



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

FEDERAL ELECTION  
COMMISSION  
SECRETARIAT

2009 FEB -3 A 10: 08

MEMORANDUM

TO: The Commission

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SUBJECT: Draft Explanation and Justification of the Final Rule on Reporting Contributions Bundled by Lobbyists, Registrants and the PACs of Lobbyists and Registrants

Attached is a draft Explanation and Justification of the Final Rule implementing section 204 of Public Law 110-81, the Honest Leadership and Open Government Act of 2007, regarding the disclosure of contributions bundled by lobbyist/registrants and lobbyist/registrant PACs. See 2 U.S.C. 434(i). The Final Rule was approved by the Commission on December 18, 2008.

We request that this draft be placed on the agenda for the February 3, 2009 continuation of the January 29, 2009 Open Session.

Attachment

**AGENDA ITEM**

For Meeting of: 2-03-09

**SUBMITTED LATE**

FEDERAL ELECTION COMMISSION

11 CFR Parts 100, 104 and 110

[Notice 2009-XXX]

Reporting Contributions Bundled by Lobbyists, Registrants and the PACs of  
Lobbyists and Registrants

**AGENCY:** Federal Election Commission.

**ACTION:** Final Rules and Transmittal of Regulations to Congress.

**SUMMARY:** The Federal Election Commission is promulgating regulations implementing new statutory provisions regarding the disclosure of information about bundled contributions provided by certain lobbyists, registrants, and political committees established or controlled by lobbyists and registrants. The final rules require authorized committees, leadership PACs, and political committees of political parties to disclose certain information about lobbyists, registrants, and lobbyists' and registrants' political committees that provide bundled contributions. Further information is provided in the supplementary information that follows.

**DATES:** These rules are effective on [INSERT DATE THAT IS 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]. However, compliance with paragraphs (b) and (e) of 11 CFR 104.22 is not required until [INSERT DATE THAT IS 3 MONTHS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Political committees that are "lobbyist/registrant PACs" must amend their FEC Form 1 (Statement of Organization) by [INSERT DATE THAT IS 40

1 DAYS AFTER THE DATE OF PUBLICATION IN THE  
2 FEDERAL REGISTER].

3 **FOR FURTHER**  
4 **INFORMATION**

5 **CONTACT:** Ms. Amy L. Rothstein, Assistant General Counsel, Ms. Cheryl  
6 A.F. Hemsley, or Ms. Esther Heiden, Attorneys, 999 E Street,  
7 N.W., Washington, DC 20463, (202) 694-1650 or (800) 424-9530.

8 **SUPPLEMENTARY**

9 **INFORMATION:** The Commission is promulgating final rules to implement Section  
10 204 of Pub. L. 110-81, 121 Stat. 735, the “Honest Leadership and Open Government Act  
11 of 2007,” signed September 14, 2007 (“HLOGA”). See 2 U.S.C. 434(i). HLOGA  
12 amended the Federal Election Campaign Act of 1971, as amended (2 U.S.C. 431 et seq.)  
13 (“FECA”) by requiring certain political committees to disclose information about each  
14 registered lobbyist<sup>1</sup> and registrant<sup>2</sup> (“lobbyist/registrant”), and each political committee  
15 established or controlled by a lobbyist or registrant (“lobbyist/registrant PAC”<sup>3</sup>), that  
16 forwards, or is credited with raising, two or more bundled contributions aggregating in  
17 excess of the reporting threshold during a specific period of time. See 2 U.S.C. 434(i).  
18 These new disclosure requirements apply only to authorized committees of Federal  
19 candidates, political committees directly or indirectly established, financed, maintained or

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<sup>1</sup> The term “lobbyist” is defined as any individual “who is employed or retained by a client for financial or other compensation for services that include more than one lobbying contact, other than an individual whose lobbying activities constitute less than 20 percent of the time engaged in the services provided by such individual to that client over a 3-month period.” 2 U.S.C. 1602(10). Any lobbyist who makes a lobbying contact or who is employed or retained to make lobbying contacts, and exceeds the work activity threshold, must register with the Secretary of the Senate and the Clerk of the House of Representatives (“Clerk of the House”) if certain income or expense levels are exceeded. See 2 U.S.C. 1603(a).

<sup>2</sup> Any organization that has one or more employees who are lobbyists must register on behalf of its lobbyist employees. See 2 U.S.C. 1603(a): see also [http://www.senate.gov/legislative/common/briefing/lobby\\_disc\\_briefing.htm#3](http://www.senate.gov/legislative/common/briefing/lobby_disc_briefing.htm#3); [http://lobbyingdisclosure.house.gov/lda\\_guide.html](http://lobbyingdisclosure.house.gov/lda_guide.html)

<sup>3</sup> “PAC” is an acronym often used to refer to a political action committee other than an authorized committee or a political committee of a political party.

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1 controlled by a candidate or an individual holding Federal office (“leadership PACs”),  
2 and party committees.

3 HLOGA Section 204 requires that the reporting threshold be indexed for inflation  
4 annually. HLOGA Section 204 states that the indexing requirement “shall apply” to the  
5 reporting threshold beginning “[i]n any calendar year after 2007.” See 2 U.S.C.  
6 434(i)(3)(B); 2 U.S.C. 441a(c)(1)(B). Thus, although HLOGA set the initial reporting  
7 threshold at \$15,000 in 2007, the reporting threshold as indexed for inflation is \$16,000  
8 for 2009. The Commission will publish in the Federal Register a notice of the reporting  
9 threshold for 2009 shortly.

10 The Commission is implementing these provisions by adding two new paragraphs  
11 to 11 CFR 100.5(e), which sets forth examples of “political committees.” In addition, the  
12 Commission is adding new section 104.22 to 11 CFR Part 104, which governs reports by  
13 political committees and other persons. Finally, in addition to addressing, in new 11 CFR  
14 104.22(g), the price indexing of the new bundling reporting threshold, the Commission is  
15 revising one paragraph and adding another in 11 CFR 110.17, which provides for the  
16 price indexing and publication of certain contribution and expenditure limits.

17 The Commission published a Notice of Proposed Rulemaking in the Federal  
18 Register on November 6, 2007. See Notice of Proposed Rulemaking on Reporting  
19 Contributions Bundled by Lobbyists, Registrants and the PACs of Lobbyists and  
20 Registrants, 72 FR 62600 (November 6, 2007) (the “NPRM”). The comment period  
21 closed on November 30, 2007. The Commission received eight comments from twelve  
22 commenters.<sup>4</sup> The comments are available at

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<sup>4</sup> One of these comments was from the Internal Revenue Service, stating that the Internal Revenue Service did not find any conflict between its regulations and the Commission’s proposed rules.

1 [http://www.fec.gov/law/law\\_rulemakings.shtml#bundling](http://www.fec.gov/law/law_rulemakings.shtml#bundling). Six of the commenters  
2 testified at a hearing held on September 17, 2008. For the purposes of this document, the  
3 term “comment” applies to both written comments and oral testimony at the public  
4 hearing.

5 Under the Administrative Procedure Act, 5 U.S.C. 553(d), and the Congressional  
6 Review of Agency Rulemaking Act, 5 U.S.C. 801(a)(1), agencies must submit final rules  
7 to the Speaker of the House of Representatives and the President of the Senate, and  
8 publish them in the Federal Register at least thirty calendar days before they take effect.  
9 The final rules that follow were transmitted to Congress on February XX, 2009.

10 These regulations are effective thirty days after publication in the Federal  
11 Register. Reporting committees, however, must comply with the disclosure requirements  
12 of Section 204 of HLOGA and with the corresponding provisions of new 11 CFR 104.22  
13 – that is, with paragraph (b) (Reporting Requirement for Reporting Committees) and  
14 paragraph (e) (When to File) – only with respect to reports filed more than three months  
15 after these final rules are published in the Federal Register.

16 This delayed compliance date is required by Section 204(b) of HLOGA, which  
17 provides that “the amendment made by [Section 204(a)] shall apply with respect to  
18 reports filed under [2 U.S.C. 434] after the expiration of the 3-month period which begins  
19 on the date that the regulations required to be promulgated by the [Commission] under [2  
20 U.S.C. 434(i)(5)] become final.” Regulations are final upon their publication in the  
21 Federal Register. See Natural Resources Defense Council, Inc. v. EPA, 683 F.2d 752 (3d  
22 Cir. 1982).

1           Reports required to be filed after these final rules are published (and any records  
2 corresponding to such reports, as discussed below) need not include activity before the  
3 effective date of these regulations, and activity before the effective date does not count  
4 toward any aggregate amount for the purposes of the reporting threshold. Thus, monthly  
5 filers must begin reporting under new 11 CFR 104.22(b) in May 2009, for bundled  
6 contributions that are received in April. Quarterly filers must begin reporting under new  
7 11 CFR 104.22(b) in July 2009, for bundled contributions that are received in April  
8 through June 30. Finally, semi-annual filers must begin reporting under new 11 CFR  
9 104.22(b) in July 2009, for bundled contributions that are received beginning on the  
10 effective date of these rules (i.e., thirty days after publication in the Federal Register)  
11 through June 30. The Commission is not requiring the reporting of contributions bundled  
12 by lobbyists/registrants received as of January 1, 2009 through the effective date of these  
13 regulations (i.e., 30 days after publication in the Federal Register), because such a  
14 requirement would be a retroactive application of the regulation. Contributions bundled  
15 by entities that may be lobbyist/registrant PACs and received through 30 days after the  
16 effective date of these regulations (i.e., 60 days after publication in the Federal Register)  
17 also need not be reported.

18           Because the Commission is requiring reporting committees to report bundled  
19 contributions received as of the effective date of these regulations, but is providing an  
20 additional ten days for lobbyist/registrant PACs to amend their Form 1s, there will be at  
21 least a ten-day period during which reporting committees may be unable to determine  
22 definitively whether an entity is a lobbyist/registrant PAC. Moreover, because the  
23 Commission is unable to update its website instantaneously to provide real-time

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1 information regarding amended Form 1s or to provide a list that is reasonably searchable  
2 with respect to whether an entity is a lobbyist/registrant PAC, the Commission anticipates  
3 an additional delay between the deadline by which lobbyist/registrant PACs are required  
4 to amend their Form 1s and when such information becomes available to reporting  
5 committees. Accordingly, the Commission is delaying the implementation of these rules  
6 with respect to contributions bundled by entities that may be lobbyist/registrant PACs for  
7 an additional 30 days after the effective date of these regulations (i.e., 60 days after  
8 publication in the Federal Register), during which time reporting committees are not  
9 required to report contributions bundled by such entities.

10 **Explanation and Justification**

11 **I. Background**

12 Prior to HLOGA, FECA and Commission regulations imposed certain reporting  
13 and recordkeeping requirements for contributions received and forwarded by any person  
14 to a political committee. Each person who received and forwarded contributions to a  
15 political committee was also required to forward certain information identifying the  
16 original contributor. See 2 U.S.C. 432(b); 11 CFR 102.8. Additionally, 2 U.S.C.  
17 441a(a)(8) and 11 CFR 110.6 imposed certain reporting and recordkeeping requirements  
18 for contributions received and forwarded by persons known as “conduits” or  
19 “intermediaries” to the authorized committees of Federal candidates. The Commission  
20 did not propose and is not implementing any changes to these rules.

21 Section 204 of HLOGA requires each authorized committee of a Federal  
22 candidate, leadership PAC and political committee of a political party to disclose certain  
23 information about any person reasonably known by the committee to be a

1 lobbyist/registrant or lobbyist/registrant PAC that forwards to the reporting committee, or  
2 is credited with raising for the reporting committee, two or more bundled contributions  
3 aggregating in excess of the reporting threshold within a “covered period” of time. See 2  
4 U.S.C. 434(i)(1), (2), (3) and (8). Accordingly, Section 204 of HLOGA requires  
5 reporting committees to disclose information about two distinct types of bundled  
6 contributions: (1) contributions that are forwarded to a reporting committee by a  
7 lobbyist/registrant or lobbyist/registrant PAC, and (2) contributions that, although  
8 received by the reporting committee directly from a contributor, are credited by the  
9 reporting committee to a lobbyist/registrant or lobbyist/registrant PAC through records,  
10 designations or other means of recognizing that a certain amount of money has been  
11 raised by that lobbyist/registrant or lobbyist/registrant PAC. Id. Under Section 204 of  
12 HLOGA, a reporting committee must disclose the name and address of the  
13 lobbyist/registrant or lobbyist/registrant PAC, the lobbyist/registrant’s employer (for  
14 individuals), and the aggregate amount of bundled contributions within the covered  
15 period. See 2 U.S.C. 434(i)(1).

16 **II. 11 CFR 100.5 – Political Committee (2 U.S.C. 431(4), (5), (6))**

17 Section 100.5(e) of 11 CFR provides examples of types of political committees.  
18 The Commission is adding two new paragraphs, (e)(6) and (e)(7), to section 100.5  
19 regarding “leadership PAC” and “lobbyist/registrant PAC,” respectively, as examples of  
20 political committees.

21 **A. 11 CFR 100.5(e)(6) – Leadership PAC**

22 The term “leadership PAC” is defined in Section 204(a) of HLOGA as “a political  
23 committee that is directly or indirectly established, financed, maintained or controlled by



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1 [a] candidate [for Federal office] or [an] individual [holding Federal office] but which is  
2 not an authorized committee of the candidate or individual and which is not affiliated  
3 with an authorized committee of the candidate or individual, except that such term does  
4 not include a political committee of a political party.”<sup>5</sup> 2 U.S.C. 434(i)(8)(B).

5 The new definition of “leadership PAC” is relevant to two areas of HLOGA that  
6 fall within the Commission’s purview: (1) the disclosure requirements in Section 204 of  
7 HLOGA for contributions bundled by lobbyists/registrants and lobbyist/registrant PACs  
8 and (2) restrictions on candidate travel in section 601 of HLOGA. See Pub. L. No. 110-  
9 81, section 601(a) (codified at 2 U.S.C 439a(c)(2)).

10 The Commission announced its plans to initiate rulemakings for these two  
11 provisions on September 24, 2007.<sup>6</sup> The candidate travel NPRM responsive to section  
12 601 of HLOGA initially proposed a definition of “leadership PAC” as that term applies to  
13 both provisions. See Notice of Proposed Rulemaking on Candidate Travel, 72 FR 59953  
14 (October 23, 2007) (“Candidate Travel NPRM”). The NPRM for this bundling  
15 disclosure rulemaking cited to the proposed definition in the Candidate Travel NPRM as  
16 the definition to be used. See NPRM, 72 FR at 62600, fn. 3; see also Candidate Travel  
17 NPRM, 72 FR at 59954. Because these bundling disclosure rules are becoming final  
18 before the candidate travel rules, the Commission is including the definition of  
19 “leadership PAC” in these final rules.

