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[Notice 2009–03]

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 March 19, 2009. However, compliance with paragraphs (b) and (e) of 11 CFR 104.22 is not required until May 18, 2009. Political committees that are ''lobbyist/registrant PACs'' must amend their FEC Form 1 (Statement of Organization) by March 30, 2009.

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SUPPLEMENTARY INFORMATION: The Commission is promulgating final rules to implement Section 204 of Public Law 110–81, 121 Stat. 735, the ''Honest Leadership and Open Government Act of 2007,'' signed September 14, 2007 (''HLOGA''). *See* 2 U.S.C. 434(i). HLOGA amended the Federal Election Campaign Act of 1971, as amended (2 U.S.C. 431 *et seq.*) (''FECA'') by requiring certain political committees to disclose information about each registered lobbyist [1] and registrant [2] (''lobbyist/registrant''), and each political committee established or controlled by a lobbyist or registrant (''lobbyist/registrant PAC'' [3]), that forwards, or is credited with raising, two or more bundled contributions aggregating in excess of the reporting threshold during a specific period of time. *See* 2 U.S.C. 434(i). These new disclosure requirements apply only to authorized committees of Federal candidates, political committees directly or indirectly established, financed, maintained or controlled by a candidate or an individual holding Federal office (''leadership PACs''), and party committees.

HLOGA Section 204 requires that the reporting threshold be indexed for inflation annually. HLOGA Section 204 states that the indexing requirement ''shall apply'' to the reporting threshold beginning ''[i]n any calendar year after 2007.'' *See* 2 U.S.C. 434(i)(3)(B); 2 U.S.C. 441a(c)(1)(B). Thus, although HLOGA set the initial reporting threshold at $15,000 in 2007, the reporting threshold as indexed for inflation is $16,000 for 2009. The Commission is publishing elsewhere in this **Federal Register** a notice of the reporting threshold for 2009.

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

The Commission published a Notice of Proposed Rulemaking in the **Federal Register** on November 6, 2007. *See* Notice of Proposed Rulemaking on Reporting Contributions Bundled by Lobbyists, Registrants and the PACs of Lobbyists and Registrants, 72 FR 62600 (November 6, 2007) (the ''NPRM''). The comment period closed on November 30, 2007. The Commission received eight comments from twelve commenters.[4] The comments are available at *http://www.fec.gov/law/law_rulemakings.shtml#bundling*. Six of the commenters testified at a hearing held on September 17, 2008. For the purposes of this document, the term ''comment'' applies to both written comments and oral testimony at the public hearing.

Under the Administrative Procedure Act, 5 U.S.C. 553(d), and the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801(a)(1), agencies must submit final rules to the Speaker of the House of Representatives and the President of the Senate, and publish them in the **Federal Register** at least thirty calendar days before they take effect. The final rules that follow were transmitted to Congress on February 4, 2009.

These regulations are effective thirty days after publication in the **Federal Register**. Reporting committees, however, must comply with the disclosure requirements of Section 204 of HLOGA and with the corresponding provisions of new 11 CFR 104.22—that is, with paragraph (b) (Reporting Requirement for Reporting Committees) and paragraph (e) (When to File)—only with respect to reports filed more than

[1] 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 more than one 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).

[2] 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://lobbyingdisclosure.house.gov/lda_guide.html*.

[3] ''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.

[4] 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.

three months after these final rules are published in the **Federal Register**.

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

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

Because the Commission is requiring reporting committees to report bundled contributions received as of the effective date of these regulations, but is providing an additional ten days for lobbyist/registrant PACs to amend their FEC Form 1, there will be at least a ten-day period during which reporting committees may be unable to determine definitively whether an entity is a lobbyist/registrant PAC. Moreover, because the Commission is unable to update its Web site instantaneously to provide real-time information regarding amended FEC Form 1 or to provide a list that is reasonably searchable with respect to whether an entity is a lobbyist/registrant PAC, the Commission anticipates an additional delay between the deadline by which lobbyist/registrant PACs are required to amend their FEC Form 1 and when such information becomes available to reporting committees. Accordingly, the Commission is delaying the implementation of these rules with respect to contributions bundled by entities that may be lobbyist/registrant PACs for an additional 30 days after the effective date of these regulations (*i.e.*, 60 days after publication in the **Federal Register**), during which time reporting committees are not required to report contributions bundled by such entities.

