



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

FEDERAL ELECTION  
COMMISSION  
SECRETARIAT

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MEMORANDUM

TO: The Commission

FROM: Thomasenia P. Duncan *JPD*  
General Counsel

Rosemary C. Smith *RCS*  
Associate General Counsel

Amy L. Rothstein *ALR*  
Assistant General Counsel

Cheryl A.F. Hemsley *CAH*  
Attorney

Esther D. Heiden *EDH*  
Attorney

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

**AGENDA ITEM**  
For Meeting of: 12-18-08

**SUBMITTED LATE**

Attached is a draft 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/registant PACs. See 2 U.S.C. 434(i). The Explanation and Justification for this rule will be considered separately by the Commission at a later date.

We request that this draft be placed on the agenda for December 18, 2008.

Attachment

1 For the reasons set out in the preamble, the Federal Election Commission is  
2 amending Subchapter A of Chapter 1 of Title 11 of the Code of Federal Regulations as  
3 follows:

4 **PART 100 – SCOPE AND DEFINITIONS (2 U.S.C. 431)**

5 1. The authority citation for part 100 continues to read as follows:

6 **Authority:** 2 U.S.C. 431, 434, and 438(a)(8).

7 2. Section 100.5 is amended by adding new paragraphs (e)(6) and (7) to read as  
8 follows:

9 **§ 100.5 Political committee (2 U.S.C. 431(4), (5), (6)).**

10 \* \* \* \* \*

11 (e) The following are examples of political committees:

12 \* \* \*

13 (6) Leadership PAC. Leadership PAC means a political committee that is directly or  
14 indirectly established, financed, maintained or controlled by a candidate for  
15 Federal office or an individual holding Federal office but which is not an  
16 authorized committee of the candidate or individual and which is not affiliated  
17 with an authorized committee of the candidate or individual, except that  
18 leadership PAC does not include a political committee of a political party.

19 (7) Lobbyist/Registrant PAC. See 11 CFR 104.22(a)(3).

20 \* \* \* \* \*

21 **PART 104 – REPORTS BY POLITICAL COMMITTEES AND OTHER PERSONS**  
22 **(2 U.S.C. 434)**

23 3. The authority citation for part 104 continues to read as follows:

1           **Authority:** 2 U.S.C. 431(1), 431(8), 431(9), 432(i), 434, 438(a)(8) and (b), 439a,  
2           441a, and 36 U.S.C. 510.

3  
4           4.       Section 104.22 is added to read as follows:

5       **§ 104.22 Disclosure of bundling by Lobbyists/Registrants and Lobbyist/Registrant**  
6       **PACs (2 U.S.C. 434(i)).**

7       (a) Definitions

8           (1) Reporting Committee. Reporting committee means:

9           (i)     An authorized committee of a Federal candidate as defined at 11

10                     CFR 100.5(f)(1);

11           (ii)    A leadership PAC as defined at 11 CFR 100.5(e)(6); or

12           (iii)   A party committee as defined at 11 CFR 100.5(e)(4).

13           (2) Lobbyist/Registrant. Lobbyist/registrant means a person who, at the time a  
14           contribution is forwarded to, or is received by, a reporting committee, is:

15           (i)     A current registrant under Section 4(a) of the Lobbying Disclosure

16                     Act of 1995 (2 U.S.C. 1603(a)); or

17           (ii)    An individual who is named on a current registration or current report

18                     filed under Section 4(b)(6) or 5(b)(2)(C) of the Lobbying Disclosure Act

19                     of 1995 (2 U.S.C. 1603(b)(6) or 1604(b)(2)(C)).

20           (3) Lobbyist/Registrant PAC. Lobbyist/registrant PAC means any political

21           committee that a lobbyist/registrant “established or controls,” as defined in

22           paragraph (a)(4) of this section.

23           (4) Established or Controls.

24           (i)     For purposes of this section only, a lobbyist/registrant established or

25                     controls any political committee that the lobbyist/registrant is required to

1 disclose to the Secretary of the U. S. Senate or Clerk of the U.S. House of  
2 Representatives as being established or controlled by that  
3 lobbyist/registrant under Section 203 of the Honest Leadership and Open  
4 Government Act of 2007, amending the Lobbying Disclosure Act of 1995  
5 (2 U.S.C. 1604(d)(1)(C)).