20 The Commission is defining “leadership PAC” at 11 CFR 100.5(e)(6) as proposed  
21 in the Candidate Travel NPRM. The definition follows the definition of “leadership

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<sup>5</sup> This definition is consistent with the Commission’s rules that treat such committees as unaffiliated with a candidate’s authorized committee. See 11 CFR 100.5(g).

<sup>6</sup> See News Release, Federal Election Commission Announces Plans to Issue New Regulations to Implement the Honest Leadership and Open Government Act of 2007, available at <http://www.fec.gov/press/press2007/20070924travel.shtml>.

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1 PAC” in Section 204 of HLOGA.<sup>7</sup> The Commission received one comment on the  
2 proposed definition in response to the Candidate Travel NPRM that supported the  
3 substance and location of the new definition, and did not receive any comments opposing  
4 it.<sup>8</sup>

5 B. 11 CFR 100.5(e)(7) – Lobbyist/Registrant PAC

6 New paragraph (e)(7) refers the reader to the definition in new 11 CFR  
7 104.22(a)(3) of the term “lobbyist/registrant PAC,” which is discussed below.

8 **III. New 11 CFR 104.22 – Disclosure of Bundling by Lobbyists/Registrants and**  
9 **Lobbyist/Registrant PACs (2 U.S.C. 434(i))**

10 To implement the requirements of HLOGA Section 204, the Commission is  
11 adopting new 11 CFR 104.22. New paragraph (a) defines key terms; paragraphs (b) and  
12 (c) set forth the reporting requirements under these new rules; paragraphs (d) and (e)  
13 govern where to file and when to file, respectively; paragraph (f) establishes  
14 recordkeeping requirements; and paragraph (g) addresses the annual indexing for  
15 inflation of the threshold amount of bundled contributions that trigger the reporting  
16 requirement for a covered period.

17 A. 11 CFR 104.22(a) – Definitions

18 The Commission is adding several new definitions in new 11 CFR 104.22(a).  
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<sup>7</sup> The term “political committee” applies only to those organizations that are for the purpose of influencing Federal elections. The definition of “leadership PAC” does not cover committees that are not included in the definition of “political committee” (such as State leadership PACs that are established, financed, maintained, or controlled by a State official who runs for Federal office).

<sup>8</sup> Comments filed in the candidate travel rulemaking are available at [http://www.fec.gov/law/law\\_rulemakings.shtml#travel07](http://www.fec.gov/law/law_rulemakings.shtml#travel07).

1                   1.       11 CFR 104.22(a)(1) – Reporting Committee

2                   HLOGA adds reporting requirements that apply to three types of political  
3 committees: authorized committees of a candidate, leadership PACs, and party  
4 committees. See 2 U.S.C. 434(i)(6). New 11 CFR 104.22(a)(1) defines “reporting  
5 committee” to encompass these three types of political committees, as they are defined in  
6 11 CFR 100.5(e)(4), new (e)(6), and (f)(1). The Commission requested but received no  
7 comments on the proposed definition, which is the same as the final rule.

8                   2.       11 CFR 104.22(a)(2) – Lobbyist/Registrant

9                   HLOGA Section 204 applies to contributions bundled by “a current registrant  
10 under section 4(a) of the Lobbying Disclosure Act of 1995 [the “LDA”] (2 U.S.C.  
11 1603(a)); an individual who is listed on a current registration filed under section 4(b)(6)  
12 of [the LDA](2 U.S.C. 1603(b)(6)) or a current report under section 5(b)(2)(C) of [the  
13 LDA](2 U.S.C. 1604(b)(2)(C));<sup>9</sup> or a political committee established or controlled by  
14 such a registrant or individual.” 2 U.S.C. 434(i)(7). The NPRM proposed creating a new  
15 term, “lobbyist/registrant,” to encompass both current registrants and individuals listed on  
16 a current registration or report filed under the LDA.

17                   The NPRM requested comments on whether the reporting requirements of  
18 HLOGA Section 204 should also apply to contributions forwarded by or received and  
19 credited to a registrant’s employee, where that employee is not listed by the registrant as  
20 an in-house lobbyist. Six comments addressed this issue. Four comments opined that the

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<sup>9</sup> Under section (4)(b)(6) of the LDA, each registration filed with the Secretary of the Senate or Clerk of the House must include the name of each employee of the registrant who has acted or whom the registrant expects to act as a lobbyist on behalf of the registrant or a client; under Section 5(b)(2)(c), each registrant must file quarterly reports with the Secretary of the Senate and the Clerk of the House that include a list of the registrant’s employees who acted as lobbyists on behalf of a client of the registrant during the quarter. See 2 U.S.C. 1603(b)(6).

1 crux of the matter would depend on whether the employee was raising funds on behalf of  
2 the employee's registrant employer or was acting on the employee's own behalf. Three  
3 of these comments suggested various standards that the Commission might employ to  
4 determine on whose behalf the non-lobbyist employee is acting. One comment suggested  
5 using a standard based on the law of agency. A second comment suggested using a  
6 standard analogous to that used in determining whether corporate facilitation has taken  
7 place, that is, examining whether the employee was ordered or directed by the  
8 employee's superior to undertake the activity. See 11 CFR 114.2(f)(2)(i)(A). A third  
9 comment suggested creating a rebuttable presumption that certain employees, such as  
10 senior officers and government relations employees of a registrant, are acting on behalf of  
11 their registrant employer.

12 By contrast, two comments stated that HLOGA covers only activity by  
13 lobbyists/registrants and lobbyist/registrator PACs. One of these comments opined that  
14 the Commission has no authority to go beyond the plain statutory language by requiring  
15 the disclosure of information about individuals who are employed by registrants but are  
16 not themselves lobbyists.

17 The Commission agrees with the latter two comments. By its express terms,  
18 HLOGA requires the disclosure of information only about lobbyists and registrants.  
19 2 U.S.C. 434(i)(7). This interpretation is further supported by a section-by-section  
20 analysis of HLOGA that was made a part of the record in the Senate debate on HLOGA  
21 by Senator Feinstein. In her remarks, Senator Feinstein stated "I ask unanimous consent  
22 to have printed in the [Congressional] Record a section-by-section analysis of the bill  
23 [HLOGA] we are about to vote on, including legislative history endorsed by the three

1 principal Senate authors of the legislation: myself, Chairman [of the Senate Committee  
2 on Homeland Security and Governmental Affairs] Lieberman and Majority Leader Reid.”  
3 153 Cong. Rec. S10708 (daily ed. August 2, 2007) (“Section-by-Section Analysis”).

4 The Section-by-Section Analysis specifically states that the disclosure  
5 requirements apply only to lobbyists and registrants:

6 This provision covers only contributions credited to registered lobbyists,  
7 as defined in subsection 204(a)(7). Contributions credited to others,  
8 including others who may share a common employer with, or work for a  
9 lobbyist, are not covered by this section so long as any credit is genuinely  
10 received by the non-lobbyist and not the lobbyist.

11 153 Cong. Rec. S10709 (daily ed. August 2, 2007).

12 Thus, the Commission has determined that non-lobbyist employees of  
13 lobbyists/registrants or lobbyist/registrant PACs who forward bundled contributions or  
14 receive credit from a reporting committee for bundling contributions are outside of the  
15 scope of HLOGA Section 204. However, if the reporting committee knows that the  
16 person is forwarding the contributions on behalf of a lobbyist/registrant or  
17 lobbyist/registrant PAC, such forwarded contributions are within the scope of HLOGA  
18 Section 204. The final rule defines “bundled contribution” accordingly. See 11 CFR  
19 104.22(a)(6)(i); see also discussion below at III.6.a.

20 3. 11 CFR 104.22(a)(3) – Lobbyist/Registrant PAC

21 New 11 CFR 104.22(a)(3) defines “lobbyist/registrant PAC” as “any political  
22 committee that a ‘lobbyist/registrant’ ‘established or controls’” as that term is defined in  
23 11 CFR 104.22(a)(4). This definition tracks the language of HLOGA, which defines

1 “persons” who raise bundled contributions to include a “political committee established  
2 or controlled” by a lobbyist or registrant. 2 U.S.C. 434(i)(7)(C). As discussed below,  
3 any political committee that meets the definition of “lobbyist/registrant PAC” under  
4 11 CFR 104.22(a)(3) must identify itself as such on any FEC Form 1 (Statement of  
5 Organization) that it files with the Commission after the effective date of this rule. See  
6 11 CFR 104.22(c). Committees that have already filed FEC Form 1 with the  
7 Commission and that meet the definition of “lobbyist/registrant PAC” under 11 CFR  
8 104.22(a)(3) are required to amend their FEC Form 1 to reflect this change in status  
9 within ten days after the effective date of this rule. Id.; 11 CFR 102.2(a)(2). Thus, Form  
10 1 must be amended within forty days after the date this rule is published in the Federal  
11 Register. Statements of Organization are filed pursuant to 2 U.S.C. 433, and therefore  
12 are not subject to the mandatory three-month waiting period under HLOGA Section 204,  
13 which applies to reports filed under 2 U.S.C. 434(i).

14 4. 11 CFR 104.22(a)(4) – Established or Controls

15 HLOGA Section 204 requires reporting committees to disclose bundled  
16 contributions that exceed the reporting threshold within a covered period, if those  
17 bundled contributions were forwarded by, or received and credited to, any political  
18 committee reasonably known by the recipient reporting committee to be “established or  
19 controlled” by a lobbyist or registrant. 2 U.S.C. 434(i)(7)(C). The NPRM asked several  
20 questions as to when a lobbyist/registrant should be considered to have “established or  
21 [to] control[.]” a political committee. In the NPRM, the Commission requested but  
22 received no comments on including the separate segregated fund (“SSF”) of any

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1 corporation, labor organization or other connected organization (see 11 CFR 100.6) that  
2 is a registrant under the LDA, within the ambit of “lobbyist/registrant PACs.”

3         The NPRM also requested comments on when a nonconnected committee would  
4 be considered to be “controlled” by a lobbyist/registrant, and whether a  
5 lobbyist/registrant that is the treasurer of the political committee controls the committee  
6 per se. One comment on this issue suggested that “controlled” is a recognized term of art  
7 under FECA: for example, political committees “established, financed, maintained or  
8 controlled” by the same person or group of persons are “affiliated” and are treated as a  
9 single committee for contribution purposes. Several comments suggested using factors  
10 similar to those used by the Commission to determine case-by-case affiliation of political  
11 committees under 11 CFR 100.5(g). These comments suggested using such factors as (1)  
12 whether the lobbyist/registrant has the authority to direct or participate in the governance  
13 of the political committee; (2) whether the lobbyist/registrant has the authority to hire,  
14 appoint, demote or otherwise control the officers of the political committee; and (3)  
15 whether the lobbyist/registrant provides significant funding for the political committee on  
16 an ongoing basis. One comment stated that having a lobbyist on the board of directors of  
17 a nonconnected committee or serving as an officer would be an example of per se control  
18 by the lobbyist. Another comment agreed that having a lobbyist acting as treasurer of a  
19 nonconnected committee would constitute per se control, but cautioned against creating a  
20 rule that would make any board membership per se control.

21         The concept of “established or controlled” in Section 204 of HLOGA, which is  
22 implemented by the Commission in new 11 CFR 104.22(a)(4), relates to the same entities  
23 as does Section 203 of HLOGA, which is implemented by the Secretary of the Senate and

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1 Clerk of the House under the LDA. See 2 U.S.C. 1604(d). Therefore, in addition to the  
2 comments' proposals, the Commission also considered following the description of  
3 "established or controlled" set out by the Secretary of the Senate and the Clerk of the  
4 House of Representatives in their guidance on reports filed with them under the LDA,  
5 which includes the following example:

6 Lobbyists "C" and "D" serve on the board of a non-connected PAC as member  
7 and treasurer respectively. As board members, they are in positions that control  
8 direction of the PAC's contributions. Since both are controlling to whom the  
9 PAC's contributions are given, they must disclose applicable contributions of the  
10 PAC on their semi-annual reports.

11 See [http://www.senate.gov/legislative/resources/pdf/S1\\_guidance.pdf](http://www.senate.gov/legislative/resources/pdf/S1_guidance.pdf) at page 22;

12  
13 [http://lobbyingdisclosure.house.gov/amended\\_lda\\_guide.html#125update](http://lobbyingdisclosure.house.gov/amended_lda_guide.html#125update) at section 7.  
14

15 The Commission decided to use a combination of the House and Senate guidance  
16 and the Commission's own factors to determine whether a lobbyist/registrant established  
17 or controls a political committee. Because of the overlap between Sections 203 and 204  
18 of HLOGA with respect to the use of the term "established or controlled," the  
19 Commission concluded that it was preferable, to the extent practicable, to harmonize its  
20 rule in new 11 CFR 104.22(a)(4) with the Secretary of the Senate and the Clerk of the  
21 House's implementation of Section 203 of HLOGA under the LDA.

22 Accordingly, a lobbyist/registrant established or controls any political committee  
23 for the purposes of new 11 CFR 104.22(a)(4) if the lobbyist/registrant is required to  
24 disclose such political committee to the Secretary of the Senate or the Clerk of the House  
25 as being established or controlled by that lobbyist/registrant under Section 203 of  
26 HLOGA. If a political committee is able to obtain definitive guidance from the Secretary



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1 of the Senate or Clerk of the House that it is, or is not, required to be disclosed as being  
2 established or controlled by a lobbyist/registrant, then such determination is conclusive  
3 for the purposes of new 11 CFR 104.22, and the political committee need not consider  
4 the Commission's additional criteria described below.

5         The Commission, is aware, however, that there may be times when a political  
6 committee will not be able to determine definitively from guidance issued by the  
7 Secretary of the Senate and the Clerk of the House, or after communicating with those  
8 offices, whether a political committee is established or controlled by a lobbyist/registrant.  
9 For this reason, the Commission is issuing additional criteria on whether a political  
10 committee is established or controlled by a lobbyist/registrant for the purposes of  
11 HLOGA Section 204. If, after consulting guidance issued by the offices of the Secretary  
12 of the Senate and Clerk of the House or after communicating with those offices, a  
13 political committee is unable to ascertain whether it is established or controlled by a  
14 lobbyist/registrant, the political committee must consult the additional criteria set forth in  
15 new 11 CFR 104.22(a)(4)(ii).

