"Craig Holman" <cholman@citizen.org>
11/30/2007 01:50 PM

To <bundling07@fec.gov>
cc
bcc
Subject Public Citizen's comments

Ms. Amy Rothstein:

Please accept the attached comments from Public Citizen regarding NPRM 2007-23, on bundling disclosure.

Craig Holman of Public Citizen requests also to testify before the Commission on the matter.

Attachment.

Craig Holman, Ph.D.
Lobbyist
Public Citizen
215 Pennsylvania Avenue SE
Washington DC 20003
TEL: 202-454-5182
CELL: 202-905-7413
FAX: 202- 547-7392
Holman@aol.com

Bundling rulemaking.doc

Public Citizen 35 YEARS
Protecting Health, Safety & Democracy
Auto Safety Group • Congress Watch • Energy Program • Global Trade Watch • Health Research Group • Litigation Group
Joan Claybrook, President

Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

November 30, 2007

Chairman Robert Lenhard
Vice Chairman David Mason
Commissioner Hans von Spakovsky
Commissioner Ellen Weintraub
Commissioner Steven Walther
Assistant General Counsel Amy L. Rothstein

RE: Bundling rulemaking – Notice 2007-23

Dear Counsel Rothstein:

These comments are submitted by Public Citizen in response to Notice of Proposed Rulemaking 2007-23 ("Reporting Contributions Bundled by Lobbyists, Registrants and the PACs of Lobbyists and Registrants"). Public Citizen requests the opportunity to testify before the Commission on this matter.

Though this rulemaking on implementing 2 U.S.C. 434(i) regarding the disclosure of contributions bundled by lobbyists, registrants and their PACs, affords the Federal Election Commission (FEC) an opportunity to generally update its current bundling regulation [11 CFR 110.6 and 11 CFR 102.8], there is no indication in the Notice of Proposed Rulemaking that the Commission is prepared to do so. The Commission appears intent on not changing the current bundling regulation of earmarked contributions forwarded through "conduits" or "intermediaries." Instead, the Commission is focusing its rulemaking on implementing the narrower bundling disclosure requirement for lobbyists and registrants as prescribed under the new "Honest Leadership and Open Government Act of 2007."

As such, Public Citizen will largely limit its comments to the rulemaking at hand. We nonetheless urge the Commission to develop bundling disclosure regulations that are compatible with the full disclosure regime of the Federal Election Campaign Act (FECA), which should include disclosure of bundling activity by all persons.

Much of the bundling regulations initially proposed in NPRM 2007-23 capture the intent of the bundling requirement under the new law, *see* 2 U.S.C. 434(i). The definitions of lobbyist, registrant and "lobbyist/registrant PAC" are reasonable interpretations of the law, as is the definition of bundled contributions, which includes fundraising events hosted by lobbyists and registrants. The Commission is to be commended for proposing a system of quarterly reporting of bundled contributions, aggregated

on a semi-annual basis. And the Commission appropriately recognizes the need to create a new bundling filing form for candidates and committees to carry out its mandate.

In order to implement the new bundling disclosure requirement in an accurate and least burdensome manner, Public Citizen also recommends that:

- "Agents" of lobbyists, registrants and lobbyist/registrant PACs should be included under the bundling disclosure regime, as intended by the legislation's principal congressional sponsors.
- A separate "bundling schedule" should be developed by the Commission as part of the FECA filing and disclosure reports in order to clarify bundling activity for the public.
- The separate "bundling schedule" in the FEC filing and disclosure reports should include the categories of "bundled contributions during this quarterly period" and "aggregate bundled contributions in the semi-annual period" in order to avoid over-counting or under-counting of bundled contributions within the covered period.

Unlike much of the primary proposals in the NPRM, the alternative proposals suggested, such as not aggregating bundled contributions over a semi-annual period, fail to meet the spirit or letter of the new lobbying and ethics legislation and should be rejected by the Commission.