Explanation and Justification

I. Background

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

Section 204 of HLOGA requires each authorized committee of a Federal candidate, leadership PAC and political committee of a political party to disclose certain information about any person reasonably known by the committee to be a lobbyist/registrant or lobbyist/registrant PAC that forwards to the reporting committee, or is credited with raising for the reporting committee, two or more bundled contributions aggregating in excess of the reporting threshold within a ''covered period'' of time. *See* 2 U.S.C. 434(i)(1), (2), (3) and (8). Accordingly, Section 204 of HLOGA requires reporting committees to disclose information about two distinct types of bundled contributions: (1) Contributions that are forwarded to a reporting committee by a lobbyist/registrant or lobbyist/registrant PAC, and (2) contributions that, although received by the reporting committee directly from a contributor, are credited by the reporting committee to a lobbyist/registrant or lobbyist/registrant PAC through records, designations or other means of recognizing that a certain amount of money has been raised by that lobbyist/registrant or lobbyist/registrant PAC. *Id.* Under Section 204 of HLOGA, a reporting committee must disclose the name and address of the lobbyist/registrant or lobbyist/registrant PAC, the lobbyist/registrant's employer (for individuals), and the aggregate amount of bundled contributions within the covered period. *See* 2 U.S.C. 434(i)(1).

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

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

A. 11 CFR 100.5(e)(6)—Leadership PAC

The term ''leadership PAC'' is defined in Section 204(a) of HLOGA as ''a political committee that is directly or indirectly established, financed, maintained or controlled by [a] candidate [for Federal office] or [an] individual [holding Federal office] but which is not an authorized committee of the candidate or individual and which is not affiliated with an authorized committee of the candidate or individual, except that such term does not include a political committee of a political party.'' [5] 2 U.S.C. 434(i)(8)(B).

The new definition of ''leadership PAC'' is relevant to two areas of HLOGA that fall within the Commission's purview: (1) The disclosure requirements in Section 204 of HLOGA for contributions bundled by lobbyists/registrants and lobbyist/registrant PACs; and (2) restrictions on candidate travel in section 601 of HLOGA. See Public Law No. 110–81, section 601(a) (codified at 2 U.S.C. 439a(c)(2)).

The Commission announced its plans to initiate rulemakings for these two provisions on September 24, 2007.[6] The candidate travel NPRM responsive to section 601 of HLOGA initially proposed a definition of ''leadership PAC'' as that term applies to both provisions. *See* Notice of Proposed

[5] 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).

[6] *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.*

Rulemaking on Candidate Travel, 72 FR 59953 (October 23, 2007) (''Candidate Travel NPRM''). The NPRM for this bundling disclosure rulemaking cited to the proposed definition in the Candidate Travel NPRM as the definition to be used. *See* NPRM, 72 FR at 62600, fn. 3; *see also* Candidate Travel NPRM, 72 FR at 59954. Because these bundling disclosure rules are becoming final before the candidate travel rules, the Commission is including the definition of ''leadership PAC'' in these final rules.

The Commission is defining ''leadership PAC'' at 11 CFR 100.5(e)(6) as proposed in the Candidate Travel NPRM. The definition follows the definition of ''leadership PAC'' in Section 204 of HLOGA.[7] The Commission received one comment on the proposed definition in response to the Candidate Travel NPRM that supported the substance and location of the new definition, and did not receive any comments opposing it.[8]

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

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

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

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

A. 11 CFR 104.22(a)—Definitions

The Commission is adding several new definitions in new 11 CFR 104.22(a).

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

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

2. 11 CFR 104.22(a)(2)—Lobbyist/Registrant

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

The NPRM requested comments on whether the reporting requirements of HLOGA Section 204 should also apply to contributions forwarded by or received and credited to a registrant's employee, where that employee is not listed by the registrant as an in-house lobbyist. Six comments addressed this issue. Four comments said that the crux of the matter would depend on whether the employee was raising funds on behalf of the employee's registrant employer or was acting on the employee's own behalf. Three of these comments suggested various standards that the Commission might employ to determine on whose behalf the non-lobbyist employee is acting. One comment suggested using a standard based on the law of agency. A second comment suggested using a standard analogous to that used in determining whether corporate facilitation has taken place, that is, examining whether the employee was ordered or directed by the employee's superior to undertake the activity. *See* 11 CFR 114.2(f)(2)(i)(A). A third comment suggested creating a rebuttable presumption that certain employees, such as senior officers and government relations employees of a registrant, are acting on behalf of their registrant employer.