16         Under these additional criteria, a political committee must first consult new 11  
17 CFR 104.22(a)(4)(ii)(A), which states that a separate segregated fund whose connected  
18 organization is a registrant is a lobbyist/registrant PAC. If the political committee does  
19 not meet the criterion under 11 CFR 104.22(a)(4)(ii)(A), then the political committee  
20 must next look to new 11 CFR 104.22(a)(4)(ii)(B), which sets out two additional  
21 independent criteria for determining whether a political committee is "established or  
22 controlled" by a lobbyist/registrant. The Commission has decided not to incorporate the  
23 broad affiliation analysis at 11 CFR 100.5(g). That analysis would have required the

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1 weighing of several factors in order to determine whether a lobbyist/registrant established  
2 or controls a political committee. Instead, to give firm guidance to political committees,  
3 the “established or controls” analysis in new 11 CFR 104.22(a)(4)(ii)(B) states that a  
4 political committee is established or controlled by a lobbyist/registrant if it meets either  
5 of the criteria in paragraph (1) or (2). The Commission notes that HLOGA Section 204  
6 uses the words “established or controlled.” The use of the disjunctive “or” (rather than  
7 the conjunctive “and”) means that only one of those criteria need be present to trigger  
8 application of the law.

9         Webster’s Dictionary defines “establish” as “to found, institute, build, or bring  
10 into being on a firm or stable basis.” Random House Webster’s Unabridged Dictionary,  
11 2nd Ed. 663 (Random House 2001). The Commission recognizes that several individuals  
12 may participate in the establishment of a political committee. Therefore, the first  
13 criterion, as set out in new 11 CFR 104.22(a)(4)(ii)(B)(1), provides that a political  
14 committee is “established” by a lobbyist/registrant if a lobbyist/registrant had a primary  
15 role in the establishment of the political committee, excluding the provision of legal or  
16 compliance services or advice.

17         The second criterion, set forth in new 11 CFR 104.22(a)(4)(ii)(B)(2), provides  
18 that a political committee is “controlled” by a lobbyist/registrant if the lobbyist/registrant  
19 directs the governance or operations of the political committee, excluding the provision  
20 of legal or compliance services or advice. This standard derives from the dictionary  
21 definition of “control:” “to exercise restraint or direction over; dominate; command.” Id.  
22 at 442. The lobbyist/registrant’s authority to direct, which need not be exclusive to any  
23 one person, may derive from the political committee’s controlling documents, such as the

1 articles of incorporation or bylaws. However, a political committee’s informal  
2 procedures or actual practices may also demonstrate that a lobbyist/registrant directs the  
3 governance or operations of the committee. For example, even a lobbyist/registrant who  
4 is a non-voting member of a political committee’s board of directors may control the  
5 political committee as long as that lobbyist/registrant in fact directs the governance or  
6 operations of the political committee.

7 Both criteria, as discussed above, exclude the provision of legal or compliance  
8 services or advice from the criteria for determining when a political committee is  
9 established or controlled by a lobbyist/registrant. This exclusion reflects the  
10 Commission’s recognition that, during and after formation, political committees often  
11 consult experts who may be lobbyists/registrants or whose firms are registrants. The new  
12 rule is designed to reach those situations in which the lobbyist/registrant is more actively  
13 involved in the formation or operation of a political committee than merely providing  
14 legal or compliance services or advice. Thus, a political committee’s use for compliance  
15 purposes of an attorney or other expert from a firm that itself is a registrant (or even if the  
16 attorney or expert is a lobbyist/registrant) will not by itself result in the political  
17 committee being established or controlled by a lobbyist/registrant.

18 5. 11 CFR 104.22(a)(5) – Covered Period

19 Section 204 of HLOGA requires that reporting committees disclose information  
20 about any lobbyist/registrant or lobbyist/registrant PAC that forwards, or is credited with  
21 raising for the reporting committee, two or more bundled contributions aggregating in  
22 excess of the reporting threshold during any “covered period.” See 2 U.S.C. 434(i)(1),  
23 (2), (3) and (8). HLOGA defines “covered period” as January 1 through June 30, July 1

1 through December 31 “and . . . any reporting period applicable to the committee under [2  
2 U.S.C. 434] during which any [lobbyist/registrant or lobbyist/registrant PAC] provided  
3 two or more bundled contributions to the committee in an aggregate amount greater than  
4 [the reporting threshold].” 2 U.S.C. 434(i)(2). HLOGA grants the Commission the  
5 discretion to provide for quarterly reporting by political committees that file their  
6 campaign finance reports more frequently than on a quarterly basis.<sup>10</sup> See 2 U.S.C.  
7 434(i)(5)(A).

8 a. The Proposed Definition

9 The NPRM presented both a proposed and an alternative definition of “covered  
10 period.” Under the proposed definition, a “covered period” would be the semi-annual  
11 periods of January 1 through June 30 and July 1 through December 31. Additionally, in  
12 any calendar year in which a reporting committee is required to file or files monthly or  
13 quarterly campaign finance reports, “covered period” would also include the quarterly  
14 periods of January 1 through March 31 and July 1 through September 30, if during those  
15 periods, a lobbyist/registrant or lobbyist/registrant PAC provided two or more bundled  
16 contributions to the reporting committee that aggregate in excess of the reporting  
17 threshold.

18 The Commission received four comments favoring the proposed definition. All  
19 four comments stated that the proposed definition was consistent with HLOGA’s

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<sup>10</sup> Under FECA, political committees are subject to the following campaign finance reporting requirements: national committees of political parties (including the national congressional campaign committees) must report monthly in all calendar years. see 2 U.S.C. 434(a)(4)(B); 11 CFR 104.5(c)(4); state, district and local committees of political parties are required to file monthly if they exceed certain levels of Federal election activity. see 2 U.S.C. 434(e)(4); 11 CFR 300.36(c); most authorized committees of presidential candidates are required to file monthly during presidential election years, see 2 U.S.C. 434(a)(3); 11 CFR 104.5(b); authorized committees of House and Senate candidates are required to file quarterly, see 2 U.S.C. 434(a)(2); 11 CFR 104.5(a); other political committees may choose to file on either a monthly or a quarterly basis. see 2 U.S.C. 434(a)(4); 11 CFR 104.5(c)(1)-(3).

1 requirement that the Commission’s regulations provide for the broadest possible  
2 disclosure of lobbyist/registrant bundling activity.

3           The NPRM also asked whether the statute would support the elimination of  
4 duplicative reporting that would result from the proposed definition of “covered period.”  
5 The NPRM asked, for example, whether there is a statutory basis for the Commission to  
6 consider exempting reporting committees from having to disclose semi-annually  
7 information about lobbyists/registrants or lobbyist/registrant PACs providing bundled  
8 contributions if the information was already fully disclosed in a prior report filed with the  
9 Commission. All four comments were in favor of elimination of duplicative reporting.  
10 As such, they suggested that the Commission design the new reporting schedule to allow  
11 for both quarterly and semi-annual reporting once the reporting threshold has been  
12 exceeded. One comment stated that such a reporting form would assist the public’s  
13 understanding of the data.

14                                   b. The Alternative Definition

15           The alternative definition in the NPRM would provide that, in any calendar year  
16 in which a reporting committee is required to file or files reports on a quarterly or  
17 monthly basis under 11 CFR 104.5, the covered period would be defined as the quarterly  
18 periods of January 1 through March 31, April 1 through June 30, July 1 through  
19 September 30, and October 1 through December 31. Additionally, in any calendar year  
20 in which a reporting committee files semi-annual reports, the covered period would also  
21 include the semi-annual periods of January 1 through June 30 and July 1 through  
22 December 30. The Commission received one comment in favor of this alternative

1 definition, noting that the alternative definition would result in more persons meeting the  
2 reporting threshold, and thus lead to greater disclosure.

3 c. Quarterly Covered Periods for Reporting Committees which  
4 File More Frequently than on a Quarterly Basis

5 Under both the proposed and the alternative definition of “covered period” in the  
6 NPRM, the Commission would have exercised its authority under HLOGA to require  
7 reporting committees that file monthly campaign finance reports to file their bundling  
8 disclosure reports quarterly, rather than monthly. See 2 U.S.C. 434(i)(5)(A).

9 The Commission asked whether it should, instead, require monthly filers to  
10 disclose information about bundled contributions on a monthly and semi-annual basis.  
11 See 2 U.S.C. 434(i)(5)(A) (“[T]he Commission may . . . provide for quarterly filing . . .  
12 by a committee which files reports . . . more frequently than on a quarterly basis.”).

13 The Commission received five comments on this question. All supported  
14 quarterly filing schedules for political committees that file their campaign finance reports  
15 on a monthly basis. One comment noted that quarterly filing will result in more persons  
16 meeting the reporting threshold, and thus provide greater disclosure by reporting  
17 committees. The comment further noted that requiring reporting committees to  
18 determine on a monthly basis which entities have forwarded or been credited with raising  
19 contributions in excess of the reporting threshold, and then to determine for that same  
20 period which of those entities are lobbyists/registrants or their PACs, would impose an  
21 undue compliance burden on many reporting committees.

22 d. Definition of “Covered Period” in Final Rule

1           The Commission’s final rule follows HLOGA Section 204. The final rule  
2 provides for different “covered periods” as follows:

3           Semi-Annual Covered Periods – “Covered period” for each reporting committee  
4 is the semi-annual periods of January 1 through June 30, and July 1 through December  
5 31. See 11 CFR 104.22(a)(5)(i).

6           Quarterly Covered Periods – For reporting committees that file campaign finance  
7 reports under 11 CFR 104.5 on a quarterly basis, the covered periods also include the  
8 quarters beginning on January 1, April 1, July 1, and October 1, and the applicable pre-  
9 and post-election reporting periods in election years. See 11 CFR 104.22(a)(5)(ii). In  
10 non-election years, reporting committees other than those authorized by a candidate may  
11 file lobbyist bundling disclosure reports only for the semi-annual covered periods. Id.

12           Monthly Covered Periods – For reporting committees that file campaign finance  
13 reports under 11 CFR 104.5 on a monthly basis, the covered periods also include each  
14 month in the calendar year, except that in election years, the pre- and post-general  
15 election reporting periods are covered periods in lieu of the monthly November and  
16 December reporting periods. 11 CFR 104.22(a)(5)(iii); see also 11 CFR 104.5(c)(3)(ii).  
17 This reporting schedule follows the campaign finance reporting schedule for political  
18 committees other than authorized committees in 2 U.S.C. 434(a)(4)(B).

19           HLOGA requires reporting committees to file lobbyist bundling disclosure reports  
20 both semi-annually and for “any reporting period applicable” to the reporting committee  
21 under 2 U.S.C. 434 during which any lobbyist/registrant or lobbyist/registrant PAC  
22 provided two or more bundled contributions to the committee in an aggregate amount  
23 exceeding the reporting threshold. 2 U.S.C. 434(i)(2)(C). Conforming the definition of

1 “covered period” in 11 CFR 104.22(a)(5) with the reporting committee’s campaign  
2 finance reporting periods under 2 U.S.C. 434 thus more closely tracks the language of  
3 HLOGA than did either the proposed rule or its alternative in the NPRM.

4 Furthermore, requiring reporting committees to file lobbyist bundling disclosure  
5 reports according to their usual campaign finance reporting schedule, including pre- and  
6 post-election reports, means that quarterly filers will disclose information about lobbyist  
7 bundling activity during the crucial period immediately before an election, as will  
8 monthly filers in the period immediately before a general election. The proposed rule  
9 and the alternative in the NPRM would have resulted in the disclosure of  
10 lobbyist/registrant and lobbyist/registrant PAC bundling information by quarterly and  
11 monthly filers only after the close of each calendar quarter which, in some cases, would  
12 have been after the relevant election. The Commission’s decision to require pre-election  
13 disclosure is consistent with the requirement in HLOGA that the Commission promulgate  
14 rules that “provide for the broadest possible disclosure.” 2 U.S.C. 434(i)(5)(D).

15 The Commission’s decision to conform the definition of “covered period” to a  
16 reporting committee’s campaign finance reporting schedule alleviates the concern  
17 expressed in several comments that reporting committees might find it difficult to try to  
18 implement two different reporting schedules – one for campaign finance reports under 11  
19 CFR 104.5 and one for lobbyist bundling disclosure reports under 11 CFR 104.22.  
20 Requiring the filing of bundling disclosure reports and campaign finance reports on the  
21 same timeline reduces or alleviates any possible confusion, while at the same time  
22 reducing the burden of the reporting requirement. In addition, placing both types of  
23 reports on the same timeline will facilitate the public’s ability to compare the two types



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1 of reports accurately, thereby further helping to achieve the public disclosure objectives  
2 of HLOGA. See 2 U.S.C. 434(i)(5)(D). Accordingly, 11 CFR 104.22(a)(5)(ii) and (iii)  
3 define “covered period” to correspond to a reporting committee’s regular campaign  
4 finance reporting schedule under 11 CFR 104.5.

5         The Commission recognizes, however, that some comments conveyed a  
6 preference for allowing reporting committees that file their campaign finance reports on a  
7 monthly basis to file their lobbyist bundling disclosure reports quarterly, instead. As one  
8 comment noted, requiring reporting committees to make a monthly determination as to  
9 who is a lobbyist/registrant or lobbyist/registrant PAC, and whether or not the reporting  
10 threshold for bundled contributions has been exceeded, would impose a substantial  
11 compliance burden. Recognizing that concern, the regulations adopted by the  
12 Commission permit quarterly filing of the information required by this regulation for  
13 reporting committees that file their campaign finance reports under 2 U.S.C. 434 more  
14 frequently than on a quarterly basis. See 2 U.S.C. 434(i)(5)(A). Under new 11 CFR  
15 104.22(a)(5)(iv), reporting committees that file their campaign finance reports on a  
16 monthly basis may elect to file their lobbyist bundling disclosure reports on a quarterly,  
17 rather than monthly, basis. Any such reporting committee that chooses to file its lobbyist  
18 bundling disclosure reports on a quarterly basis must follow the same schedule as  
19 quarterly filers: semi-annually; for each calendar quarter; and pre- and post-election, as  
20 discussed above. A reporting committee that wishes to change its reporting schedule  
21 under new 11 CFR 104.22(a)(5) must notify the Commission in writing, just as non-  
22 authorized committees must do for campaign finance reports. See 11 CFR 104.5(c).

1 Reporting committees may not change their filing frequency more than once per calendar  
2 year. See id.

3 Finally, new 11 CFR 104.22(a)(5)(v) establishes a covered period for reporting  
4 committees with respect to special elections and runoff elections. Any such reporting  
5 committee that receives two or more contributions forwarded by or raised by and credited  
6 to a lobbyist/registrant or lobbyist/registrant PAC that exceed the reporting threshold  
7 during the covered period must file FEC Form 3L (Report of Contributions Bundled by  
8 Lobbyists/Registrants and Lobbyist/Registrant PACs) at the same time that the reporting  
9 committee files its campaign finance reports for the special or run-off election. Special  
10 and run-off elections are called under State law, and the Commission sets deadlines for  
11 filing campaign finance reports for the elections under 2 U.S.C. 434(a)(9). See also 11  
12 CFR 104.5(h). The new definition of “covered period” for reporting committees active in  
13 special and run-off elections thus is consistent with HLOGA’s definition of “covered  
14 period,” which includes “any reporting period applicable to the committee under [2  
15 U.S.C. 434].” 2 U.S.C. 434(i)(2).