A. Background: Bundling for Favors

Though the law is under attack in the courts, the Bipartisan Campaign Reform Act of 2002 (BCRA) significantly improved the federal campaign finance landscape. It prohibits six-figure "soft money" contributions to political parties from corporations, unions and wealthy donors seeking to curry influence with federal officeholders. But the influence peddlers have not faded away.

Many of them have shifted gears into the "hard money" world. Instead of handing over one large soft money check to a candidate's party, some influence peddlers have turned to giving a candidate a large number of smaller hard money checks collected from different contributors. This is all perfectly legal, and has an enormous effect on buying influence with the candidate or officeholder.

This is known as "bundling."

Bundling is the fundraising practice of pooling together a large number of contributions from PACs and individuals in order to maximize the political influence of the bundlers and the interests they represent. Most often, the bundler is a lobbyist or corporate executive, representing a particular business or industry, with expectations of something in return for the fundraising efforts.

1. Old Style of Bundling

The oldest form of bundling involves a "conduit" who collects and delivers "earmarked" contributions to a candidate in a manner that ensures the conduit is duly recognized as the source of the contributions. Though bundling campaign contributions has perhaps been done as long as contribution limits have been on the books, perhaps the first formally recognized bundling activity was the Civic Pledge Program of the Boeing Company in 1976. Boeing received guidance from the FEC in establishing a management-run program of maximizing individual contributions from its

administrative personnel. Boeing's political action committee prepared a data sheet on candidates it favored and then canvassed individual checks from Boeing management and administrators. The checks were made out directly to the candidates, which the PAC would then collect and forward to the candidates. The Commission concluded that the bundled contributions need be disclosed to the public and, because they were controlled in part by Boeing's management, counted against the contribution limits both the PAC and the individual contributor. [Advisory Opinion 1976-92]

Shortly afterward, the Council for a Livable World, a nonprofit ideological organization, followed a similar model of bundling, but claimed to relinquish control over choosing which candidates to support. The Council would simply collect and "transmit" contributions from individuals to peace candidates. By relinquishing control over the contributions, the Council could bundle contributions far in excess of the organization's own contribution limit ($5,000). As Jerome Grossman, president of the Council noted, bundling allowed the organization to evade the disclosure requirements and contribution limits: "Yes, it allows us to exceed the limit of $5,000…. We give to some as much as $70,000."[1]

The FEC initially developed regulations in the 1980s to govern this form of bundling activity. FECA allows for earmarking of contributions "made by a person, either directly or indirectly, on behalf of a particular candidate." [2 U.S.C. 441a(a)(8)] All contributions by a person that are made on behalf of, or to, a candidate, including contributions that are in any way earmarked or otherwise directed to the candidate through an intermediary or conduit, are contributions from the person to the candidate. [2 U.S.C. 441a(a)(8); 11 CFR 110.6(a)] If the intermediary or conduit exercises any direction or control over the choice of the recipient candidate, however, the contributions are treated as contributions from both the original contributors and from the intermediary or conduit to the recipient candidate. [11 CFR 110.6(d)] The Commission's regulations define "earmarked" as "a designation, instruction, or encumbrance, whether direct or indirect, express or implied, oral or written, which results in all or any part of a contribution or expenditure being made to, or expended on behalf of, a clearly identified candidate or a candidate's authorized committee." [11 CFR 110.6(b)(1)]

Commission regulations further require that persons who receive contributions on behalf of an authorized committee must forward the contributions to the treasurer no later than 10 days after receiving them. [11 CFR 102.8(a)] If the contribution exceeds $50, the name and address of the contributor and the date of receipt must be forwarded with the contribution, and, if the contribution exceeds $200, the contributor's employer and occupation must also be forwarded. The intermediary or conduit must also report the original source and the intended recipient of an earmarked contribution to the Commission and to the intended recipient, which then is supposed to be disclosed on the recipient candidate's disclosure reports. [11 CFR 110.6]

2. New Style of Bundling

According to FEC regulations, when a conduit physically touches a bundled contribution and delivers the check to a campaign, both the bundler and the original contributor must be publicly

---

[1] Amitai Etzioni, CAPITAL CORRUPTION: THE NEW ATTACK ON AMERICAN DEMOCRACY (Transaction Publishers, 1988) at 228.

disclosed in the campaign's FEC reports. But if the bundler does not physically touch the checks, s/he need not be disclosed to the public as the conduit source of the contribution.

