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cc
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Subject Comments

Enclosed, please find comments on behalf of Sandler, Reiff & Young, PC regarding Notice 2007-23.

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SRY Comments Notice 2007-23.pdf

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November 30, 2007

Via E-Mail

Amy Rothstein, Esq.
Assistant General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: Notice of Proposed Rulemaking: Reporting Contributions Bundled by Lobbyists, Registrants and the PACs of Lobbyists and Registrants

Dear Ms. Rothstein:

We are submitting these comments in response to the Commission's Notice of Proposed Rulemaking on Reporting Contributions Bundled by Lobbyists, Registrants and the PACs of Lobbyists and Registrants, 72 *Fed. Reg.* 62600 (Nov. 6, 2007). These comments are based on our experience in representing numerous Democratic political party committees, but do not represent the views of any specific client.

In the event the Commission holds a hearing on the proposed regulations, the undersigned requests an opportunity to testify at that hearing.

1. Reporting

a. Covered Period for Monthly Filers

The Commission has requested comment on the correct interpretation of "covered period" with respect to committees—including the national party committees and many state party committees—that file monthly.

The statute, the Honest Leadership and Open Government Act of 2007 ("HLOGA"), provides that each such committee include a separate schedule, disclosing the required information about bundlers, in the "first report required to be filed under this section [2 USC §434] after each covered period……" 2 U.S.C. §434(i)(1), as added by HLOGA §204(a). "Covered period" means "any reporting period applicable to the committee under" section 434. Id. §434(i)(2)(C). Thus, in the case of monthly filers, the "covered period" is each calendar month and the "first report required to be filed" is the regular monthly report.

The statute also, however, provides the Commission with authority to allow monthly filers to file the special bundling report on a quarterly rather than a monthly basis. Id. §434(i)(5)(A). Both alternatives proposed in the NPRM for the definition of "covered period" would provide for quarterly, rather than monthly, filing of the bundling report, by committees that file their regular FEC reports on a monthly basis.

We strongly support that approach for two reasons. First, using a quarterly rather than a monthly period will result in many more persons meeting the $15,000 reporting threshold, resulting in greater disclosure of bundled contributions. Second, monthly determination of who is a bundler, which bundlers have met the threshold and which of those are registered lobbyists, would impose a very substantial additional compliance burden, particularly on state parties that are ill-equipped to bear that burden.

b. **Double Reporting of Bundled Contributions**

The Commission also raises the question of whether its proposed regulations should require double-reporting—that is, whether the amount of contributions bundled by a covered individual or entity in a quarter should be reported on a semi-annual basis in addition to being reported on a quarterly basis. 72 *Fed. Reg*. at 62602. The answer is no. Nothing in the plain language of the statute remotely suggests that the same bundled contributions should be disclosed in more than one report. The statute requires that if contributions exceeding the threshold were bundled by a covered individual or entity during a particular reporting period, that should be disclosed in the "*first report* required to be filed…after" that covered period. 2 U.S.C. §434(i)(1)(emphasis added). "First report" refers to only *one* report—the first one filed after the covered period.

Thus, if the Commission decided to require monthly filers to file bundling reports monthly, the "first report" would be the regular monthly FEC report, covering the period in which the contribution was received; that would be the only report that needed to be filed in respect of that "covered period." The "first report" filed after the semi-annual period ending June 30 is still the July 20 monthly report. The Commission should also clarify that schedules required under HLOGA need only be filed if the committee has information required to be disclosed and that "zero reports" need not be filed if there is no such information.

If the Commission decides to allow quarterly filing of bundling reports by monthly filers, then the "first report" is the first report filed after each applicable quarter. Again, although the statute treats each semi-annual period as an additional "covered period," there is still only one "first report" regularly filed after the end of each such period.

Nothing in the statute permits, let alone compels, the Commission to require that same information to be disclosed in two different reports, *i.e*., a special semi-annual report in addition to the quarterly report. For this reason, the Commission should adopt the *alternative* definition of "covered period," under which for monthly filers, the covered period would be define as quarterly periods for monthly and quarterly filers (except semi-annual for quarterly filers in the off-year) and there would be no duplicate reporting.

2. **Bundled Contributions**

a. Non-Listed Employees of Registered Entities

The Commission questions whether the new law covers "bundled contributions provided by employees and agents of organizations that are registrants, when those individuals are not themselves lobbyist/registrants?" 72 *Fed. Re*g. at 62603. For two reasons, the regulations should not cover such employees and "agents."