16 6. 11 CFR 104.22(a)(6) – Bundled Contribution

17 HLOGA Section 204 defines the term “bundled contribution” as “with respect to  
18 a [reporting committee] and a [lobbyist/registrant or lobbyist/registrant PAC], a  
19 contribution (subject to the applicable threshold) which is (i) forwarded from the  
20 contributor or any contributors to the [reporting] committee by the [lobbyist/registrant or  
21 lobbyist/registrant PAC]; or (ii) received by the [reporting] committee from a contributor  
22 or contributors, but credited by the [reporting] committee or the candidate involved (or,  
23 in the case of a leadership PAC, by the [officeholder] involved) to the [lobbyist/registrant

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1 or lobbyist/registrant PAC] through records, designations, or other means of recognizing  
2 that a certain amount of money has been raised by the [lobbyist/registrant or  
3 lobbyist/registrant PAC].” 2 U.S.C. 434(i)(8)(A).<sup>11</sup>

4 HLOGA thus recognizes two distinct types of bundled contributions – (1)  
5 contributions that are forwarded to the reporting committee by a lobbyist/registrant or  
6 lobbyist/registrant PAC, and (2) contributions received by the reporting committee from  
7 the contributors that are credited by the reporting committee to a lobbyist/registrant or  
8 lobbyist/registrant PAC through records, designations or other means of recognizing that  
9 a certain amount of money has been raised by that lobbyist/registrant or  
10 lobbyist/registrant PAC. Each type of bundled contribution is discussed separately  
11 below.

12 a. 11 CFR 104.22(a)(6)(i) – Contributions Forwarded to a  
13 Reporting Committee by a Lobbyist/Registrant or  
14 Lobbyist/Registrant PAC

15 The first type of “bundled contribution” defined in 11 CFR 104.22(a)(6) is  
16 a contribution that is forwarded to the reporting committee by a lobbyist/registrant  
17 or lobbyist/registrant PAC. New 11 CFR 104.22(a)(6)(i) states that a forwarded  
18 contribution is any contribution delivered or transmitted, by physical or electronic  
19 means, to the reporting committee by the lobbyist/registrant or lobbyist/registrant  
20 PAC, or by any person that the reporting committee knows to be forwarding such  
21 contribution on behalf of a lobbyist/registrant or lobbyist/registrant PAC.

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<sup>11</sup> As discussed in section III.H below, because the term “contributions” in FECA includes in-kind contributions, the rules for “bundled contributions” apply to both monetary and in-kind contributions. See 2 U.S.C. 431(8)(A)(i) and 11 CFR 100.51(a), 100.54, 100.56, 109.21(b).

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1           This type of bundled contribution does not result from the reporting  
2 committee's crediting the lobbyist/registrant or the lobbyist/registrant PAC with  
3 having raised the contributions in order for the contributions to be included in the  
4 aggregate amount of bundled contributions disclosed. Rather, this type of  
5 bundled contribution turns solely on the fact that the contributions were  
6 forwarded by the lobbyist/registrant or lobbyist/registrant PAC to the reporting  
7 committee. Bundled contributions that are forwarded to a reporting committee by  
8 a lobbyist/registrant or lobbyist/registrant PAC must be reported regardless of  
9 whether the committee awards any "credit" to the lobbyist/registrant or  
10 lobbyist/registrant PAC.

11           The NPRM sought comment as to whether it might be helpful and  
12 facilitate compliance if the Commission were to define the term "forwarded" in  
13 the rule as, for instance, "arranging or causing the physical or electronic delivery  
14 or transmission of a contribution." NPRM, 72 FR at 62602.

15           Three comments addressed this question. One comment stated that such a  
16 definition would be useful to clarify, for example, that if a lobbyist collects a  
17 batch of checks for a candidate but arranges for an employee or third party to give  
18 them to the candidate, rather than personally delivering them, those checks have  
19 been "forwarded" and the reporting committee must report the information about  
20 the bundler if the contributions exceed the reporting threshold.

21           A second comment stated that the definition of the term "forwarded" should  
22 simply restate the Commission's current "intermediary/conduit" concept at 11 CFR  
23 110.6. This comment suggested that for simplicity, the Commission should apply the

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1 existing standards in 11 CFR 110.6, but exclude the exception in 11 CFR  
2 110.6(b)(2)(i)(E) for any person who is expressly authorized by the candidate or the  
3 candidate's political committee to engage in fundraising, and who occupies a significant  
4 position in the candidate's campaign organization.

5 The third comment stated that such a definition would be helpful, but argued that  
6 HLOGA Section 204(a)(8)(A)(i) covers only contributions that are physically forwarded  
7 by a lobbyist to a reporting committee, rather than contributions forwarded electronically.  
8 In the absence of statutory language to the contrary, the comment argued, the  
9 Commission must adopt the approach set forth in the Section-by-Section Analysis, which  
10 refers to "situation[s] where a lobbyist physically forwards contributions to the  
11 campaign." 153 Cong. Rec. S10709 (daily ed. August 2, 2007).

12 The Commission concludes that a new definition of "forwarded contribution"  
13 would be helpful and that the new definition should appropriately encompass both the  
14 physical and the electronic forwarding of contributions.

15 The Section-by-Section Analysis explains that the first type of bundled  
16 contribution "covers the situation where a lobbyist physically forwards contributions to  
17 the campaign." This type of bundled contribution is distinguished from situations in  
18 which contributions are made directly by a contributor to a reporting committee, but are  
19 raised by and credited to a lobbyist/registrant or lobbyist/registrant PAC.

20 The Commission has long recognized that contributions may be made  
21 electronically. The Commission has also recognized that earmarked contributions may  
22 be forwarded electronically to the recipient candidate committee. See generally Advisory  
23 Opinion 1995-09 (NewtWatch). Accordingly, the Commission has concluded that certain

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1 contributions should not fall outside the scope of HLOGA's reporting requirements  
2 simply because they were forwarded electronically. New 11 CFR 104.22 thus requires  
3 disclosure of information about lobbyists/registrants and lobbyist/registrant PACs that  
4 forward contributions either physically or electronically to a reporting committee if the  
5 amount of bundled contributions exceeds the reporting threshold in the covered period.

6 Examples of contributions forwarded "electronically" include contributions  
7 received by a lobbyist/registrant in the form of checks and then deposited by the  
8 lobbyist/registrant in its account and transmitted by the lobbyist/registrant electronically  
9 to the reporting committee, and contributions received by a lobbyist/registrant PAC via  
10 credit card, debit card, or electronic check, including authorization to access credit or  
11 debit card funds or banking funds, and then transmitted by the lobbyist/registrant PAC in  
12 the form of a check or via credit card to the reporting committee.<sup>12</sup>

13 Additionally, 11 CFR 104.22(a)(6)(i) specifies that a bundled contribution means  
14 a contribution that is forwarded to the reporting committee by a person that the reporting  
15 committee "knows to be forwarding such contribution on behalf of a lobbyist/registrant  
16 or lobbyist registrant PAC." This provision covers such situations as when an employee  
17 or officer of a lobbyist/registrant or lobbyist/registrant PAC forwards a contribution to a  
18 reporting committee, and the reporting committee knows that the employee or officer

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<sup>12</sup> The Commission notes that, in these examples, the lobbyist/registrant also might have to file a conduit report pursuant to 11 CFR 110.6. Conduits, intermediaries, and lobbyist/registrants and lobbyist/registrant PACs that forward bundled contributions are also subject to the rules in 11 CFR 102.8. Conduit or intermediary activities are additionally subject to disclosure by reporting committees under these final rules if the conduits or intermediaries are lobbyist/registrants or lobbyist/registrant PACs and provide bundled contributions exceeding the reporting threshold within the covered period. Furthermore, these final rules do not make permissible any activity otherwise prohibited by the FECA and Commission regulations (e.g., making or facilitating contributions by prohibited sources). See, e.g., 2 U.S.C. 441b(a) and 11 CFR 114.2(f).

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1 forwarded the contributions on behalf of the lobbyist/registrant or lobbyist/registrant  
2 PAC.

3 As noted below, the Commission believes that both the reporting committee and  
4 the lobbyist/registrant or lobbyist/registrant PAC have a convergent interest in knowing  
5 and having it made known that a lobbyist/registrant or lobbyist/registrant PAC has raised  
6 certain contributions for the committee. If the reporting committee knows that the non-  
7 lobbyist intermediary is forwarding the checks on behalf of the lobbyist/registrant or  
8 lobbyist/registrant PAC, the reporting committee must report information about the  
9 lobbyist/registrant or lobbyist/registrant PAC on whose behalf the checks are forwarded,  
10 if the reporting threshold is met. The reporting requirement may not be avoided simply  
11 because the intermediary who forwarded the contribution was not a lobbyist/registrant or  
12 lobbyist/registrant PAC.

13 For example, a lobbyist may ask a friend, colleague, employee, or courier service  
14 to deliver checks collected by the lobbyist to a reporting committee. If the reporting  
15 committee knows of that fact, for example, if told orally or by means of a transmittal  
16 letter, disclosure of the lobbyist-forwarded contributions cannot be avoided in this case  
17 simply because the lobbyist forwarded such contributions through a non-lobbyist  
18 intermediary.

19 b. 11 CFR 104.22(a)(6)(ii) – Crediting Contributions to  
20 Lobbyists/Registrants and their PACs

21 The second type of “bundled contribution” in new 11 CFR 104.22(a)(6) covers  
22 contributions received by the reporting committee from the contributors (rather than from  
23 a lobbyist/registrant or lobbyist/registrant PAC, as discussed in section III.A.6.a, above)

1 that are credited by the reporting committee to a lobbyist/registrant or lobbyist/registrant  
2 PAC through records, designations or other means of recognizing that a certain amount of  
3 money has been raised by that lobbyist/registrant or lobbyist/registrant PAC. 11 CFR  
4 104.22(a)(6)(ii).

5 i. Received and Credited

6 The NPRM requested comments on whether the amount of contributions received  
7 or the amount of contributions credited should be included in the aggregation toward the  
8 reporting threshold.

9 Two comments addressed this issue. One comment indicated a preference that  
10 the reporting committees be required to disclose the amount received, rather than the  
11 amount credited, to eliminate any discrepancies in the amounts that lobbyists/registrants  
12 and their PACs report they have raised for reporting committees and the amounts that the  
13 reporting committees know have or have not been raised. The other comment stated that  
14 both the amounts received and credited should determine the amount disclosed. This  
15 latter comment stated a belief that the reporting committee is in the best position to  
16 determine what credit to give and to whom. The comment noted that what matters under  
17 HLOGA is the amount of contributions that the reporting committee credits the  
18 lobbyist/registrant or lobbyist/registrant PAC for having raised.

19 The Commission agrees with the latter comment. Bundled contributions that are  
20 forwarded to a reporting committee by a lobbyist/registrant or lobbyist/registrant PAC  
21 must be reported regardless of whether the reporting committee provides any "credit" for  
22 them. In contrast, the focus of HLOGA's reporting requirement for contributions  
23 received directly from contributors is based upon the credit that a reporting committee



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1 gives to a lobbyist/registrant or lobbyist/registrant PAC for having raised the  
2 contribution. The Commission so concludes for the following reasons:

3 (A) HLOGA defines “bundled contribution” as a contribution “received by the  
4 committee from a contributor or contributors, but credited by the committee or candidate  
5 involved...to the [lobbyist/registrant or lobbyist/registrant PAC] through records,  
6 designations, or other means of recognizing that a certain amount of money has been  
7 raised by the [lobbyist/registrant or lobbyist/registrant PAC].” 2 U.S.C. 434(i)(8)(A)(ii)  
8 (emphasis added). Thus, the statutory definition has two components: receipt from the  
9 contributor and credit given to the lobbyist/registrant or lobbyist/registrant PAC.

10 (B) HLOGA’s disclosure requirement is intended to make transparent the  
11 influence that lobbyists/registrants and lobbyist/registrant PACs might gain by raising  
12 contributions for reporting committees. Any such influence may be affected by the  
13 reporting committee’s perception of the value of the lobbyist/registrant’s or  
14 lobbyist/registrant PAC’s fundraising efforts. Accordingly, the purpose behind  
15 HLOGA’s disclosure requirement is best served by requiring reporting committees to  
16 disclose the amount of credit that they give to lobbyist/registrants or lobbyist/registrant  
17 PACs for having raised contributions.

18 (C) The Section-by-Section Analysis supports this interpretation. It states that the  
19 disclosure requirement would apply only if the reporting committee credits a  
20 lobbyist/registrant or lobbyist/registrant PAC with proceeds of a fundraising event that  
21 the lobbyist/registrant or lobbyist/registrant PAC hosts. See 153 Cong. Rec. S10709  
22 (daily ed. August 2, 2007) (“An event hosted by a registered lobbyist may trigger the  
23 disclosure requirement if the committee credits the lobbyist with the proceeds of the

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1 fundraiser . . .”) (emphasis added). The Section-by-Section Analysis also emphasizes  
2 that the reporting requirement depends on whether the committee gave credit to the  
3 lobbyist/registrant or lobbyist/registrant PAC, as opposed to requiring a committee to  
4 report automatically the proceeds of any fundraising event held on the premises of a  
5 lobbyist/registrant or lobbyist/registrant PAC. *Id.* (“The disclosure requirement is not  
6 triggered by general solicitation of contributions where a registered lobbyist attends an  
7 event or an event is held on the premises of a registrant.”) Therefore, the Commission  
8 believes that the focus of HLOGA Section 204 is the credit provided by the reporting  
9 committee to the lobbyist/registrant or lobbyist/registrant PAC for having raised  
10 contributions.