In the 2000 presidential election cycle, the campaign of George W. Bush developed a new style of bundling activity that sidestepped FEC reporting requirements. Bundlers – then called "Pioneers" by the Bush campaign – signed a written pledge to raise at least $100,000 in bundled contributions from many different individuals. On this pledge form, each fundraising bundler was assigned a tracking number. These bundlers would in turn ask employees, associates, friends or business colleagues to make a contribution, write the tracking number on their checks, and give the checks to the campaign on their own. This way, the bundler would get credit with Bush for the contribution, yet avoid any need to disclose to the public that the contribution was in fact solicited through a conduit bundler.

One such solicitation letter by Bush Pioneer Thomas Kuhn, head of the Edison Electric Institute, the trade association for the electric utility industry, read as follows:

> *"As you know, a very important part of the campaign's outreach to the business community is the use of tracking numbers for contributions. Both Don Evans [then chair of the campaign and then-current Secretary of Commerce] and Jack Oliver [then finance director of the campaign] have stressed the importance of having our industry incorporate the #1178 tracking number in your fundraising efforts.* ***LISTING YOUR INDUSTRY'S CODE DOES NOT PREVENT YOU, ANY OF YOUR INDIVIDUAL SOLICITORS OR YOUR STATE FROM RECEIVING CREDIT FOR SOLICITING A CONTRIBUTION. IT DOES ENSURE THAT OUR INDUSTRY IS CREDITED, AND THAT YOUR PROGRESS IS LISTED AMONG THE OTHER BUSINESS/INDUSTRY SECTORS.****" (emphasis original)*

Kuhn received credit from the Bush campaign for the contributions, yet neither he nor the Bush campaign had to disclose his fundraising activities.

This new style of bundling activity is now commonplace. In 2004, Bush's re-election campaign raised $262 million in the primary elections, and at least 30 percent of the money Bush raised during the 2004 primaries – $76.5 million – came from only 548 bundlers. It seems probable that Bush's bundlers raised closer to 40 percent of the total money, or closer to $100 million. John Kerry raised $248 million in the primaries, breaking all previous records for a Democrat. Between 17 and 21 percent of that – at least $41.5 million – came from 546 bundlers.[2]

Thus far in 2007 alone, Public Citizen has already identified about 2,400 bundlers working on behalf of all the presidential candidates. [*See* www.WhiteHouseForSale.org] This represents a huge increase in bundling activity over recent years. There were 1,094 bundlers through the entire two-year presidential election cycle in 2004, and only 241 bundlers in the 2000 presidential election cycle.

Since there is no disclosure requirement for this new style of bundling, however, it is not yet possible to estimate the amount of funds these bundlers have raised. None of the 2008 presidential

---

[2] Public Citizen, The Importance of Bundlers to the Bush and Kerry Campaigns: Post-Election Summary of Findings (Dec. 2, 2004).

candidates have voluntarily disclosed as much information on their bundling activity as Bush and Kerry did in 2004 – and it is not at all clear whether any of the candidates intend to disclose sufficient information over the course of the election cycle. [*See* Public Citizen's letter to the presidential candidates requesting additional information on their bundlers, at: http://www.citizen.org/pressroom/release.cfm?ID=2495]

3. Bundling for Favors

As Kuhn's pointed memorandum highlights, the purpose of bundling campaign contributions for many bundlers is to ingratiate a particular business, special interest or industry with candidates and lawmakers. Such ingratiation can take many forms. It could be as simple as getting a photo opportunity with the candidate. It could be more nefarious, such as Norman Hsu's alleged scheme to acquire credibility among investors, or, worse yet, it could be used to obtain government contracts, tax breaks, earmarks or public policies.