6 (ii) If, after consulting guidance from the offices of the Secretary of  
7 the Senate or Clerk of the U.S House of Representatives, or  
8 communicating with such offices, a political committee is unable  
9 to ascertain whether it is established or controlled by a  
10 lobbyist/registrant, a lobbyist/registrant will be deemed to have  
11 established or to control a political committee if:

12 (A) The political committee is a separate segregated fund with  
13 a current registrant under Section 4(a) of the Lobbying  
14 Disclosure Act (2 U.S.C. 1603(a)) as its connected  
15 organization; or

16 (B) The political committee meets either of the following  
17 criteria:

18 (1) A lobbyist/registrant had a primary role in the  
19 establishment of the political committee, excluding  
20 the provision of legal or compliance services or  
21 advice; or

1                           (2)     A lobbyist/registrant directs the governance or  
2   operations of the political committee, excluding the  
3   provision of legal or compliance services or advice.

4     (5) Covered Period. Covered period means:

5           (i)     Semi-annually. The semi-annual periods of January 1 through June 30,  
6   and July 1 through December 31; and the period described in paragraph  
7   (a)(5)(ii), (iii) or (iv), below that applies to the reporting committee.

8           (ii)    Quarterly. For reporting committees that file campaign finance reports  
9   under 11 CFR 104.5 on a quarterly basis, the covered period also includes  
10   the quarters beginning on January 1, April 1, July 1, and October 1 of each  
11   calendar year and the applicable pre- and post-election reporting periods in  
12   election years; in a nonelection year, reporting committees not authorized  
13   by a candidate need only observe the semi-annual period described in  
14   paragraph (a)(5)(i) above; or

15          (iii)   Monthly. For reporting committees that file monthly campaign finance  
16   reports under 11 CFR 104.5, the covered period also includes each month  
17   in the calendar year, except that in election years the pre- and post-general  
18   election reporting periods shall constitute the covered period in lieu of the  
19   monthly November and December reporting periods.

20          (iv)   Alternative for monthly filers. Any reporting committee that files monthly  
21   campaign finance reports under 11 CFR 104.5 may choose to file reports  
22   pursuant to the quarterly covered period in paragraph (a)(5)(ii) of this  
23   section instead of the monthly covered period in paragraph (a)(5)(iii) of

1 this section. It shall do so by notifying the Commission in writing of its  
2 intention to do so at the time the reporting committee files a monthly  
3 report under paragraph (a)(5)(iii). The reporting committee will be  
4 required to file its next report under the new filing frequency. The  
5 reporting committee may change its filing frequency no more than once  
6 per calendar year.

7 (v) Runoffs and Special Elections. For special elections and runoff elections  
8 set by State law, the covered period shall be the same as the reporting  
9 periods set under 11 CFR 104.5(h).

10 (6) Bundled Contribution. Bundled contribution means any contribution that meets  
11 the definitions set forth in paragraphs (i) or (ii) below:

12 (i) Forwarded contribution means a contribution delivered or transmitted, by  
13 physical or electronic means, to the reporting committee by a  
14 lobbyist/registrant or lobbyist/registrant PAC, or by any person that the  
15 reporting committee knows to be forwarding such contribution on behalf  
16 of a lobbyist/registrant or lobbyist/registrant PAC.

17 (ii) Received and credited contribution means a contribution received by the  
18 reporting committee from the contributor or contributors, and credited by  
19 the reporting committee or candidate involved to a lobbyist/registrant or  
20 lobbyist/registrant PAC through records, designations, or other means of  
21 recognizing that a certain amount of money has been raised by the  
22 lobbyist/registrant or lobbyist/registrant PAC.

1 (A) Records, designations, or other means of recognizing.

2 Records means written evidence (including writings, charts,  
3 computer files, tables, spreadsheets, databases, or other  
4 data or data compilations stored in any medium from which  
5 information can be obtained) that the reporting committee  
6 or candidate involved attributes to a lobbyist/registrant or  
7 lobbyist/registrant PAC contributions raised by that person  
8 or entity and received by the reporting committee.