11 (D) Further, the Commission notes that Congress may have anticipated the  
12 possible discrepancy between the amount that a lobbyist/registrant or lobbyist/registrant  
13 PAC may claim to have raised for a reporting committee, and the amount that the  
14 reporting committee reports as actually credited to a lobbyist/registrant or  
15 lobbyist/registrant PAC. Earlier versions of the Senate bill that eventually became  
16 HLOGA Section 204 would have placed the reporting obligation for contributions  
17 “collected or arranged” by a lobbyist or registrant solely on the lobbyist or registrant.  
18 S.1, 110th Cong. § 212 (as passed by the Senate, Jan. 1 2007). Because of concerns  
19 about the accuracy of the information that would be reported, however, a subsequent  
20 House bill, H.R. 2317 also would have required registered lobbyists to give notice to the  
21 recipients of these contributions before the lobbyists filed their reports. H.R. 2317, 110th  
22 Cong. § 2(a) (as passed by the House, July 31, 2007). The Committee Report for this bill  
23 explained the provision: “[t]his notice enables the covered recipient to raise any questions

1 with the lobbyist about the information, and to take any appropriate action, prior to the  
2 public filing of the information.” H.R. Rep. 110-162, at 4 (May 21, 2007). As enacted,  
3 HLOGA addressed this concern by requiring the reporting committees themselves to  
4 disclose contributions forwarded by, or raised by and credited to, lobbyists. See 2 U.S.C.  
5 434(i)(1). In short, this evolution reflects the reality that simply because a lobbyist or  
6 registrant claims to have raised a specific amount for a reporting committee does not  
7 make it so. Instead, Congress anticipated that the reporting committees themselves  
8 would be in the best position to determine whether they had received contributions and  
9 credited the contributions to a lobbyist/registrant or lobbyist/registrant PAC.

10 Accordingly, new 11 CFR 104.22(a)(6)(ii) follows HLOGA, as explained in the  
11 Section-by-Section Analysis, in requiring that a contribution be both received by the  
12 reporting committee and credited to a lobbyist/registrant or lobbyist/registrant PAC to  
13 satisfy the definition of “bundled contribution.” See 2 U.S.C. 434(i)(8)(A)(ii). Thus, for  
14 example, if a lobbyist merely tells a candidate that the lobbyist has raised \$20,000 for the  
15 candidate’s campaign those contributions are not considered “bundled contributions”  
16 under 11 CFR 104.22(a)(6)(ii) unless they have been both received and credited by the  
17 candidate or the reporting committee.

18 The Commission emphasizes that any intentional misrepresentation or  
19 misreporting of the reporting committee’s actual crediting of bundled contributions is a  
20 violation of this rule.

21 ii. 11 CFR 104.22(a)(6)(ii)(A) – Records, Designations, or  
22 Other Means of Recognizing

1 HLOGA Section 204 requires the disclosure of information about  
2 lobbyists/registrants and lobbyist/registrant PACs that are credited by a reporting  
3 committee, “through records, designations or other means of recognizing,” with having  
4 raised contributions in excess of the threshold amount for the reporting committee.  
5 2 U.S.C. 434(i)(8)(A)(ii).

6 A. Records

7 HLOGA states that reporting committees may credit lobbyists/registrants or  
8 lobbyist/registrant PACs “through records, designations, or other means of recognizing.”  
9 2 U.S.C. 434(i)(8)(A)(ii). The NPRM requested commenters to submit examples of  
10 “records, designations or other means of recognizing” that a lobbyist/registrant or  
11 lobbyist/registrant PAC had raised contributions for a reporting committee. NPRM, 72  
12 FR at 62603.

13 The Commission received one comment addressing the “records” aspect of  
14 crediting. The comment observed that the proposed rule did not define the type of  
15 “record” that would trigger the reporting requirement and asked that the final rule  
16 indicate the level of specificity or certainty required for a “record” to constitute credit.

17 The Commission has decided to draw from the Federal Rules of Civil Procedure  
18 to define “records” in new 11 CFR 104.22(a)(6)(ii)(A). “Records” means written  
19 evidence, which includes writings, charts, computer files, tables, spreadsheets, databases,  
20 or other data or data compilations stored in any medium from which information can be  
21 obtained. 11 CFR 104.22(a)(6)(ii)(A); see also Fed. R. Civ. P. 34. In sum, a “record” is  
22 any method that the reporting committee uses to retain information pertaining to the  
23 committee’s crediting, and includes not just paper, but electronic, digital, audio, video, or

1 any other format. The Commission notes that records include informal items such as  
2 hand-written notations on a business card.

3 B. Designations or other means of recognizing

4 The proposed rules in the NPRM would have defined “designations or other  
5 means of recognizing” to include “titles [bestowed upon lobbyists/registrants or  
6 lobbyist/registrant PACs] based on levels of fundraising, access to events reserved  
7 exclusively for those who generate a certain level of contributions, or similar benefits  
8 provided as a reward for successful fundraising.” NPRM, 72 FR at 62603. The NPRM  
9 asked whether “designations or other means of recognizing” must be written and sought  
10 other examples of crediting through “designations or other means of recognizing.”

11 Several comments addressed this issue. All of them asserted that the “designation  
12 or other means of recognizing” bundled contributions need not be written. Some  
13 comments argued that the standard should be one of knowledge by the candidate  
14 involved or by the reporting committee that the committee has received a certain amount  
15 of bundled contributions raised by a lobbyist/registrant or lobbyist/registrant PAC, but  
16 others disagreed.

17 One comment indicated that additional examples of “designations and other  
18 means of recognizing” bundled contributions could include (1) being the host or co-host  
19 of a fundraising event; (2) using a lobbyist/registrant’s or lobbyist/registrant PAC’s office  
20 or residence for a fundraising event; or (3) being on a steering committee in exchange for  
21 raising a certain amount of money. With respect to the first two suggested examples, the  
22 Commission notes that the Section-by-Section Analysis specifically states, “[t]he  
23 disclosure requirement is not triggered . . . where . . . an event is held on the premises of a

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1 registrant. An event hosted by a registered lobbyist may trigger the disclosure  
2 requirement if the reporting committee credits the lobbyist with the proceeds of the  
3 fundraiser through record, designation, or other form of recognition . . . .” 153 Cong.  
4 Rec. S10709 (daily ed. August 2, 2007) (emphasis added). Thus, the Section-by-Section  
5 Analysis indicated that the simple fact that a lobbyist/registrant or lobbyist/registrant  
6 PAC hosts a fundraiser or holds a fundraiser on its premises would not, by itself, trigger  
7 the reporting requirement.

8 Two comments cited the Bush “Pioneer/Ranger model,” in which bundlers were  
9 given titles corresponding with the amounts of money raised, as an example of crediting.  
10 One comment also referred to the earmarking standard of “implied or expressed, oral or  
11 written” designation as analogous to the standard that the Commission should set for  
12 what type of designation would constitute crediting. See 11 CFR 110.6(b)(1). One  
13 comment noted that crediting is not necessarily the same thing as keeping records.

14 Consistent with the statutory imperative to provide for the broadest possible  
15 disclosure consistent with the law (2 U.S.C. 434(i)(5)(D)), the Commission has  
16 determined that the phrase “designations, or other means of recognizing that a certain  
17 amount of money has been raised” is to be construed broadly as encompassing benefits  
18 given by the reporting committee to a lobbyist/registrant or lobbyist/registrant PAC for  
19 raising a certain amount of contributions.

20 The Section-by-Section Analysis provides “honorary titles within the committee”  
21 as an example of “designations.” 153 Cong. Rec. at S10709 (daily ed. August 2, 2007).  
22 The Commission has incorporated this concept in its regulations. Thus, designations  
23 include titles that the reporting committee gives to persons who have raised a certain

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1 amount of contributions. 11 CFR 104.22(a)(6)(ii)(A)(1). The titles that various  
2 presidential campaigns have given to their fundraisers are examples of such designations.  
3 Titles, however, are only one example of a “designation.”

4 Similarly, the Commission interprets “other means of recognizing that a certain  
5 amount of money has been raised” as benefits that reporting committees use to credit  
6 lobbyist/registrants or lobbyist/registrant PACs for having raised a certain amount of  
7 contributions, and not to include benefits given to such individuals or entities solely for  
8 any other reason. The example in the Section-by-Section Analysis is instructive:  
9 “examples of such recognition include access to certain events reserved exclusively for  
10 those who generate a certain level of contributions or similar benefits provided by the  
11 committee as a reward for successful fundraising.” 153 Cong. Rec. at S10709 (daily ed.  
12 August 2, 2007). Thus, if a reporting committee holds an event in recognition of its  
13 fundraisers, to which it invites only persons who raised at least \$20,000, invitations to the  
14 event would be a means of recognizing that a “certain amount of money has been raised”  
15 (i.e., at least \$20,000). 11 CFR 104.22(a)(6)(ii).

16 Additionally, a candidate may credit a lobbyist by inviting the lobbyist to an event  
17 that is not exclusive to those who generate a certain level of contributions, so long as that  
18 particular invitation was extended in recognition of the lobbyist having raised a certain  
19 amount of contributions. In contrast, if, for example, an individual who happens to be a  
20 lobbyist, but who has not actually raised any money for the reporting committee, is  
21 invited to the event, then the invitation to that individual would not constitute crediting  
22 with respect to that individual (i.e., a means of recognizing that a certain amount of  
23 money has been raised by that individual). On the other hand, if a lobbyist who has

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1 raised contributions in excess of the reporting threshold is invited to an event in  
2 recognition of the reporting committee's fundraisers, the committee cannot avoid  
3 disclosing that lobbyist by claiming that the lobbyist was invited for some other reason.

4         The Commission agrees with those comments that urged that neither designations  
5 nor "other means of recognizing" need be in writing. 2 U.S.C. 434(i)(8)(A)(ii). While  
6 the inherent nature of "records" is that they be in writing, or "recorded" in some form,  
7 "designations or other means of recognizing" need not be. The example in the Section-  
8 by-Section Analysis of "access to certain events reserved exclusively for those who  
9 generate a certain level of contributions or similar benefits provided by the committee as  
10 a reward for successful fundraising," is again instructive. 153 Cong. Rec. at S10709  
11 (daily ed. August 2, 2007). Access to events may be memorialized in records (such as  
12 guest lists) but they will not necessarily be so.

13         New 11 CFR 104.22(a)(6)(ii)(A) expands on the examples suggested in the  
14 Section-by-Section Analysis. Thus, "other means of recognizing" include tracking  
15 identifiers that the reporting committee assigns and that are included on contributions or  
16 contribution-related materials (for example, contributor response devices, cover letters, or  
17 Internet website solicitation pages) that may be used to maintain information about the  
18 amounts of contributions that a person raises. 11 CFR 104.22(a)(6)(ii)(A)(2). Other  
19 "means of recognizing" also include access, including offers of attendance (invitations)  
20 and/or actual attendance, at events given to a lobbyist/registrant or lobbyist/registrant  
21 PAC by the reporting committee as a result of the lobbyist/registrant or lobbyist/registrant  
22 PAC having raised a certain amount of contributions. 11 CFR 104.22(a)(6)(ii)(A)(3).  
23 Another common means of recognizing those who bundle contributions are mementos,



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1 such as photographs with the candidate or autographed copies of books authored by the  
2 candidate, given by the reporting committee to persons who have raised a certain amount  
3 of contributions. 11 CFR 104.22(a)(6)(ii)(A)(4).

4         The fact that a reporting committee knows that a contribution was raised by a  
5 lobbyist/registrant or lobbyist/registrant PAC and credits the lobbyist/registrant or  
6 lobbyist/registrant PAC through some means of recognition is sufficient to satisfy this  
7 final type of credit. The examples listed in the new rule are illustrative, and are designed  
8 to give guidance, but do not constitute an exhaustive list. Committees may be creative in  
9 how they recognize their fundraisers, and the Commission has no interest in limiting or  
10 discouraging creative incentives that are consistent with the law.

11         The Commission notes that some comments suggested that mere knowledge by a  
12 reporting committee that a lobbyist/registrant or lobbyist/registrant PAC has raised funds  
13 of a certain amount is enough to constitute credit. Although Congress could have enacted  
14 a provision in HLOGA to require reporting if a reporting committee simply “knows or  
15 has reason to know” that a contribution was raised by a lobbyist/registrant or  
16 lobbyist/registrant PAC, without requiring that the reporting committee credit a  
17 lobbyist/registrant or lobbyist/registrant PAC for the contribution, neither HLOGA as  
18 enacted, nor the Section-by-Section Analysis, suggested any intent to require reporting in  
19 that situation. In several instances similar to this, Congress has used a “knows or has  
20 reason to know” standard in sections of FECA, but did not do so here. See, e.g., 2 U.S.C.  
21 434(f)(2)(D) (requiring the reporting of names of candidates to be identified in an  
22 electioneering communication “if known”); 2 U.S.C. 434(i)(1) (requiring the reporting of  
23 information on each person “reasonably known” to be a lobbyist/registrant or



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1 August 2, 2007). This definition follows the definition of “authorized committee” in  
2 FECA, which states that an authorized committee is a political committee authorized by a  
3 candidate to receive contributions or make expenditures on behalf of the candidate.  
4 2 U.S.C. 431(6); see also 11 CFR 100.5(f)(1). Second, the Section-by-Section Analysis  
5 indicates that the “candidate involved” in a leadership PAC is “the candidate who directly  
6 or indirectly establishes, finances, maintains or controls the Leadership PAC,” which  
7 tracks the definition of leadership PAC in HLOGA. See 2 U.S.C. 434(i)(8)(B); 153  
8 Cong. Rec. S10709 (daily ed. August 2, 2007). Last, the Section-by-Section Analysis  
9 also indicates that the “candidate involved” in a party committee is the chairman of the  
10 party committee. See 153 Cong. Rec. S10709 (daily ed. August 2, 2007).

11 The proposed rules followed the definitions in the Section-by-Section Analysis  
12 for authorized committees and leadership PACs, but did not include a definition of  
13 “candidate involved” in the context of a political party committee.

14 The only comment that addressed this topic referred to the Section-by-Section  
15 Analysis and suggested that the final rules include a definition of “candidate involved”  
16 with party committees, in addition to those proposed for authorized committees of  
17 Federal candidates and for leadership PACs.

18 The Commission agrees with the comment that a definition of “candidate  
19 involved” for all three types of reporting committees would provide useful additional  
20 guidance to the regulated community. Accordingly, new 11 CFR 104.22(a)(6)(ii)(B)  
21 defines “candidate involved” in accordance with the Section-by-Section Analysis.

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iv. Co-hosting Fundraisers

Another issue in the NPRM that several comments addressed was how a reporting committee should give credit to multiple lobbyists/registrants or lobbyist/registrant PACs that co-host fundraisers or raise funds for a candidate as a result of any coordinated effort.

Although HLOGA Section 204 did not explicitly address co-hosted fundraisers, in a colloquy on the Senate floor, two Senators stated that there was concern that reporting committees would attempt to avoid the reporting requirements by dividing the total receipts of a fundraising event among many co-hosts on a prorated basis or another allocation method potentially designed to avoid disclosure. 153 Cong. Rec. S10699 (daily ed. August 2, 2007). To prevent this, one Senator stated that where two or more lobbyists/registrants or lobbyist/registrant PACs are co-hosts of a fundraiser, then each lobbyist/registrant or lobbyist/registrant PAC “should be treated as providing the total amount raised at the event” for the purposes of reaching the reporting threshold, and for the purposes of reporting “bundled contributions” under HLOGA Section 204. Id.