One such official favor that many bundlers seek are government appointments to positions of prestige, influence or power. According to an analysis by Public Citizen, about 24 percent of Bush's elite fundraisers in 2000 and 2004 received some form of presidential appointment. At least 221 Pioneers and Rangers (or their spouses) received appointments ranging from jobs in the executive branch, to positions on federal advisory boards, to spots on the Bush-Cheney transition team. This tally includes 21 appointments to key executive branch posts, five Cabinet secretaries and 49 ambassadorships.[3]

Another report by Public Citizen showed that Bush gave tax breaks and regulatory and policy preferences to the very same industries most represented by his elite fundraisers. The Bush Administration delivered on major tax breaks that benefited the finance industry; made it easier for real estate developers to build on wetlands and in the Florida Everglades; reneged on a campaign pledge to regulate carbon dioxide emissions (pleasing the electric utility and mining industries); increased the amount of public land available for oil and gas exploration and coal mining; filled top Interior Department positions with executives from the mining industry; and aided the pharmaceutical industry by pushing pro-industry Medicare drug legislation.[4]

Nine of 10 Bush bundlers are associated with corporate interests, and many have a stake in decisions made by the federal government – regulatory actions, government contracts and legislative proposals. Seventy-four of Bush Rangers, Pioneers and Super Rangers were professional lobbyists in the influence-peddling industry – representing 13 percent of all his bundlers. Collectively, they raised at least $11 million.[5]

What makes lobbyists such an important source of fundraising is that, as a group, they are most easily tapped as fundraisers for desperately-needed early funds, especially by incumbents. Even before

---

[3] Public Citizen, Rangers and Pioneers Receiving Appointments from the Bush Administration (August 10, 2004, updated on Nov. 26, 2007).

[4] Public Citizen, Bush Campaign Ads: Brought to You by … Special Interests (March 2004).

[5] Public Citizen, Corporate Cronies: How the Bush Administration Stalled a Major Corporate Reform and Placed the Interests of Donors Over the Nation's Investors (October 2004).

an election year rolls around, lobbyists – eager to forge close financial bonds with lawmakers – make campaign contributions from their own pockets, urge their clients to make campaign contributions, and host extensive fundraising events.

A well-known example of the eagerness of lobbyists to host round-the-clock fundraising events for lawmakers involved a former lobbyist for Freddie Mac, Mitch Delk. Delk held 45 fundraisers in the 2002 election cycle alone for lawmakers. Most of the lawmakers who benefited from the fundraising were overseeing the mortgage lending industry in general, and Delk's client in particular After Public Citizen filed a complaint against Delk with the Federal Election Commission, the agency found violations of federal campaign finance laws and fined Freddie Mac, the U.S. government-sponsored mortgage finance company, $3.8 million – the largest civil fine in FEC history.[6]

4. Lobbyist-Bundlers

Public Citizen has been monitoring bundling activity in the presidential elections since 2000 on its Web site, www.WhiteHouseForSale.org. Data on lobbyists-bundlers has been largely limited to the presidential candidates, since there has been no required disclosure of such activity until now. Judging from the presidential campaigns, the amount of fundraising activity by lobbyist-bundlers is growing rapidly.

The number of registered lobbyists raising money for 2008 presidential candidates is already nearing the total for the entire 2004 campaign – despite the fact that most of the 2004 lobbyist-fundraisers are not yet involved. So far, Public Citizen has identified at least 119 federal lobbyists acting as fundraisers for the 2008 presidential candidates. In comparison, 136 lobbyists were on the lists of fundraisers released by the 2004 presidential candidates for the entire 2004 election cycle.

Though disclosure of bundling activity is very, very sketchy for most of the 2008 presidential candidates – as discussed earlier, none of the 2008 candidates have met the same voluntary disclosure standards of George W. Bush in 2000 and 2004 – Republican John McCain and Democrat Hillary Clinton each list more than twice as many lobbyist-fundraisers than any of their respective party's other presidential candidates, according to Public Citizen's methodology of identifying bundlers.