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

The Commission agrees with the latter two comments. By its express terms, HLOGA requires the disclosure of information only about lobbyists and registrants. 2 U.S.C. 434(i)(7). This interpretation is further supported by a section-by-section analysis of HLOGA that was made a part of the record in the Senate debate on HLOGA by Senator Feinstein. In her remarks, Senator Feinstein stated ''I ask unanimous consent to have printed in the [Congressional] Record a section-by-section analysis of the bill [HLOGA] we are about to vote on, including legislative history endorsed by the three principal Senate authors of the legislation: myself, Chairman [of the Senate Committee on Homeland Security and Governmental Affairs] Lieberman and Majority Leader Reid.'' 153 Cong. Rec. S10708 (daily ed. August 2, 2007) (''Section-by-Section Analysis'').

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

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

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

Thus, the Commission has determined that non-lobbyist employees of lobbyists/registrants or lobbyist/registrant PACs who forward bundled contributions or receive credit from a reporting committee for bundling contributions are outside of the scope of HLOGA Section 204. However, if the reporting committee knows that the

[7] 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).

[8] Comments filed in the candidate travel rulemaking are available at *http://www.fec.gov/law/law_rulemakings.shtml#travel07*.

[9] 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); 2 U.S.C. 1604(b)(2)(C).

person is forwarding the contributions on behalf of a lobbyist/registrant or lobbyist/registrant PAC, such forwarded contributions are within the scope of HLOGA Section 204. The final rule defines ''bundled contribution'' accordingly. *See* 11 CFR 104.22(a)(6)(i); *see also* discussion below at III.6.a.

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

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

4. 11 CFR 104.22(a)(4)—Established or Controls

HLOGA Section 204 requires reporting committees to disclose bundled contributions that exceed the reporting threshold within a covered period, if those bundled contributions were forwarded by, or received and credited to, any political committee reasonably known by the recipient reporting committee to be ''established or controlled'' by a lobbyist or registrant. 2 U.S.C. 434(i)(7)(C). The NPRM asked several questions as to when a lobbyist/registrant should be considered to have ''established or [to] control[ ]'' a political committee. In the NPRM, the Commission requested but received no comments on including the separate segregated fund (''SSF'') of any corporation, labor organization or other connected organization (*see* 11 CFR 100.6) that is a registrant under the LDA, within the ambit of ''lobbyist/registrant PACs.''

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

The concept of ''established or controlled'' in Section 204 of HLOGA, which is implemented by the Commission in new 11 CFR 104.22(a)(4), relates to the same entities as does Section 203 of HLOGA, which is implemented by the Secretary of the Senate and Clerk of the House under the LDA. *See* 2 U.S.C. 1604(d). Therefore, in addition to the comments' proposals, the Commission also considered following the description of ''established or controlled'' set out by the Secretary of the Senate and the Clerk of the House of Representatives in their guidance on reports filed with them under the LDA, which includes the following example:

> Lobbyists ''C'' and ''D'' serve on the board of a non-connected PAC as member and treasurer respectively. As board members, they are in positions that control direction of the PAC's contributions. Since both are controlling to whom the PAC's contributions are given, they must d

See Secretary of the Senate Guidance (January 16, 2009), available at http://www.senate.gov/legislative/resources/pdf/S1guidance.pdf at page 24; Clerk of the House Guidance (January 16, 2009), *available at http://lobbyingdisclosure.house.gov/amended_lda_guide.html#125update* at section 7.

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

Accordingly, a lobbyist/registrant established or controls any political committee for the purposes of new 11 CFR 104.22(a)(4) if the lobbyist/registrant is required to disclose such political committee to the Secretary of the Senate or the Clerk of the House as being established or controlled by that lobbyist/registrant under Section 203 of HLOGA. If a political committee is able to obtain definitive guidance from the Secretary of the Senate or Clerk of the House that it is, or is not, required to be disclosed as being established or controlled by a lobbyist/registrant, then such determination is conclusive for the purposes of new 11 CFR 104.22, and the political committee need not consider the Commission's additional criteria described below.

The Commission is aware, however, that there may be times when a political committee will not be able to determine definitively from guidance issued by the Secretary of the Senate and the Clerk of the House, or after communicating with those offices, whether a political committee is established or controlled by a lobbyist/registrant. For this reason, the Commission is issuing additional criteria on whether a political committee is established or controlled by a lobbyist/registrant for the purposes of HLOGA Section 204. If, after consulting guidance issued by the offices of the Secretary of the Senate and Clerk of the House or after communicating with those offices, a political committee is unable to ascertain whether it is established or controlled by a lobbyist/registrant, the

political committee must consult the additional criteria set forth in new 11 CFR 104.22(a)(4)(ii).