9 Designations or other means of recognizing bundled  
10 contributions means benefits given by the reporting  
11 committee to persons for raising a certain amount of  
12 contributions, including but not limited to:

13 (1) Titles that the reporting committee assigns to  
14 persons who have raised a certain amount of  
15 contributions;

16 (2) Tracking identifiers that the reporting committee  
17 assigns and that are included on contributions or  
18 contributions-related materials (for example,  
19 contributor response devices, cover letters, or  
20 Internet Web site solicitation pages) for the purpose  
21 of maintaining information about the amounts of  
22 contributions that a person raises;

1                    (3)    Access (including offers or attendance) to events or  
2                    activities given to the lobbyist/registrant or  
3                    lobbyist/registrant PAC by the reporting committee  
4                    as a result of raising a certain amount of  
5                    contributions; and

6                    (4)    Mementos, such as photographs with the candidate  
7                    or autographed copies of books authored by the  
8                    candidate, given by the reporting committee to  
9                    persons who have raised a certain amount of  
10                  contributions.

11                  (B)    The candidate involved means: the candidate by whom the  
12                  authorized committee is authorized; the candidate or  
13                  individual holding Federal office who directly or indirectly  
14                  established, finances, maintains or controls the leadership  
15                  PAC; or the chairman of the committee in the case of a  
16                  political party committee.

17                  (iii)   Bundled contributions do not include contributions made by the  
18                  lobbyist/registrant PAC or from the personal funds of the  
19                  lobbyist/registrant that forwards or is credited with raising the  
20                  contributions or the personal funds of that person's spouse.

21                  (b) Reporting requirement for reporting committees.

22                  (1) FEC Form 3L. Each reporting committee must file FEC Form 3L (Report  
23                  of Contributions Bundled by Lobbyist/Registrants and Lobbyist/Registrant



1 PACs) if it has received two or more bundled contributions (see paragraph  
2 (a)(6)) forwarded by or received and credited to a person reasonably  
3 known by the reporting committee to be a lobbyist/registrant or  
4 lobbyist/registrant PAC aggregating in excess of \$15,000 during the  
5 covered period. The form shall set forth:

- 6 (i) The name of each lobbyist/registrant or lobbyist/registrant PAC;
- 7 (ii) The address of each lobbyist/registrant or lobbyist/registrant PAC;
- 8 (iii) The employer of each lobbyist/registrant; and
- 9 (iv) The aggregate amount of bundled contributions forwarded by or received  
10 and credited to each lobbyist/registrant or lobbyist/registrant PAC by the  
11 reporting committee during the covered period.

12 (2) Determining whether a person is reasonably known to be a lobbyist/registrant or  
13 lobbyist/registrant PAC.

14 (i) In order to comply with paragraph (b)(1) of this section, a reporting  
15 committee must consult, in a manner reasonably calculated to find the  
16 name of each person who is a lobbyist/registrant or lobbyist/registrant  
17 PAC, the Web sites maintained by the Clerk of the House of  
18 Representatives, the Secretary of the Senate, and the Federal Election  
19 Commission to determine whether, at the time a contribution was  
20 forwarded to, or received by, the reporting committee:

- 21 (A) The person was listed as a current registrant under Section  
22 4(a) of the Lobbying Disclosure Act of 1995 (2 U.S.C.  
23 1603(a));

1 (B) The person was an individual listed on a current  
2 registration filed under Section 4(b)(6) or a current report  
3 filed under Section 5(b)(2)(C) of the Lobbying Disclosure  
4 Act of 1995 (2 U.S.C. 1603 or 1604);

5 (C) The person identified itself as a lobbyist/registrant PAC on its  
6 Statement of Organization, FEC Form 1, filed with the  
7 Commission; or

8 (D) The person was listed as a political committee established or  
9 controlled by a lobbyist or registrant on a report filed under Sec.  
10 203(a) of the Honest Leadership and Open Government Act of  
11 2007, amending the Lobbying Disclosure Act of 1995 (2 U.S.C.  
12 1604).

13 (ii) A manner reasonably calculated to find the name of each person who is a  
14 lobbyist/registrant or lobbyist/registrant PAC may be demonstrated by the  
15 reporting committee producing a computer printout or screen capture from  
16 a Web browser indicating that the name of the person sought was not  
17 listed in the results of the Web site consultations performed in accordance  
18 with paragraph (b)(2)(i). Such a computer printout or screen capture shall  
19 constitute conclusive evidence that the reporting committee has consulted  
20 such Web sites and not found the name of the person sought, but shall not  
21 be the exclusive means by which the reporting committee may provide  
22 evidence that it has consulted such Web sites and not found the name of  
23 the person sought.