The Commission has considered this colloquy in light of the text of HLOGA and the Section-by-Section Analysis, which describes bundled contributions as those where a “committee or candidate credits a registered lobbyist for generating the contributions and where such credit is reflected in some form of record, designation or recognition.” 153 Cong. Rec. S10709 (daily ed. August 2, 2007) (emphasis added). The Section-by-Section Analysis states that “[a]n event hosted by a registered lobbyist may trigger the disclosure requirement if the committee credits the lobbyist with the proceeds of the fundraiser...” Id. (emphasis added).

1           Three comments urged the Commission to promulgate regulations requiring the  
2 reporting committee in all instances to credit each of the hosts for the entire amount  
3 raised for purposes of bundling disclosure.

4           By contrast, a fourth comment argued that crediting each host with the total  
5 amount raised would result in inaccurate and misleading reporting of the actual amount  
6 raised. This comment indicated a preference for an approach under which credit for the  
7 amount raised should be prorated among the fundraiser's co-hosting lobbyists/registrants  
8 and lobbyist/registrant PACs. Other comments, however, disagreed, arguing that  
9 proration among a fundraiser's co-hosts would enable reporting committees to avoid  
10 reporting bundled contributions by increasing the number of co-hosts, such that when the  
11 total amount of contributions raised is divided among them, none of the co-hosts would  
12 be credited with raising more than the reporting threshold.

13           Other comments supported the Section-by-Section Analysis. They asserted that  
14 the amount of funds a reporting committee actually credits of the funds raised at a  
15 fundraiser hosted by multiple lobbyists/registrants and/or lobbyist/registrant PACs is the  
16 amount that should be disclosed. One comment noted that the reporting committees  
17 know best who they credited for raising bundled contributions at a co-hosted fundraiser,  
18 and how much, and that there should not be a regulatory mandate requiring committees to  
19 give and report credit in a contrary manner. Moreover, the comment pointed out that an  
20 individual may be listed as a "co-host" of a fundraiser for many different reasons  
21 unrelated to actual amounts raised from a particular event. Another comment noted that  
22 in many cases, to be on a hosting committee, a lobbyist/registrant or lobbyist/registrant  
23 PAC is required to raise a certain amount of contributions. The comment stated that if a

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1 co-host fails to raise the requisite amount, the reporting committee would not credit that  
2 co-host with having raised more than the co-host actually raised. The comment also  
3 pointed out that in other situations, where, for example, 25 members of a host committee  
4 each raise \$3,000, the reporting committee would not credit each co-host with having  
5 raised the full \$75,000.

6 After considering the colloquy on the Senate floor, the Section-by-Section  
7 Analysis, and the comments received, the Commission concludes that any determination  
8 of whether the reporting threshold is met, and how much must be reported, is controlled  
9 by (a) whether a reporting committee credits a lobbyist/registrant or lobbyist/registrant  
10 PAC for having raised contributions, and (b) how much the reporting committee credits  
11 the lobbyist/registrant or lobbyist/registrant PAC with having raised. Both the reporting  
12 committee and the fundraiser have independent incentives to ensure that credit for funds  
13 raised is properly attributed – on the one hand, the reporting committee is motivated to  
14 provide appropriate credit in an effort to encourage the fundraiser to continue raising  
15 funds and, on the other hand, the fundraiser is motivated to ensure that the fundraiser is  
16 receiving the proper credit for any funds raised. As noted above, the Commission  
17 received testimony that committees, in order to have effective fundraising programs, need  
18 to know and do know who is raising funds for them and how much those persons are  
19 raising. The Commission believes that this dual motivation will result in the accurate  
20 reporting of actual credit given.

21 Requiring a reporting committee to credit the entire amount raised at a fundraiser  
22 to each lobbyist/registrant and lobbyist/registrant PAC co-host could be confusing and  
23 could lead to the compelled disclosure of potentially misleading information. The

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1 requirement could be confusing, because it would involve the creation of two separate  
2 and potentially inconsistent definitions of crediting: one to apply in every situation other  
3 than co-hosted fundraising events, and the other to apply only in situations involving co-  
4 hosted fundraising events. Under the non-co-host definition, a reporting committee  
5 would disclose information about a lobbyist/registrant only if the reporting committee  
6 actually credits the lobbyist/registrant with having raised contributions exceeding the  
7 threshold amount during the covered period. Under the co-host definition, by contrast, a  
8 reporting committee would disclose information about a lobbyist/registrant or  
9 lobbyist/registrant PAC co-host regardless of whether or how much the reporting  
10 committee actually credits the co-host for having raised. Such a result could lead to  
11 further confusion as to who is raising contributions, and how much, for reporting  
12 committees.

13 As noted above, the Section-by-Section Analysis provides that “[a]n event hosted  
14 by a registered lobbyist may trigger the disclosure requirement if the [reporting]  
15 committee credits the lobbyist with the proceeds of the fundraiser . . .” 153 Cong. Rec.  
16 S10709 (daily ed. August 2, 2007) (emphasis added). The Commission reads this  
17 statement as an expression of legislative intent to apply not only to lobbyists hosting  
18 fundraising events or functions, but also to lobbyists that co-host the events or functions,  
19 regardless of whether such events or functions are formal or informal.

20 Finally, as discussed below, requiring a reporting committee to credit the entire  
21 amount raised at a fundraiser to each lobbyist/registrant and lobbyist/registrant PAC co-  
22 host could be potentially misleading. It would require reporting committees to report not  
23 only that they credited lobbyist/registrant and lobbyist/registrant PAC co-hosts for raising

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1 more money than the co-hosts might actually have raised, but also that they gave the co-  
2 hosts credit when, in fact, credit was not given. For example, if a group of individuals  
3 consisting of lobbyists and non-lobbyists co-host a fundraiser for a candidate, the  
4 candidate's committee would have to report that each of the lobbyists raised the entire  
5 amount, without regard to how much the reporting committee credited them for having  
6 raised, without regard to how much they might actually have raised, and without regard  
7 to the non-lobbyist co-hosts. This could result in committees reporting information that  
8 they know to be untrue. One comment stated that treasurers would be reluctant to sign  
9 such reports.

10 The Commission similarly rejected the suggestion that it require credit for the  
11 entire amount of contributions raised at a co-hosted fundraising event to be pro-rated  
12 among all of the co-hosting lobbyists/registrants and lobbyist/registrant PACs. Not only  
13 would such a requirement enable reporting committees to avoid the reporting threshold  
14 by increasing the number of co-hosts, as noted by several comments, but it would also  
15 raise the same potential for confusion and inaccuracy as would requiring the full amount  
16 raised to be credited to each co-host.

17 Thus, the Commission has decided not to adopt either the suggestion that the total  
18 proceeds of a fundraising event be required to be prorated among all the co-hosts, or the  
19 suggestion that the total proceeds of any event be required to be credited to each of the  
20 co-hosts. Instead, co-hosted events will be treated like any other fundraising activity:  
21 committees must report the actual amounts raised by and credited to lobbyist/registrants  
22 and lobbyist/registrant PACs.



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1           Accordingly, the Commission concludes that reporting committees are in the best  
2 position to determine the amount of contributions raised by lobbyists/registrants and their  
3 PACs from co-hosted fundraisers, based on the reporting committees' recognition of the  
4 amount each person actually raised. This conclusion is consistent with both the language  
5 of the statute and the Section-by-Section Analysis.

6           Contributions raised as the result of a fundraising event hosted by one or more  
7 lobbyist/registrants or lobbyist/registrant PACs will follow the general rule in new  
8 11 CFR 104.22(a)(6)(ii), which requires that a contribution be both received by the  
9 reporting committee and credited to a lobbyist/registrant or lobbyist/registrant PAC to  
10 satisfy the definition of "bundled contribution." The reporting committee must disclose  
11 any and all bundled contributions received as the result of a fundraiser that are credited to  
12 a lobbyist/registrant or lobbyist/registrant PAC so long as the reporting threshold has  
13 been exceeded for that lobbyist/registrant or lobbyist/registrant PAC during the relevant  
14 covered period. The following are examples that assume a \$16,000 reporting threshold:<sup>13</sup>

- 15       • Example 1. A fundraising event is co-hosted by Lobbyists A, B, and C. The  
16 event generates \$20,000 in contributions. The reporting committee believes that  
17 Lobbyist A raised the entire \$20,000 and thus credits Lobbyist A with the entire  
18 \$20,000 raised at the event, and does not credit Lobbyists B or C. The reporting  
19 committee must disclose the \$20,000 that has been credited to Lobbyist A. The  
20 reporting committee need not disclose any information regarding Lobbyists B and  
21 C, because neither Lobbyists B nor C has been credited with any bundled  
22 contributions.

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<sup>13</sup> For 2009, the applicable reporting threshold is \$16,000. Although HLOGA Section 204 set the initial reporting threshold at \$15,000, 2 U.S.C. 434(i)(3)(A), this number will be indexed for inflation annually. 2 U.S.C. 434(i)(3)(B); 11 CFR 104.22(g).

- 1       • Example 2. A fundraising event is co-hosted by Lobbyist A and Lobbyist B, as  
2       well as three non-lobbyist hosts. The event generates \$20,000 in contributions.  
3       The reporting committee gives each host credit for raising \$20,000. The reporting  
4       committee must disclose the \$20,000 of bundled contributions that has been  
5       credited to Lobbyist A and also report the \$20,000 of bundled contributions that  
6       has been credited to Lobbyist B because the reporting committee has credited the  
7       full amount to each lobbyist.<sup>14</sup> The reporting committee may, if it chooses,  
8       include a memo entry in the space provided on FEC Form 3L to indicate that,  
9       although only a total of \$20,000 was raised at the event, that full \$20,000 was  
10      credited to each of the co-hosts, or any other information that the reporting  
11      committee wishes to include.
- 12      • Example 3. A fundraising dinner is co-hosted by Lobbyist A and Lobbyist B, as  
13      well as three non-lobbyist hosts. Each host takes responsibility for filling eight  
14      seats at \$500 a seat. The fundraiser generates \$20,000 in contributions from non-  
15      hosts, and the reporting committee credits each host with generating \$4,000 in  
16      contributions. The reporting committee must disclose the \$4,000 of bundled  
17      contributions that has been credited to Lobbyist A, if the reporting committee also  
18      has credited Lobbyist A with more than \$12,000 of other bundled contributions  
19      during the relevant covered period, thereby causing Lobbyist A to surpass the  
20      \$16,000 reporting threshold. This same analysis would apply for Lobbyist B.

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<sup>14</sup> The reporting committee would report having received only \$20,000 on FEC Form 3 and would provide itemized information on Schedule A related to the \$20,000 of received contributions. It is only the credit that is reported twice on FEC Form 3L (see section III-B below) and this would be a direct result of the reporting committee having given the full \$20,000 credit to two different lobbyists. A reporting committee may give credit to all co-hosts for the full amount raised, but is not required to do so.

1       • Example 4. A fundraising event is co-hosted by Lobbyist A and Lobbyist B, as  
2       well as three non-lobbyist hosts. The fundraiser generates \$21,000 in  
3       contributions and the reporting committee knows that Lobbyist A raised \$17,000  
4       of the total. The Committee credits Lobbyist A with generating \$17,000 of the  
5       contributions and credits Lobbyist B, as well as the three non-lobbyist hosts as  
6       having generated \$1,000 each. The reporting committee must disclose the  
7       \$17,000 of bundled contributions that has been credited to Lobbyist A because  
8       this amount is in excess of the \$16,000 reporting threshold. The reporting  
9       committee must also disclose the \$1,000 in bundled contributions that has been  
10      credited to Lobbyist B if the reporting committee also has credited Lobbyist B  
11      with more than \$15,000 of other bundled contributions during the relevant  
12      covered period, thereby causing Lobbyist B to surpass the \$16,000 reporting  
13      threshold.

14      • Example 5. A fundraising event is co-hosted by Lobbyist A and Lobbyist B, as  
15      well as three non-lobbyist hosts. The fundraiser generates \$20,000 in  
16      contributions and the reporting committee knows that Lobbyist A raised \$17,000  
17      of the total and that one of the non-lobbyist hosts raised the remaining \$3,000.  
18      The Committee credits Lobbyist A with generating \$17,000 of the contributions.  
19      The reporting committee must disclose the \$17,000 of bundled contributions that  
20      has been credited to Lobbyist A because \$17,000 is in excess of the \$16,000  
21      reporting threshold. The reporting committee need not disclose any information  
22      regarding Lobbyist B because Lobbyist B is not responsible for raising any of the

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1           \$20,000 raised at the fundraiser and Lobbyist B has not been credited with any  
2           bundled contributions.

3           The Commission notes that the examples and above discussion do not apply to  
4           bundled contributions that are forwarded by lobbyists/registrants or lobbyist/registrant  
5           PACs at co-hosted fundraisers. Credit is not a consideration in the case of forwarded  
6           contributions. Accordingly, contributions forwarded by a lobbyist/registrant or  
7           lobbyist/registrant PAC at a co-hosted fundraiser count as contributions bundled by the  
8           lobbyist/registrant or lobbyist/registrants PAC that forwarded the contributions,  
9           regardless of whether the lobbyist/registrant or lobbyist/registrant PAC is a co-host of the  
10          fundraiser or an attendee.

11          For example, at a fundraiser co-hosted by Lobbyist A and several non-lobbyist  
12          hosts, Lobbyist B (who is not a co-host of the fundraiser) approaches the candidate for  
13          whom funds are being raised and hands the candidate \$20,000 in contributions from other  
14          individuals. Because these are contributions that have been “forwarded” by Lobbyist B,  
15          the reporting committee must disclose the \$20,000 of bundled contributions that were  
16          forwarded by Lobbyist B irrespective of any amount of credit given to Lobbyist B.

17          If the reporting committee also credits Lobbyist A, a co-host of the fundraiser,  
18          \$20,000 for having raised the contributions forwarded by Lobbyist B (because the  
19          contributions were received during the fundraising event), the reporting committee must  
20          then also disclose that \$20,000 of bundled contributions has been credited to Lobbyist A.  
21          Similar to “Example 2” above, even though the reporting committee must disclose the  
22          entire \$20,000 as having been forwarded by Lobbyist B, the reporting committee must

1 also report that same \$20,000 of bundled contributions has been credited to Lobbyist A  
2 (again, assuming it has credited Lobbyist A for that amount).