Under these additional criteria, a political committee must first consult new 11 CFR 104.22(a)(4)(ii)(A), which states that a separate segregated fund whose connected organization is a registrant is a lobbyist/registrant PAC. If the political committee does not meet the criterion under 11 CFR 104.22(a)(4)(ii)(A), then the political committee must next look to new 11 CFR 104.22(a)(4)(ii)(B), which sets out two additional independent criteria for determining whether a political committee is ''established or controlled'' by a lobbyist/registrant. The Commission has decided not to incorporate the broad affiliation analysis at 11 CFR 100.5(g). That analysis would have required the weighing of several factors in order to determine whether a lobbyist/registrant established or controls a political committee. Instead, to give firm guidance to political committees, the ''established or controls'' analysis in new 11 CFR 104.22(a)(4)(ii)(B) states that a political committee is established or controlled by a lobbyist/registrant if it meets either of the criteria in paragraph (1) or (2). The Commission notes that HLOGA Section 204 uses the words ''established *or* controlled.'' The use of the disjunctive ''or'' (rather than the conjunctive ''and'') means that only one of those criteria need be present to trigger application of the law.

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

The second criterion, set forth in new 11 CFR 104.22(a)(4)(ii)(B)(2), provides that a political committee is ''controlled'' by a lobbyist/registrant if the lobbyist/registrant directs the governance or operations of the political committee, excluding the provision of legal or compliance services or advice. This standard derives from the dictionary definition of ''control:'' ''to exercise restraint or direction over; dominate; command.'' *Id.* at 442. The lobbyist/registrant's authority to direct, which need not be exclusive to any one person, may derive from the political committee's controlling documents, such as the articles of incorporation or bylaws. However, a political committee's informal procedures or actual practices may also demonstrate that a lobbyist/registrant directs the governance or operations of the committee. For example, even a lobbyist/registrant who is a non-voting member of a political committee's board of directors may control the political committee as long as that lobbyist/registrant in fact directs the governance or operations of the political committee.

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

5. 11 CFR 104.22(a)(5)—Covered Period

Section 204 of HLOGA requires that reporting committees disclose information about any lobbyist/registrant or lobbyist/registrant PAC that forwards, or is credited with raising for the reporting committee, two or more bundled contributions aggregating in excess of the reporting threshold during any ''covered period.'' *See* 2 U.S.C. 434(i)(1), (2), (3) and (8). HLOGA defines ''covered period'' as January 1 through June 30, July 1 through December 31 ''and * * * any reporting period applicable to the committee under [2 U.S.C. 434] during which any [lobbyist/registrant or lobbyist/registrant PAC] provided two or more bundled contributions to the committee in an aggregate amount greater than [the reporting threshold].'' 2 U.S.C. 434(i)(2). HLOGA grants the Commission the discretion to provide for quarterly reporting by political committees that file their campaign finance reports more frequently than on a quarterly basis.[10] *See* 2 U.S.C. 434(i)(5)(A).

a. The Proposed Definition

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

The Commission received four comments favoring the proposed definition. All four comments stated that the proposed definition was consistent with HLOGA's requirement that the Commission's regulations provide for the broadest possible disclosure of lobbyist/registrant bundling activity.

The NPRM also asked whether the statute would support the elimination of duplicative reporting that would result from the proposed definition of ''covered period.'' The NPRM asked, for example, whether there is a statutory basis for the Commission to consider exempting reporting committees from having to disclose semi-annually information about lobbyists/registrants or lobbyist/registrant PACs providing bundled contributions if the information was already fully disclosed in a prior report filed with the Commission. All four comments were in favor of the elimination of duplicative reporting. As such, they suggested that the Commission design the new reporting schedule to allow for both quarterly and semi-annual reporting once the

[10] 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).

reporting threshold has been exceeded. One comment stated that such a reporting form would assist the public's understanding of the data.

b. The Alternative Definition

The alternative definition in the NPRM would provide that, in any calendar year in which a reporting committee is required to file or files reports on a quarterly or monthly basis under 11 CFR 104.5, the covered period would be defined as the quarterly periods of January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31. Additionally, in any calendar year in which a reporting committee files semi-annual reports, the covered period would also include the semi-annual periods of January 1 through June 30 and July 1 through December 30. The Commission received one comment in favor of this alternative definition, noting that the alternative definition would result in more persons meeting the reporting threshold, and thus lead to greater disclosure.

c. Quarterly Covered Periods for Reporting Committees Which File More Frequently Than on a Quarterly Basis

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

The Commission asked whether it should, instead, require monthly filers to disclose information about bundled contributions on a monthly and semi-annual basis. *See* 2 U.S.C. 434(i)(5)(A) (''[T]he Commission may * * * provide for quarterly filing * * * by a committee which files reports * * * more frequently than on a quarterly basis.'').

