only the physical collection of checks to be forwarded to the reporting committee but also checks sent directly to a reporting committee if a lobbyist/registrant or lobbyist/registrant PAC is credited with raising the money for the reporting committee.

Example 1: ABC PAC is a lobbyist/registrant PAC. ABC PAC makes a contribution of \$5,000 to a reporting committee. The \$5,000 contribution is not considered a bundled contribution. However, if ABC PAC forwards contributions to a reporting committee or is credited with raising funds from sources other than its own PAC, those contributions are considered bundled contributions and are subject to disclosure by the reporting committee.

Example 2: Lobbyist Z delivers an ABC PAC check to a fundraiser. Lobbyist Z delivered the check, so it is considered a bundled contribution from Lobbyist Z because it was physically forwarded by Lobbyist Z.

What does it mean to be credited with raising money for a reporting committee?

The FEC has identified two different means of being credited with raising contributions: (1) records and (2) designations or other means. Records includes the means by which a reporting committee attributes a contribution to a lobbyist/registrant or lobbyist/registrant PAC through written evidence such as writings, charts, computer files, tables, spreadsheets, databases and other data or data compilations in any medium or format. Designations or other means would include the means by which the reporting committee has given benefits to a lobbyist/registrant or lobbyist/registrant PAC for having raised a certain amount of contributions. Examples would include titles, tracking identifiers, access to events or activities and mementos such as photographs with the candidate or autographed copies of books authored by the candidate. The FEC has made clear that these examples are not exhaustive, and designations need not be in writing to fall within the rules.

What will be disclosed by the reporting committee?

The reporting committee must disclose the name and address of the lobbyist/registrant or lobbyist/registrant PAC, the lobbyist/registrant's employer and the aggregate amount in excess of \$16,000 of bundled contributions within the covered period.

Who is a lobbyist/registrant?

A lobbyist/registrant is (1) a current registrant under the Lobbying Disclosure Act of 1995 (LDA) or (2) an individual who is listed on a current registration or current report filed under the LDA. Individuals who work for the registrant or a lobbyist and are not listed on a current registration or report as a registered lobbyist are not considered lobbyist/registrants so long as any credit by the reporting committee is genuinely received by the non-lobbyist. If, however, the reporting committee knows that the non-lobbyist is forwarding the contributions on behalf of the lobbyist/registrant or lobbyist/registrant PAC, such forwarded contributions are within the scope of disclosure.

What is a lobbyist/registrant PAC?

A lobbyist registrant PAC is a political committee established or controlled by a current registrant under the LDA or an individual who is listed on a current registration or current report filed under the LDA. A PAC is considered to be established or controlled by a lobbyist/registrant if the lobbyist/registrant is required to disclose the political committee to the Secretary of the Senate or the Clerk of the House as being established or controlled by that lobbyist/registrant.

Additional circumstances when a PAC will be deemed to be a lobbyist/registrant PAC are—

1. the connected organization is a registrant under the LDA
2. a lobbyist/registrant had a primary role in the establishment of the PAC, excluding the provision of legal or compliance services or advice; or
3. a lobbyist/registrant directs the governance or operations of the political committee, excluding the provision of legal or compliance services or advice, such as enumerated in the political committee's controlling documents or informal procedures or practices.

Any political committee that meets this definition must identify itself as such on any Statement of Organization filed with the FEC. PACs that have already filed a Statement of Organization with the FEC must amend the form to reflect their lobbyist/registrant PAC identity. These amendments must be made by March 29, 2009.

What triggers disclosure of bundling?

Reporting committees must disclose identifying information for each lobbyist/registrant or lobbyist/registrant PAC that forwards or is credited with raising two or more bundled contributions aggregating in excess of \$16,000 during the applicable semi-annual period (January 1 through June 30, or July 1 through December 31). In addition, reporting committees must file disclosure reports for the covered period that corresponds to their regular schedule of filing campaign finance reports (e.g., monthly, quarterly, pre- and post-election) if they receive bundled contributions exceeding \$16,000 during that period. Thus, if a reporting committee that reports monthly receives bundled contributions in excess of \$16,000 during that monthly period, the reporting committee will be required to disclose that information on its monthly report.

What is the effective date?

Monthly filers will file their first report in May 2009 if they received two or more bundled contributions that aggregate more than \$16,000 in April. Quarterly filers will file their first report in July 2009 if they receive two or more bundled contributions that aggregate more than \$16,000 from April 1 through June 30. All reporting committees will also have to file a semi-annual report, regardless of any reports filed previously, disclosing bundled contributions from March 19, 2009 to June 30, 2009.

CONTACT INFORMATION

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