3 v. Crediting a Prohibited Source

4 Finally, the NPRM requested comments on whether a lobbyist/registrant that is  
5 otherwise prohibited from making or facilitating contributions can be credited by a  
6 reporting committee with having raised contributions. Such prohibitions apply to  
7 national banks, corporations, labor organizations, foreign nationals, and Federal  
8 government contractors. See 2 U.S.C. 441b, 441(c), 441(e); 11 CFR 110.6(b)(2)(ii),  
9 110.20, 114.2, 115.2.

10 Three comments argued that registrants that are prohibited sources of  
11 contributions should not be allowed to be credited with having raised contributions. In  
12 contrast to these three comments, other comments stated that, while certain entities are  
13 prohibited from making contributions, these entities must be reported if, through their  
14 agents, they forward contributions to a reporting committee or are credited with raising  
15 contributions for a reporting committee above the reporting threshold. This comment  
16 further stated that Congress was well aware that many entities that register under the  
17 LDA are, in fact, prohibited sources of contributions under FECA, and that these entities  
18 may nonetheless be credited with having raised contributions.

19 The Commission recognizes that under the LDA, registrants include lobbying  
20 organizations that would be prohibited sources of contributions under FECA. Congress  
21 is presumed to be aware of existing law when it passes legislation. See Miles v. Apex  
22 Marine Corp., 498 U.S. 19, 32 (1990). Thus, Congress's failure to exempt disclosure  
23 about registrants who would be prohibited sources under FECA if they are credited with

1 raising contributions suggests that Congress intended information about them to be  
2 reported.

3 Accordingly, these final rules operate independently of the prohibitions in FECA  
4 and Commission regulations on certain entities making and facilitating contributions and  
5 acting as conduits or intermediaries. See, e.g., 2 U.S.C. 441b(a); 11 CFR 114.2(f);  
6 11 CFR 110.6(b)(2)(ii). The concept of “credit” is distinct from making, facilitating, or  
7 serving as a conduit or intermediary for, contributions. A registrant that is a corporation,  
8 for example, would be prohibited from facilitating the making of contributions by  
9 persons outside of the corporation’s restricted class. But if a reporting committee  
10 nonetheless credits the corporation for having raised contributions received by that  
11 reporting committee, and the amount of contributions exceeds the reporting threshold in a  
12 covered period, information about the corporate registrant must be reported.

13 The Commission emphasizes that the prohibitions in FECA and Commission  
14 regulations are not affected by this rulemaking and continue to apply. The Commission  
15 cautions reporting committees against confusing the giving of credit to a registrant that is  
16 a prohibited source, which is permissible and may be reportable, with actually accepting  
17 contributions from, or that have been forwarded by, a prohibited source, which is not  
18 permissible.

19 c. 11 CFR 104.22(a)(6)(iii) – Bundled Contributions Do Not  
20 Include Contributions from Personal Funds of  
21 Lobbyists/Registrants or Their Spouses

22 New 11 CFR 104.22(a)(6)(iii) provides that bundled contributions do not include  
23 contributions made by a lobbyist/registrant or lobbyist/registrant PAC from three sources:

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1 (1) the personal funds of the lobbyist/registrant who forwards or is credited with raising  
2 contributions; (2) the personal funds of that person's spouse; and (3) contributions made  
3 by lobbyist/registrant PACs. This provision is consistent with HLOGA, which excludes  
4 contributions made to the reporting committee by the lobbyist/registrant or  
5 lobbyist/registrant's spouse from counting towards the reporting threshold. See 2 U.S.C.  
6 434(i)(3)(A).

7 The final rule at new 11 CFR 104.22(a)(6)(iii) is nearly identical to the proposed  
8 rule, on which the Commission received no comments. The only change from the  
9 proposed rule is the application of the rule to contributions made by lobbyist/registrant  
10 PACs. New 11 CFR 104.22(a)(6)(iii) extends this exclusion to contributions made by  
11 lobbyist/registrant PACs to reflect the fact that lobbyist/registrant PACs, like individuals,  
12 may make contributions under FECA in their own right, and the contributions count  
13 against the lobbyist/registrant PACs' contribution limits. Contributions made by  
14 lobbyist/registrant PACs from committee funds are not bundled contributions, just as  
15 contributions made by individual lobbyists from their personal funds are not bundled  
16 contributions. Therefore, including contributions by lobbyist/registrant PACs in the  
17 exception in new 11 CFR 104.22(a)(6)(iii) is consistent with HLOGA Section 204.

18 Unlike contributions made by a lobbyist/registrant PAC, or from the personal  
19 funds of a lobbyist/registrant or spouse, bundled contributions forwarded by a  
20 lobbyist/registrant or lobbyist/registrant PAC will not affect the lobbyist/registrant's or  
21 lobbyist/registrant PAC's contribution limits, so long as the lobbyist/registrant or  
22 lobbyist/registrant PAC does not exercise any direction or control over the bundled  
23 contributions. This result is consistent with the Commission's rule governing earmarked

1 contributions to candidate committees through conduits and intermediaries. See 11 CFR  
2 110.6(d).

3 B. 11 CFR 104.22(b) – Reporting Requirement for Reporting Committees

4 New 11 CFR 104.22(b) implements HLOGA’s reporting provisions by requiring  
5 reporting committees to disclose certain information on a new form, FEC Form 3L.

6 1. 11 CFR 104.22(b)(1) – FEC Form 3L

7 HLOGA Section 204 requires reporting committees to disclose certain  
8 information about each person reasonably known by the reporting committee to be a  
9 lobbyist/registrant or lobbyist/registrant PAC that “provided 2 or more bundled  
10 contributions” aggregating in excess of the reporting threshold to the reporting committee  
11 during the covered period. See 2 U.S.C. 434(i)(1). New 11 CFR 104.22(b)(1)  
12 implements this requirement by requiring reporting committees to file FEC Form 3L, on  
13 which reporting committees must disclose the name and address of the lobbyist/registrant  
14 or lobbyist/registrant PAC, the employer of the lobbyist/registrant (for individual  
15 lobbyists/registrants), and the aggregate amount of bundled contributions provided by the  
16 lobbyist/registrant or lobbyist/registrant PAC during the covered period. Cf. 2 U.S.C.  
17 434(i)(1).

18 Accordingly, for each covered period, a reporting committee must disclose  
19 information about each lobbyist/registrant or lobbyist/registrant PAC that provided the  
20 committee with “[two] or more bundled contributions” aggregating in excess of the  
21 reporting threshold during the covered period, regardless of whether those contributions  
22 consist of (1) only “forwarded” contributions, (2) only “received and credited”  
23 contributions, or (3) some combination of the two types of bundled contributions, and



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1 regardless of whether those contributions were forwarded or received either (1) one-by-  
2 one during the covered period or (2) all at once.

3 The final rule requires the reporting committee to disclose the aggregate amount  
4 of bundled contributions “forwarded by or received and credited to,” rather than the  
5 amount “provided by,” each lobbyist/registrant or lobbyist/registrant PAC as was  
6 proposed in the NPRM. This change was made to enhance precision and clarity and is  
7 not a substantive change. Otherwise, the provisions are the same as those in the proposed  
8 rule. The Commission received no comments on the proposed provision.

9 2. Bundled Contributions That are Returned or Refunded

10 i. Returned Contributions

11 If a bundled contribution is not deposited and is, instead, returned pursuant to 11  
12 CFR 103.3(a) and (b), 110.1(b)(3)(i), 110.2(b)(3)(i), or 110.4(c)(2), then it does not  
13 aggregate toward the reporting threshold for disclosure of bundled contributions and it  
14 does not be reported on the reporting committee’s Form 3L.

15 ii. Refunded Contributions

16 If a bundled contribution is received, deposited, and later refunded pursuant to 11  
17 CFR 102.9(e), 103.3(b)(3), 110.1(b)(3)(i) or 110.2(b)(3)(i), or for any other reason, then  
18 the bundled contribution does aggregate toward the reporting threshold for the covered  
19 period in which it was received. Accordingly, it must be reported on the reporting  
20 committee’s Form 3L if the reporting threshold is exceeded for that covered period. See  
21 2 U.S.C. 434(i)(1); 11 CFR 104.22(b)(1). If the receipt of the bundled contribution is  
22 reported on Form 3L, then the refund of the bundled contribution should also be reported  
23 on Form 3L for the covered period in which the refund occurred.

1                   3.     11 CFR104.22(b)(2) – Determining Whether a Person is  
2                                   Reasonably Known to be a Lobbyist/Registrant or  
3                                   Lobbyist/Registrant PAC

4             HLOGA Section 204 requires the disclosure of information about a person who  
5 forwards, or who is credited with having raised, two or more bundled contributions  
6 aggregating in excess of the reporting threshold during the covered period if the person is  
7 “reasonably known by the [reporting] committee to be” a lobbyist/registrant or a  
8 lobbyist/registrant PAC. 2 U.S.C. 434(i)(1). HLOGA also requires the Commission to  
9 “provide guidance to [reporting] committees with respect to whether a person is  
10 reasonably known by a committee to be” a lobbyist/registrant or lobbyist/registrant PAC.  
11 2 U.S.C. 434(i)(5)(B). In so doing, the Commission is to include a “requirement that  
12 [reporting] committees consult the websites maintained by the Secretary of the Senate  
13 and the Clerk of the House of Representatives containing information filed pursuant to  
14 the Lobbying Disclosure Act of 1995.” 2 U.S.C. 434(i)(5)(B).

15             The Commission proposed 11 CFR 104.22(b)(2) to provide guidance with respect  
16 to how reporting committees would comply with these requirements. Specifically, under  
17 the proposed rule, reporting committees would have had to consult the websites  
18 maintained by the Clerk of the House of Representatives, the Secretary of the Senate, and  
19 the Federal Election Commission in order to determine whether a person is identified on  
20 a filing under the LDA or FECA as a registrant, a lobbyist, or a political committee  
21 established or controlled by a registrant or lobbyist. The NPRM requested suggestions as  
22 to other sources that reporting committees might be required to check to determine  
23 whether a contributor is a lobbyist/registrant or a lobbyist/registrant PAC.

1           The Commission received two comments in response, both supporting the  
2 proposed rule. One comment also recommended amending the proposed rule to provide  
3 a safe harbor, such that a reporting committee will be deemed to have complied with the  
4 regulation if it relies on the websites for purposes of determining whether a person is a  
5 lobbyist/registrant or lobbyist/registrant PAC. See discussion below of section  
6 104.22(b)(2)(ii).

7           Consistent with the proposed rule, the final rule at 11 CFR 104.22(b)(2)(i)  
8 requires reporting committees to consult the House, Senate and Commission websites to  
9 determine if a person is a lobbyist/registrant or lobbyist/registrant PAC. If a person is  
10 listed on any of these websites as a lobbyist/registrant or lobbyist/registrant PAC, then the  
11 person is “reasonably known to be” a lobbyist/registrant or lobbyist/registrant PAC, and  
12 information about the person is subject to the reporting requirement of 11 CFR 104.22(b).

13           The House and Senate websites identify registered lobbyists and registrants. The  
14 websites also list political committees disclosed as being established or controlled by  
15 lobbyists/registrants on their semi-annual reports of contributions to candidates and  
16 Federal officeholders and donations to related entities. These political committees are  
17 “lobbyist/registrant PACs” under new 11 CFR 104.22(a)(4)(i). To ensure that reporting  
18 committees have the most up-to-date information available about lobbyist/registrant  
19 PACs, and to provide information about lobbyist/registrant PACs that are unable to  
20 ascertain from the Secretary of the Senate or Clerk of the House of Representatives  
21 whether they are established or controlled by a lobbyist/registrant, but which meet the  
22 Commission’s additional “established or controlled” criteria under 11 CFR  
23 104.22(a)(4)(ii), these final rules require reporting committees to check the

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1 Commission’s website as well. Any political committee that is “established or  
2 controlled” by a lobbyist/registrant must identify itself as such on its Statement of  
3 Organization (FEC Form 1), which will be posted on the Commission’s website. See 11  
4 CFR 104.22(c), discussed below.

5 Each reporting committee must consult the House, Senate, and Commission  
6 websites “in a manner reasonably calculated to find the name of each person who is a  
7 lobbyist/registrant or lobbyist/registrant PAC.” 11 CFR 104.22(b)(2)(i). The  
8 Commission recognizes that reporting committees that have exercised due diligence in  
9 searching House, Senate, and Commission websites must be able to rely on the results of  
10 their searches. Under new 11 CFR 104.22(b)(2)(i), a reporting committee will not be  
11 deemed to have “reasonably known” about the status of a lobbyist/registrant or  
12 lobbyist/registrant PAC whose name the committee did not find in searching the House,  
13 Senate, and Commission websites, so long as the reporting committee performs its  
14 searches in a manner reasonably calculated to find the name of each lobbyist/registrant or  
15 lobbyist/registrant PAC listed on the websites.

16 New 11 CFR 104.22(b)(2)(ii) provides that a computer printout or screen capture  
17 showing the absence of the person’s name on the House, Senate, or Commission websites  
18 on the date in question, may be used to demonstrate that the reporting committee  
19 consulted the required websites in a manner reasonably calculated to find the name of  
20 each person who is a lobbyist/registrant or lobbyist/registrant PAC, and did not find the  
21 name of the person in question. This provision allows reporting committees to rely on  
22 the results of website searches, provided that the printout shows that the search history  
23 utilized by the reporting committee to verify that the search was performed in a manner

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1 reasonably calculated to find the name of the person in question, as discussed above.  
2 Such a computer printout or screen capture constitutes conclusive evidence that the  
3 reporting committee has consulted the websites and not found the name of the person  
4 sought. Accordingly, except as described below, such evidence demonstrates that a  
5 person was not reasonably known by the reporting committee to be a lobbyist/registrant  
6 or lobbyist/registrant PAC for the purposes of 11 CFR 104.22(b)(1). A reporting  
7 committee also may provide other credible evidence to show that it has consulted the  
8 websites in compliance with 11 CFR 104.22(b)(2)(i).

9       Notwithstanding new 11 CFR 104.22(b)(2)(ii), a reporting committee is not  
10 entitled to rely on the results of a website search if the reporting committee knows that  
11 the person who forwarded or is credited with raising contributions is a lobbyist/registrant  
12 or lobbyist/registrant PAC. New 11 CFR 104.22(b)(iii) provides that a reporting  
13 committee is required to report bundled contributions forwarded by or received and  
14 credited to a person that the reporting committee actually knows is a lobbyist/registrant or  
15 lobbyist/registrant PAC as defined in 11 CFR 104.22(a)(2) or (a)(3), even if the reporting  
16 committee consulted the websites in accordance with 11 CFR 104.22(b)(2)(i) and (2)(ii).  
17 and did not find the person's name on any of the websites. A reporting committee is  
18 deemed to have actual knowledge if the candidate involved, the treasurer of the reporting  
19 committee, or any members of the reporting committee's staff who are responsible for  
20 verifying the accuracy of Form 3L has actual knowledge that the person who forwarded  
21 or is credited with raising contributions is required to be listed as a lobbyist/registrant or  
22 lobbyist/registrant PAC.