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

d. Definition of ''Covered Period'' in Final Rule

The Commission's final rule follows HLOGA Section 204. The final rule provides for different ''covered periods'' as follows:

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

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

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

HLOGA requires reporting committees to file lobbyist bundling disclosure reports both semi-annually and for ''any reporting period applicable'' to the reporting committee under 2 U.S.C. 434 during which any lobbyist/registrant or lobbyist/registrant PAC provided two or more bundled contributions to the committee in an aggregate amount exceeding the reporting threshold. 2 U.S.C. 434(i)(2)(C). Conforming the definition of ''covered period'' in 11 CFR 104.22(a)(5) with the reporting committee's campaign finance reporting periods under 2 U.S.C. 434 thus more closely tracks the language of HLOGA than did either the proposed rule or its alternative in the NPRM.

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

The Commission's decision to conform the definition of ''covered period'' to a reporting committee's campaign finance reporting schedule alleviates the concern expressed in several comments that reporting committees might find it difficult to try to implement two different reporting schedules—one for campaign finance reports under 11 CFR 104.5 and one for lobbyist bundling disclosure reports under 11 CFR 104.22. Requiring the filing of bundling disclosure reports and campaign finance reports on the same timeline reduces or alleviates any possible confusion, while at the same time reducing the burden of the reporting requirement. In addition, placing both types of reports on the same timeline will facilitate the public's ability to compare the two types of reports accurately, thereby further helping to achieve the public disclosure objectives of HLOGA. *See* 2 U.S.C. 434(i)(5)(D). Accordingly, 11 CFR 104.22(a)(5)(ii) and (iii) define ''covered period'' to correspond to a reporting committee's regular campaign finance reporting schedule under 11 CFR 104.5.

The Commission recognizes, however, that some comments conveyed a preference for allowing reporting committees that file their campaign finance reports on a monthly basis to file their lobbyist bundling disclosure reports quarterly, instead. As one comment noted, requiring reporting committees to make a monthly determination as to who is a lobbyist/registrant or lobbyist/registrant PAC, and whether or not the reporting threshold for bundled contributions has been exceeded, would impose a substantial compliance burden. Recognizing that concern, the regulations adopted by the Commission permit quarterly filing of the information required by this regulation

for reporting committees that file their campaign finance reports under 2 U.S.C. 434 more frequently than on a quarterly basis. *See* 2 U.S.C. 434(i)(5)(A). Under new 11 CFR 104.22(a)(5)(iv), reporting committees that file their campaign finance reports on a monthly basis may elect to file their lobbyist bundling disclosure reports on a quarterly, rather than monthly, basis. Any such reporting committee that chooses to file its lobbyist bundling disclosure reports on a quarterly basis must follow the same schedule as quarterly filers: semi-annually; for each calendar quarter; and pre- and post-election, as discussed above. A reporting committee that wishes to change its reporting schedule under new 11 CFR 104.22(a)(5) must notify the Commission in writing, just as non-authorized committees must do for campaign finance reports. 11 CFR 104.22(a)(5)(iv); *see also* 11 CFR 104.5(c). Reporting committees may not change their filing frequency more than once per calendar year. 11 CFR 104.22(a)(5)(iv); *see also* 11 CFR 104.5(c).

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

6. 11 CFR 104.22(a)(6)—Bundled Contribution

HLOGA Section 204 defines the term ''bundled contribution'' as ''with respect to a [reporting committee] and a [lobbyist/registrant or lobbyist/registrant PAC], a contribution (subject to the applicable threshold) which is (i) forwarded from the contributor or any contributors to the [reporting] committee by the [lobbyist/registrant or lobbyist/registrant PAC]; or (ii) received by the [reporting] committee from a contributor or contributors, but credited by the [reporting] committee or the candidate involved (or, in the case of a leadership PAC, by the [officeholder] involved) to the [lobbyist/registrant or lobbyist/registrant PAC] through records, designations, or other means of recognizing that a certain amount of money has been raised by the [lobbyist/registrant or lobbyist/registrant PAC].'' 2 U.S.C. 434(i)(8)(A).[11]

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

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

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

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

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

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

A second comment stated that the definition of the term ''forwarded'' should simply restate the Commission's current ''intermediary/conduit'' concept at 11 CFR 110.6. This comment suggested that for simplicity, the Commission should apply the existing standards in 11 CFR 110.6, but exclude the exception in 11 CFR 110.6(b)(2)(i)(E) for any person who is expressly authorized by the candidate or the candidate's political committee to engage in fundraising, and who occupies a significant position in the candidate's campaign organization.