- 1           (iii) A reporting committee shall be subject to the reporting  
2                           requirement under paragraph (b)(1) if it had actual knowledge that,  
3                           at the time a contribution was forwarded or received, the person  
4                           whose name is sought was required to be listed on any registration  
5                           or report described in paragraph (a)(2) or (3).
- 6 (c) Lobbyist/Registrant PAC reporting requirements. Any political committee that is a  
7 lobbyist/registrant PAC as defined in paragraph (a)(3) of this section must identify  
8 itself as such on FEC Form 1 either upon registration with the Commission if it is a  
9 new political committee, or by amendment in accordance with 11 CFR 102.2(a)(2) if  
10 it is a political committee registered with the Commission.
- 11 (d) Where to file. Reporting committees shall file either with the Secretary of the Senate  
12 or with the Federal Election Commission in accordance with 11 CFR Part 105.
- 13 (e) When to file. Reporting committees must file the forms required under this section  
14 with the first report that they file under 11 CFR 104.5 following the end of each  
15 covered period.
- 16 (f) Recordkeeping. In addition to any requirements to maintain records and accounts  
17 under 11 CFR 102.8, 102.9 and 110.6, each reporting committee must maintain for  
18 three years after the filing of the report to which the information relates a record of  
19 any bundled contributions (see 11 CFR 104.22(a)(4)) provided by a  
20 lobbyist/registrant or lobbyist/registrant PAC that aggregate in excess of \$15,000 for  
21 any covered period. The information required to be maintained is:
- 22 (1) The name and address of the lobbyist/registrant or lobbyist/registrant  
23 PAC;

- 1 (2) The employer of the lobbyist/registrant; and
- 2 (3) The aggregate amount of bundled contributions forwarded by or
- 3 received and credited to each lobbyist/registrant or lobbyist/registrant
- 4 PAC by the reporting committee during the covered period.
- 5 (g) Price index increase.
- 6 (1) The threshold for reporting bundled contributions established in paragraph (b)(1)
- 7 of this section shall be increased by the percent difference between the price index
- 8 as defined at 11 CFR 110.17(d), as certified to the Commission by the Secretary
- 9 of Labor, for the 12 months preceding the beginning of the calendar year and the
- 10 price index for the base period.
- 11 (2) Each contribution bundling threshold so increased shall be the threshold in effect
- 12 for that calendar year.
- 13 (3) For purposes of this paragraph (g), the term base period means calendar year
- 14 2006.
- 15 (4) Rounding of price index increases. If any amount after the increases under this
- 16 paragraph (g) is not a multiple of \$100, such amount shall be rounded to the
- 17 nearest multiple of \$100.

18 **PART 110 –CONTRIBUTION AND EXPENDITURE LIMITATIONS AND**

19 **PROHIBITIONS**

- 20 3. The authority citation for part 110 is revised to read as follows:
- 21 **Authority:** 2 U.S.C. 431(8), 431(9), 432(c)(2), 434(i)(3), 438(a)(8), 441a, 441b,  
22 441d, 441e, 441f, 441g, 441h and 36 U.S.C. 510.
- 23
- 24 4. In section 110.17, paragraph (e) is revised and paragraph (f) is added to
- 25 read as follows:

1 § 110.17 Price index increase.

2 \* \* \* \* \*

3 (e) Publication of price index increases.

4 (1) Expenditure and Contribution Limitations. In every odd-numbered year, the  
5 Commission will publish in the FEDERAL REGISTER the amount of the  
6 expenditure and contribution limitations in effect and place such information on  
7 the Commission's Web site.

8 (2) Lobbyist/registrant and lobbyist/registrant PAC contribution bundling disclosure  
9 threshold. In every calendar year, the Commission will publish in the FEDERAL  
10 REGISTER the amount of the lobbyist/registrant and lobbyist/registrant PAC  
11 contribution bundling disclosure threshold in effect and place such information on  
12 the Commission's Web site.

13 (f) Price index increases for lobbyist/registrant and lobbyist/registrant PAC contribution  
14 bundling threshold. The threshold for disclosure of lobbyists/registrants and  
15 lobbyist/registrant PACs that bundle contributions shall be indexed for each calendar  
16 year in accordance with 11 CFR 104.22(g).

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18 On behalf of the Commission,

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\_\_\_\_\_  
Donald F. McGahn II  
Chairman  
Federal Election Commission

25 DATED \_\_\_\_\_  
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