Insight into the significance of lobbyist fundraising for the other Republican candidates is greatly diminished by the candidates' paltry disclosures. Despite the promises of the three leading announced Republican candidates to disclose the identities of their bundlers, most have yet to do so, or to provide any significant information about how much their bundlers have raised. (Rudy Giuliani has provided some information to the news media, but has not made the data directly available to the public. Giuliani's campaign has not responded to Public Citizen's requests for his list of bundlers.) There is therefore no way to measure how much help, if any, the Republicans' lobbyist-fundraisers are actually providing.

---

[6] Public Citizen's complaint against Mitch Delk is available at: http://www.citizen.org/documents/ACFAB5.pdf.

Given this lack of publicly available information, Public Citizen is using statements by the Republican candidates that name their honorary finance chairs and other fundraising team members to build lists of their likely bundlers.

The three leading Democrats, in contrast, have publicly released their bundler lists. Clinton releases bundler names after each has raised $100,000. Obama has recently taken the additional step of releasing bundler names after each has raised $50,000, $100,000 and $200,000, but has not given out information on city or state of residence, or employer. Edwards gives city and state of residence of each bundler, but no amounts. Thus, while Obama clearly discloses more than the rest of the 2008 presidential candidates on his bundling activity, none of the candidates comply with standards that were a common practice in the last presidential election.

George Bush, John Kerry and Howard Dean, the three 2004 candidates who released lists of bundlers, reported fundraising activity by 136 federal lobbyists. Fewer than 30 percent (28.7 percent) of those lobbyists have not yet surfaced on the 2008 candidates' fundraiser lists. The fact that only a minority of 2004 lobbyist-bundlers are currently involved as fundraisers for the 2008 presidential candidates may be due in part to the lack of a clear front-runner.

B. Proposed Regulations for Reporting Fundraising by Lobbyist-Bundlers

Section 204 of the "Honest Leadership and Open Government Act of 2007," signed into law on September 14, 2007, requires candidates and their campaign committees, leadership PACs, and political party committees to disclose on their FEC campaign reports the name, address and employer of each lobbyist or registrant who provided two or more bundled contributions amounting to more than $15,000 in a covered period. "Bundled" contributions are not contributions made directly by the lobbyist or registrant, but rather contributions solicited, arranged, collected or forwarded by the lobbyist or registrant. Direct contributions from lobbyists must be filed separately on the LDA reports under Section 203 of the Act.

Generally, the primary proposals offered by the Commission reasonably reflect the spirit and letter of Section 204. These proposals in turn are discussed below.

1. Definition of lobbyist and registrant.

The NPRM proposes that the definition of "lobbyist" and "registrant" covered by the Act include those who are registered under LDA. The Commission also appropriately provides in 11 CFR 100.5(e)(7) a new definition of "lobbyist/registrant PAC" to include "any committee established or controlled" by a lobbyist or registrant, which covers committees and separate segregated funds controlled by an individual or organization that is a registrant, and to report this information in the statement of organization. This is a critical addition to the definitions, given that many LDA registrants are corporations or labor unions, which generally cannot participate in fundraising for federal candidates outside the restricted class other than through a separate segregated fund (PACs).

The Commission requests comment on whether and how the term "controlled" by a lobbyist or registrant be applied to non-connected committees as well. The term "controlled" is a fairly well established term of art in FECA. Under the Act, for example, political committees "established or

financed or maintained or controlled" by the same persons or group of persons are treated as a single political committee for the purposes of the contributions they make or receive. 2 U.S.C.§441a(a)(5). Commission regulations interpret the Act and frequently characterize such committees as "affiliated committees." 11 CFR 100.5(g), 102.2(b)(1), and 110.3. Indicia that determine whether a committee is "affiliated" with a controlling entity, which should be used in this context to determine whether a committee is "controlled" by a lobbyist or registrant, include such factors as: (i) whether the entity has the authority to direct or participate in the governance of the committee; (ii) whether the entity has the authority to hire, appoint, demote or otherwise control the officers of the committee; and (iii) whether the entity provides significant funding for the committee on an ongoing basis.

Similar indicia should be employed by the FEC to determine whether a lobbyist or registrant controls any given committee.