First, the plain language of the statute covers only a person who, at the time a bundled contribution is received by a committee, is (A) a current organizational registrant under section 4(a) of the Lobbying Disclosure Act ("LDA"); (B) "an individual who is listed on a current registration filed under section 4(b)(6)" of the LDA or on a "current report under section 5(b)(2)(C)" of LDA; or (C) a PAC established or controlled by such a registrant or individual. 2 U.S.C. §434(i)(7). This language clearly requires reporting of an individual bundler *only* if such individual is listed on an LDA registration or report. The Commission has no authority to go beyond the plain language of the statute and compel committees to report individuals who are employed by registered organizations and firms but who are not themselves listed on any LDA registration or report.

Second, there is simply no practical way for a party committee or any other committee to determine when employees of a registered organization—say, a lobbying firm, corporation, trade association or nonprofit—who are not themselves listed on any official LDA registration or report, are "acting as an agent" of the registrant organization.

For these reasons, the new requirements should not purport to cover "employees who are agents of lobbyist/registrants," 72 *Fed. Reg*. at 62603, unless they are listed as individual registered lobbyists under LDA, as the plain language of HLOGA requires.

b. Crediting Multiple Lobbyist/Registrants

The statute defines as a "bundled contribution" any contribution that is physically forwarded by a lobbyist/registrant or that is received directly by the committee "but credited by the committee…to the" lobbyist/registrant "through records, designations, or other means of recognizing that a certain amount of money has been raised by the person." 2 U.S.C. §434(i)(8)(A). Typically party committees do keep records of persons who are credited with raising contributions. It is not uncommon that more than one person is credited with raising a contribution. For example, an individual may host an event and be credited with raising all the funds received by a party committee in connection with that event; and in addition, other individuals who directly solicited donors for that event will also be credited with raising those funds.

The most sensible and easiest approach, and the one most consistent with the intent of the law, is to attribute to each individual the full amount of the contributions they are credited with raising in the committee's records. Thus, in the above example, if each of two individuals is credited by the party committee with raising the same $20,000 in contributions, the entire $20,000 amount should be attributed in full to each individual for purposes of complying with the HLOGA disclosure requirements. Each individual should be deemed to have met the threshold in that case and if either is a lobbyist/registrant, he or she should be included in the HLOGA report.

In that regard, the Commission's discussion of joint hosting of fundraisers misses the point. The issue is not involvement with a particular event; the issue is who is credited with raising how much for the committee. That is what the law is trying to have disclosed. That two individuals jointly host an event does not necessarily mean that each is credited with raising all the funds from that event. What matters is who gets the credit in the committee's records. Senator Russ Feingold's formulation of the issue, as quoted in the NPRM, is the correct and logical one: when two or more lobbyist/registrants are involved in having raised the same bundled contributions, each lobbyist should be treated as providing the total amount, for purposes of applying the applicable threshold and for purposes of reporting. 72 *Fed. Reg*. at 62603, *quoting* statement by Senator Russ Feingold (D-Wisc.)., 153 CONG. REC. S 10699 (daily ed. Aug. 2, 2007).

3. Reporting Requirement—"Reasonably Known to Be"

The Commission requests comment on its proposed regulation directing committees to consult the web sites maintained by the Clerk of the House and the Secretary of the Senate, and the Commission itself to determine whether an individual is identified on an LDA filing (as indicated on the websites of the Clerk of the House and the Secretary of the Senate) or as a PAC established by a registrant/lobbyist (as indicated by an FEC website based on the PAC's statement of organization). 72 *Fed. Reg*. at 62604. This regulation should be adopted. It carries out the manifest intent of the statute

that committees be able to tell who is a covered "person" under section 434(i)(7) by consulting definitive lists at a particular time. In addition, the proposed regulation should be amended to make clear that a committee will be deemed to have complied with the law if it relies on these websites for purposes of determining who is a "person described" under HLOGA.

4. Joint Fundraising

One issue not addressed by the NPRM that the Commission should consider is how to treat bundled contributions received by joint fundraising committees. The Commission should clarify, first, that the HLOGA reporting obligation for joint fundraising committees applies only to the joint fundraising representative and not to all the participating committees.

Second, the Commission should clarify how the HLOGA reporting requirements will apply to joint fundraising committees established both by committees covered by HLOGA and committees which are not covered.

We appreciate the Commission's consideration of these comments and look forward to providing any additional information the Commission may find useful at the hearing on the proposed regulations.

Thank you for your time and attention to this matter.

Sincerely yours,

Joseph E. Sandler
Neil P. Reiff