23       C.     11 CFR 104.22(c) – Lobbyist/Registrant PAC Reporting Requirements

1           Prior to HLOGA, the Commission required political committees to identify  
2 themselves as only one type of political committee on their Statements of Organization.  
3 See FEC Form 1 Statement of Organization, Question 5 (“Type of Committee”).

4           The NPRM sought comments on how, going forward, an organization that is both  
5 an SSF and a “lobbyist/registrant PAC” should identify itself on its Statement of  
6 Organization, and whether one type of registration should control or whether political  
7 committees should identify themselves as both types. The Commission received no  
8 comments on this issue.

9           To promote the greatest disclosure and to accommodate entities that qualify as  
10 more than one type of political committee, the Commission is revising FEC Form 1 to  
11 make it possible for committees to identify themselves as more than one type of political  
12 committee. Under new 11 CFR 104.22(c), all new leadership PACs and  
13 lobbyist/registrant PACs that register with the Commission after the effective date of this  
14 rule (30 days after publication in the Federal Register) must check all appropriate boxes  
15 on FEC Form 1, in accordance with 11 CFR 102.2(a)(1). See 11 CFR 100.5(e)(6)  
16 (definition of leadership PAC) and 11 CFR 104.22(a)(3) (definition of lobbyist/registrant  
17 PAC). Leadership PACs and lobbyist/registrant PACs already registered with the  
18 Commission must amend their FEC Form 1 in accordance with 11 CFR 102.2(a)(2) no  
19 later than ten days after the effective date of this rule (ten days after the thirty-day period  
20 from the date of publication of these rules in the Federal Register).

21           D.     11 CFR 104.22(d) – Where to File

22           New section 104.22(d) requires reporting committees to file FEC Form 3L in  
23 accordance with 11 CFR Part 105. Under 11 CFR Part 105, authorized committees of

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1 candidates for the House of Representatives, the principal campaign committees of  
2 presidential candidates, and any other political committees that support such candidates  
3 must file reports with the Commission. See 11 CFR 105.1, 105.3 and 105.4. Authorized  
4 committees of candidates for the Senate and any other political committees that support  
5 only Senate candidates must file their reports with the Secretary of the Senate. See  
6 11 CFR 105.2. The Commission requested but received no comments on this provision  
7 in the NPRM.

8 E. 11 CFR 104.22(e) – When to File

9 Under HLOGA Section 204, the first report required to be filed by a reporting  
10 committee under 2 U.S.C. 434 and 11 CFR Part 104.5 after each covered period must set  
11 forth the name, address, and employer of each person reasonably known by the  
12 committee to be a lobbyist/registrant or lobbyist/registrant PAC who provided two or  
13 more bundled contributions to the reporting committee in an aggregate amount greater  
14 than the threshold amount during the reporting period. See 2 U.S.C. 434(i)(1).

15 New 11 CFR 104.22(e) implements this provision of HLOGA. It provides that  
16 reporting committees must file Form 3L with the first campaign finance report that they  
17 file under 11 CFR 104.5 following the end of each covered period.

18 New 11 CFR 104.22(e) mirrors the proposed rule, on which the Commission  
19 requested comments in the NPRM. No comments addressed this section of the proposed  
20 rule specifically, although many did comment on the related “covered period” definition.

21 As discussed above, new 11 CFR 104.22(a)(5) defines the term “covered period”  
22 as the semi-annual periods of January 1 through June 30 and July 1 through December  
23 31, and as the periods that coincide with a reporting committee’s monthly or quarterly

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1 campaign finance reporting periods under 11 CFR 104.5. Accordingly, reporting  
2 committees must file Form 3L to disclose information about any lobbyist/registrant or  
3 lobbyist/registrant PAC that forwards, or is credited by the reporting committee for  
4 having raised, bundled contributions that aggregate in excess of the reporting threshold  
5 semi-annually and at the end of each reporting period under 2 U.S.C. 434 and 11 CFR  
6 104.5.

7         When a reporting committee is required to file pre- and post-election reports  
8 under 2 U.S.C. 434 and 11 CFR 104.5, each of those reporting periods constitutes a new  
9 covered period. Accordingly, the reporting committee must also file FEC Form 3L for  
10 those periods if it receives bundled contributions in excess of the reporting threshold  
11 during those periods. Similarly, when a reporting committee is required to file reports in  
12 connection with special elections, under 11 CFR 104.5(h), or runoff elections, each of  
13 those reporting periods constitutes a new covered period, and the reporting committee  
14 must file FEC Form 3L if it receives bundled contributions in excess of the reporting  
15 threshold during those periods.

16         F.         11 CFR 104.22(f) – Recordkeeping

17         Commission regulations implement certain statutory recordkeeping requirements  
18 that also apply to certain bundled contributions. For example, political committees must  
19 keep a record and account of each contribution exceeding \$50 for three years after filing  
20 the report to which the record or account relates. See 2 U.S.C. 432(c)(2) and (d); 11 CFR  
21 102.9(a) and (c). In addition, any person who receives and forwards contributions to any  
22 political committee must also forward certain information about the original contributor.  
23 See 2 U.S.C. 432(c) and 441a(a)(8); 11 CFR 102.8(c). Any authorized committee that



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1 receives contributions forwarded by a “conduit” or “intermediary” must also maintain  
2 records regarding the information forwarded with the contributions by the conduit or  
3 intermediary. See 11 CFR 110.6(c) and 102.9(c).

4       New 11 CFR 104.22(f) refers to the existing recordkeeping requirements in  
5 Commission regulations at 11 CFR 102.8, 102.9 and 110.6. The new provisions also  
6 require reporting committees to maintain for three years after filing a report, records of  
7 any bundled contributions forwarded by or received and credited to a lobbyist/registrant  
8 or lobbyist/registrant PAC that aggregate in excess of the reporting threshold for any  
9 covered period. The rule requires reporting committees to maintain records that  
10 document the name and address of the lobbyist/registrant or lobbyist/registrant PAC, the  
11 employer of the lobbyist/registrant (if an individual), and the aggregate amount of  
12 bundled contributions forwarded by or received and credited to each lobbyist/registrant or  
13 lobbyist/registrant PAC by the reporting committee during the covered period.

14       The rule requires only the maintenance of documentation with respect to the  
15 matters required to be reported, which shall provide in sufficient detail the necessary  
16 information and data from which the filed reports may be verified, explained, clarified,  
17 and checked for accuracy and completeness. If a committee is not required to file such a  
18 report because it has not received any contributions meeting the definition of “bundled  
19 contributions” under this section, then the new recordkeeping provision does not apply.  
20 Additionally, the new recordkeeping provision does not require reporting committees to  
21 create records the committee would not otherwise have created under its usual  
22 fundraising and accounting practices. These provisions are similar to the provisions in  
23 proposed 11 CFR 104.22(e), on which the Commission received no comments.

1           G.     11 CFR 104.22(g) and 110.17(e)(2) and (f) – Price Index Increase

2           New 11 CFR 104.22(g) requires that the disclosure threshold for reporting  
3     bundled contributions be indexed by applying a price index increase similar to the price  
4     index increase applied to contribution limitations in FECA and Commission regulations.  
5     These final rules also add a cross-reference to 11 CFR 104.22(g) in 11 CFR 110.17(e)(2)  
6     and (f), which governs the price index increases for certain contribution and expenditure  
7     limitations under FECA.

8                     1. 11 CFR 104.22(g) – Price Index Increase

9           HLOGA Section 204 requires that the reporting threshold be indexed for inflation  
10    annually, using the Consumer Price Index as verified by the Secretary of Labor, with  
11    2006 as the “base period.” See 2 U.S.C. 434(i)(3)(B). New 11 CFR 104.22(g)  
12    implements this provision by requiring that the initial \$15,000 disclosure threshold be  
13    indexed in the same manner as certain contribution limits under FECA and Commission  
14    regulations. See 2 U.S.C. 441a(c) and 11 CFR 110.17. The Commission has placed this  
15    provision in new 11 CFR 104.22 rather than in 11 CFR 110.17, which contains similar  
16    indexing provisions, because the dollar amount here is a threshold for disclosure, rather  
17    than the contribution and expenditure limits covered under 11 CFR Part 110.

18           New 11 CFR 104.22(g) is the same as the one proposed by the Commission in the  
19    NPRM. The Commission requested but received no comments on it.

20           The NPRM also requested but received no comments on the timing of the  
21    application of the indexing for inflation requirement. HLOGA Section 204 provides that  
22    the indexing requirement “shall apply” to the reporting threshold “[i]n any calendar year  
23    after 2007.” 2 U.S.C. 434(i)(3)(B). HLOGA also provides, however, that 2 U.S.C.

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1 434(i) will go into effect “with respect to reports filed . . . after the expiration of the 3-  
2 month period which begins on the date that the regulations required to be promulgated by  
3 the Commission [under new 2 U.S.C. 434(i)] become final.” Pub. L. No. 110-81, sec.  
4 204(b), 121 Stat. 735 at 746 (2007). Given that these rules are expected to go into effect  
5 in March 2009, the initial \$15,000 reporting threshold provided for in HLOGA Section  
6 204 will be indexed for 2009. The Commission will publish a notice of the 2009  
7 reporting threshold in the Federal Register and on the Commission’s website in  
8 accordance with new 11 CFR 110.17(e)(2), discussed below.

9 2. 11 CFR 110.17(e)(2) and 110.17(f) – Price Index Increase

10 Current 11 CFR 110.17 governs the price index increases for certain contribution  
11 and expenditure limitations, as well as the publication of those limitations on a biennial  
12 basis. While the bundling disclosure dollar threshold is not a contribution or expenditure  
13 limit, it is indexed for inflation on an annual basis, in the same manner as the limitations  
14 in 11 CFR 110.17 are indexed biennially. The Commission concluded that it would be  
15 helpful to the regulated community to place a cross-reference in 11 CFR 110.17 to the  
16 indexing provision in new 11 CFR 104.22(f). Accordingly, the Commission is adding a  
17 cross-reference in new 11 CFR 110.17(f) to new 11 CFR 104.22(g). Additionally, as an  
18 aid to providing the new annual threshold to the regulated community, the Commission  
19 has added new 110.17(e)(2), requiring the lobbyist/registrant bundling threshold to be  
20 published in the Federal Register annually and posted on the Commission’s website.

21 H. Application of Rule to In-Kind Contributions

22 The NPRM requested comments on whether the new rules should apply to in-kind  
23 contributions as well as monetary contributions. No comments addressed this issue.

1 HLOGA uses the term “contributions.” See 2 U.S.C. 434(i)(1). FECA and  
2 Commission regulations define “contributions” as including in-kind contributions. See  
3 2 U.S.C. 431(8)(A)(i) and 11 CFR 100.51(a), 100.52, 100.54, 100.56, 109.21. Nothing  
4 in HLOGA or its legislative history suggests that “contributions” is intended to have a  
5 different meaning from that already established in FECA and Commission regulations.  
6 Thus, the Commission determined that these rules apply to both in-kind and monetary  
7 contributions. For example, if a lobbyist/registrant asked several contributors to send  
8 monetary contributions to a reporting committee and asked others to send computers,  
9 furniture, and office supplies to the reporting committee, with a total aggregate value of  
10 monetary and in-kind contributions exceeding the reporting threshold during the covered  
11 period, and the reporting committee credited the lobbyist/registrant with having raised  
12 the contributions, then the reporting committee would have to file Form 3L disclosing  
13 information about the lobbyist/registrant for the covered period.

14 **Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)**

15 The Commission certifies that the attached final rules do not have a significant  
16 economic impact on a substantial number of small entities. The basis for this  
17 certification is that few, if any, small entities will be affected by these rules, which apply  
18 only to Federal candidates and their campaign committees, political committees  
19 established, financed, maintained or controlled by Federal candidates or individuals  
20 holding Federal office, political committees of political parties, and political committees  
21 established or controlled by lobbyist/registrants. Authorized committees of Federal  
22 candidates are not considered small entities under the definition at 5 U.S.C. 601(6).  
23 Leadership PACs established, financed, maintained or controlled by Federal candidates

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1 or individuals holding Federal office also do not qualify as small entities. Such  
2 committees, while established by an individual, are not independently owned and  
3 operated because they are not financed and controlled by a small identifiable group of  
4 individuals; rather, they rely on contributions from a variety of persons to fund the  
5 committees' activities. Political committees representing the Democratic and Republican  
6 parties have a major controlling influence within the political arena and are thus  
7 dominant in their field. However, to the extent that any party committees representing  
8 major or minor political parties or any other political committees might be considered  
9 "small organizations," the number that would be affected by this rule is not substantial.

10       Additionally, any separate segregated funds that are affected by these rules are  
11 not-for-profit political committees that do not meet the definition of "small organization"  
12 because they are financed by a combination of individual contributions and financial  
13 support for certain expenses from corporations, labor organizations, membership  
14 organizations, or trade associations, and therefore are not independently owned and  
15 operation. Most of the other political committees that are affected by these rules are not-  
16 for-profit committees that do not meet the definition of "small organization." Most  
17 political committees are not independently owned and operated because they are not  
18 financed by a small identifiable group of individuals. In addition, most political  
19 committees rely on contributions from a large number of individuals to fund the  
20 committees' operations and activities.

21       Furthermore, any small entities affected should not feel a significant economic  
22 impact from the final rule. The activity being regulated (receiving bundled contributions  
23 that have been forwarded by, or that have been raised by and credited to,

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1 lobbyists/registrants or lobbyist/registrant PACs) is entirely voluntary. Any reporting  
2 obligations for reporting committees are triggered only if entities choose to engage in this  
3 activity above the reporting threshold for any given covered period. The reporting  
4 obligations for reporting committees are also limited to contributions either forwarded by  
5 or raised by and credited to lobbyists/registrants or lobbyist/registrant PACs. The  
6 reporting requirement for lobbyist/registrant PACs is limited to the political committee  
7 disclosing itself as a lobbyist/registrant PAC on the political committee's initial Form 1  
8 (Statement of Organization) filed with the Commission, or to filing a single amendment  
9 to the political committee's Form 1. Therefore, the final rules do not have a significant  
10 economic impact on a substantial number of small entities.

11 **List of Subjects**

12 11 CFR Part 100

13 Elections.

14

15 11 CFR Part 104

16 Campaign funds, political committees and parties, reporting and recordkeeping  
17 requirements.

18 11 CFR Part 110

19 Campaign funds, political committees and parties.