2. Definition of an "agent" of a lobbyist or lobbyist/registrant PAC.

In the most significant omission of the proposed regulations, the NPRM asks, but does not advise, whether an employee who is not a registered lobbyist, but who is acting as an agent of a lobbyist or registrant for bundling activity, should also be covered under the disclosure provisions of the Act.

It is both the intent of Section 204 to include agents of lobbyists under the disclosure provision, as noted by the congressional sponsors of the legislation, and widely assumed to be captured under any other requirements of FECA, as evidenced by the current regulations governing "agents."

Sens. Russell Feingold (D-Wisc.) and Barack Obama (D-Il.) stated during Senate debate on this provision that the disclosure requirement would apply to bundled contributions by an employee of a lobbyist, if that employee is acting as an agent of the lobbyist, even if the employee is not registered under LDA.

> *"Persons whose bundling has to be reported include individuals, lobbying firms, or lobbying organizations registered or listed on registrations filed under the Lobbying Disclosure Act and political committees established or administered by each registrant or individual listed lobbyist. These persons also include any agent acting on behalf of a registered lobbyist, lobbying firm, or lobbying organization. Thus, if the CEO of a lobbying organization is raising money as an agent of the organization, his activities are covered by the legislation and must be reported. But employees of a lobbying organization, including a CEO, who are not lobbyists listed on the organization's lobbying disclosure reports are not covered, unless they are acting as agents for the organization."*[7]

This makes perfect sense; otherwise, evasion of the disclosure provision would be readily available to any lobbyist who simply turned the fundraising activity over to an employee.

[7] 153 Congressional Record S10698 (Aug. 2, 2007).

It is also consistent with FECA. The Commission prohibits evasion of the federal election law's contribution and disclosure requirements by persons acting through designated "agents." Criteria generally employed in determining whether someone is an agent of a covered officer (in this case, a lobbyist), includes whether that person has actual or apparent authority to engage in soliciting, directing or receiving contributions or transfers of funds on behalf of the lobbyist.[8] To decide otherwise would open up a gaping loophole in the law, making circumvention of the bundling disclosure requirement a simple matter.

In any instance in which a registrant is legally permitted to fundraise on behalf of candidates or committees, the same definition of agent should apply. Where such fundraising is prohibited except from within a restricted class, such as for a corporation or union, employees of a corporation or union who fundraise on their own usually should not be viewed as agents for the registrant, unless the employees are so instructed by the corporation or union to head up a fundraising campaign, or the employee and employer are credited by the campaign for the bundled contributions. More frequently in the case of corporations and unions, their separate segregated funds will run the bundling activity, as permitted by law. Agents working for bundling campaigns on behalf of such lobbyist/registrant PACs should also be subject to the same bundling disclosure requirement.

3. Definition of "bundled contribution"

The definition of "bundled contribution" subject to disclosure offered by the Commission clearly includes any fundraising events hosted or co-hosted by a lobbyist or registrant, as intended under the new law.[9] It also includes any contributions solicited or arranged by a lobbyist or registrant, as long as those contributions meet the $15,000 aggregate threshold and is credited as such by the campaign. This proposal aptly captures contributions bundled by a lobbyist and registrant under the "new style of bundling," which is the dominant method for bundling today.

The Commission requests comments on how to allocate the bundled contributions among two or more lobbyists or registrants who co-host a fundraising event, suggesting that sub-divided the funds among the co-hosts would more accurately reflect the amount of funds bundled.

Allocating portions of the funds among co-hosts serves no valid accounting purpose and would distort the actual role of each bundler in the fundraising process. Assuming that all bundled contributions are being reported on a separate "bundling schedule" (*see* discussion below on "Quarterly Covered Period and Separate Bundling Schedule"), these separately reported bundled funds

---

[8] The FEC amended its definition of "agent" in 2002, which was a matter of legal dispute. Prior to the amendment of federal regulations, however, "agent" in the context of coordinated expenditures has meant "any person who has actual oral or written authority, either express or implied, to make or to authorize the making of expenditures on behalf of a candidate, or means any person who has been placed in a position within the campaign organization where it would reasonably appear that in the ordinary course of campaign-related activities he or she may authorize expenditures." 11 CFR 109.1(b)(5).

[9] As noted by Sen. Feingold on the floor of the Senate: "And it should be understood as well that the term 'raised' in section 204 includes but is broader than the term 'solicited,' which is defined in the FEC regulations issued to implement the campaign finance laws. For example, even if a lobbyist does not make a solicitation for a contribution, as the term 'solicit' has been defined in FEC regulations, the lobbyist will still have 'raised' a contribution if the lobbyist facilitated the contribution by hosting or co-hosting a fundraising event that brought in the contribution." 153 Cong. Rec. S10699 (Aug. 2, 2007).

are for disclosure purposes only, and are not being tallied twice into the total amount of funds raised by a campaign. These funds are already tallied under Schedule A of Itemized Contributions and counted in the total campaign fundraising tally. The separate "bundling schedule" simply breaks out those contributions from Schedule A for disclosure purposes only to reveal the role that each bundler has played in the campaign. Thus, each co-host of a fundraising event should be attributed *for disclosure purposes only* the full amount bundled from the event.

Allocating the full fundraising total to each co-host of a fundraising event is also consistent with the intent of the congressional sponsors. As Sen. Feingold noted:

> *"When two or more lobbyists are jointly involved in providing the same bundled contributions--as, for instance, in the case of a fundraising event co-hosted by two or more lobbyists--then each lobbyist is responsible for and should be treated as providing the total amount raised at the event, for purposes of applying the applicable threshold to the funds raised by that lobbyist, and for purposes of reporting by the committee of 'the aggregate amount' of bundled contributions 'provided by each' registered lobbyist 'during the covered period.'"*[10]

The NPRM also offers a reasonable definition of "designations or other means of recognizing" a lobbyist or registrant whose bundled contributions must be disclosed by the candidate or committee. Regulations related to the old style of bundling simply, and inadequately, covered those who physically collected and delivered the bundled contributions. But today's new style of bundling requires that, if adequate disclosure is to be achieved, bundlers should be disclosed if they are recognized or known by the candidate or committee to be the source of the bundled contributions. This can include physically collecting and delivering bundled contributions, but it can also include tracking numbers, titles based on levels of fundraising, access to events reserved for fundraisers, or any type of crediting a bundler for the fundraising activity by the campaign.

Many of these are precisely the criteria currently being employed by Public Citizen in identifying the bundlers on behalf of the 2008 presidential campaigns, which are reluctant to provide such information voluntarily. Many of the presidential campaigns refuse to provide public lists of their bundlers, and so Public Citizen will resort to using such information as a campaign's recognition of major fundraisers as a list of bundlers.

The key in determining whether a "means of recognizing" a lobbyist or registrant as a bundler is whether the campaign knows, or reasonably should know, who served as the source for the bundled contributions. As stated by Sen. Obama:

> *"At many fundraisers, the host of the event collects the checks and gives them to a representative of the campaign. So that would be covered because the contributions have been 'forwarded' to the campaign. But at some events, a representative of the campaign, or even the candidate, physically receives checks directly from contributors as they arrive or leave, and of course, some checks may be sent in afterward. In that case, the campaign knows the total amount raised,*

[10] 153 Congressional Record S10698 (Aug. 2, 2007).

and knows the lobbyist who hosted the fundraiser is responsible for those contributions. Even if no formal records are kept about the money raised at the event, although most campaigns obviously do keep such records, the campaign has credited the lobbyist with that fundraising and it must be reported, as long as the threshold amount is met."[11]

4. Quarterly covered period and separate bundling schedule.

Much to its credit, the Commission proposes a system of quarterly reporting of bundled contributions. The new law requires at least semi-annual reporting of bundled contributions, but vests the Commission with the authority to expand the requirement to quarterly reporting, when feasible. The FEC has proposed to do exactly that in the very first stage of implementing the law.

Quarterly reporting of bundled contributions will produce data that are much more time sensitive and thus of greater value to the goal of public disclosure. Especially in the course of an election year, the public will be better informed of the sources and amounts of funds raised for a campaign from its elite fundraisers. Consistent quarterly disclosure periods for candidates and committees will also, as the Commission notes, make the reports easier to follow. Then, as required by the new law, quarterly bundled contributions must be aggregated for each source on the semi-annual reports.

The Commission expresses some concern that under a quarterly reporting system, followed by an aggregate semi-annual reporting of bundling activity as required by the new law, the same bundling activity could conceivably be reported twice by the candidate or committee. A lobbyist-bundler who raises more than $15,000 in the first quarter of a year for a candidate, but raises no further funds in the second quarter, would be listed twice on the candidate's disclosure report as raising $15,000 in bundled contributions.

Such double reporting poses no special problems for the public's understanding of the data if the Commission creates a new "bundled contributions" schedule on the FEC disclosure reports posted on its Web site. The Commission has already recognized the need for a new "bundling filing form" for candidates and committees. But the real intent of a separate schedule of bundling activity is to avoid double counting of bundled contributions and facilitate accurate public perceptions of bundled contributions.

For example, as now provided in the Summary Page of Receipts and Disbursements of FEC Form 3, which is the disclosure form posted on the FEC Web site, candidates and committees report contributions and expenditures in Column A for the current quarterly period, and then aggregate those contributions and expenditures in Column B for the election cycle to date. On a new "bundled contributions" schedule, candidates and committees should be required to identify contributions bundled from each source in Column A for the quarterly period, and then aggregate contributions bundled from the same sources in Column B for the semi-annual period.

A separate disclosure schedule not only would make the timing and amount of bundled contributions received from each source quite clear to the public, it would also avoid double counting

---

[11] 153 Congressional Record S10699 (Aug. 2, 2007).

of contributions. Each individual source of those contributions are already reported under Schedule A ("Itemized Contributions") and contained in the totals reported on the Summary Page. The separate bundling disclosure schedule simply provides a useful break-out of those contributions that the campaign is crediting to its elite fundraisers.

C. Conclusion: NPRM Generally Offers a Reasonable Model for Implementation of Lobbyist-Bundling Activity

The primary regulations for disclosure of lobbyist bundling activity in NPRM 2007-23 generally are reasonable and encompass the spirit of the new lobbying disclosure law. Public Citizen also recommends a few refinements in the proposed regulations. These include:

- "Agents" of lobbyists, registrants and lobbyist/registrant PACs should be included under the bundling disclosure regime, as intended by the legislation's principal congressional sponsors.
- A separate "bundling schedule" should be developed by the Commission as part of the FECA disclosure reports in order to clarify bundling activity for the public.
- The separate "bundling schedule" in the FEC disclosure reports should include the categories of Column A ("bundled contributions during this quarterly period") and Column B ("aggregate bundled contributions in the semi-annual period") in order to avoid over-counting or under-counting of bundled contributions within the covered period.

It is incumbent upon Public Citizen to point out that the FEC is missing a valuable opportunity to update its current bundling disclosure regulation for "conduits" and "earmarked contributions." The Commission decided long ago that FECA warrants a disclosure system of bundled contributions raised and forwarded to campaigns by elite fundraisers. At the time the original bundling regulation was developed, the "old style of bundling" in which individual contributions are collected and physically delivered to the campaigns by the bundler was the norm. When this old style was replaced by the "new style of bundling" in which individuals send in their own checks and the campaigns maintained ways to credit those checks to its elite fundraisers, the FEC should have updated its bundling disclosure regulation.

Today's bundling rulemaking affords the FEC with exactly that opportunity. At the very least, the Commission should be mindful of how its new bundling regulations could accommodate a fuller, more developed disclosure system for all bundling activity.

Respectfully Submitted,

Laura MacCleery
Director,
Public Citizen's Congress Watch
215 Pennsylvania Ave. SE
Washington, D.C. 20003

Craig Holman
Lobbyist
Public Citizen
215 Pennsylvania Ave. SE
Washington, D.C. 20003