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

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

The Section-by-Section Analysis explains that the first type of bundled contribution ''covers the situation where a lobbyist physically forwards

[11] 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).

contributions to the campaign.'' This type of bundled contribution is distinguished from situations in which contributions are made directly by a contributor to a reporting committee, but are raised by and credited to a lobbyist/registrant or lobbyist/registrant PAC.

The Commission has long recognized that contributions may be made electronically. The Commission has also recognized that earmarked contributions may be forwarded electronically to the recipient candidate committee. *See generally* Advisory Opinion 1995–09 (NewtWatch). Accordingly, the Commission has concluded that certain contributions should not fall outside the scope of HLOGA's reporting requirements simply because they were forwarded electronically. New 11 CFR 104.22 thus requires disclosure of information about lobbyists/registrants and lobbyist/registrant PACs that forward contributions either physically or electronically to a reporting committee if the amount of bundled contributions exceeds the reporting threshold in the covered period.

Examples of contributions forwarded ''electronically'' include contributions received by a lobbyist/registrant in the form of checks and then deposited by the lobbyist/registrant in its account and transmitted by the lobbyist/registrant electronically to the reporting committee, and contributions received by a lobbyist/registrant PAC via credit card, debit card, or electronic check, including authorization to access credit or debit card funds or banking funds, and then transmitted by the lobbyist/registrant PAC in the form of a check or via credit card to the reporting committee.[12]

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

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

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

b. 11 CFR 104.22(a)(6)(ii)—Crediting Contributions to Lobbyists/Registrants and Their PACs

The second type of ''bundled contribution'' in new 11 CFR 104.22(a)(6) covers contributions received by the reporting committee from the contributors (rather than from a lobbyist/registrant or lobbyist/registrant PAC, as discussed in section III.A.6.a, above) that are credited by the reporting committee to a lobbyist/registrant or lobbyist/registrant PAC through records, designations or other means of recognizing that a certain amount of money has been raised by that lobbyist/registrant or lobbyist/registrant PAC. 11 CFR 104.22(a)(6)(ii).

i. Received and Credited

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

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

The Commission agrees with the latter comment. Bundled contributions that are *forwarded* to a reporting committee by a lobbyist/registrant or lobbyist/registrant PAC must be reported regardless of whether the reporting committee provides any ''credit'' for them. In contrast, the focus of HLOGA's reporting requirement for contributions received directly from contributors is based upon the credit that a reporting committee gives to a lobbyist/registrant or lobbyist/registrant PAC for having raised the contribution. The Commission so concludes for the following reasons:

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

(B) HLOGA's disclosure requirement is intended to make transparent the influence that lobbyists/registrants and lobbyist/registrant PACs might gain by raising contributions for reporting committees. Any such influence may be affected by the reporting committee's perception of the value of the lobbyist/registrant's or lobbyist/registrant PAC's fundraising efforts. Accordingly, the purpose behind HLOGA's disclosure

[12] 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).

requirement is best served by requiring reporting committees to disclose the amount of credit that they give to lobbyist/registrants or lobbyist/registrant PACs for having raised contributions.

(C) The Section-by-Section Analysis supports this interpretation. It states that the disclosure requirement would apply only if the reporting committee credits a lobbyist/registrant or lobbyist/registrant PAC with proceeds of a fundraising event that the lobbyist/registrant or lobbyist/registrant PAC hosts. *See* 153 Cong. Rec. S10709 (daily ed. August 2, 2007) (''An event hosted by a registered lobbyist *may* trigger the disclosure requirement *if* the committee *credits* the lobbyist with the proceeds of the fundraiser. * * *'') (emphasis added). The Section-by-Section Analysis also emphasizes that the reporting requirement depends on whether the committee gave credit to the lobbyist/registrant or lobbyist/registrant PAC, as opposed to requiring a committee to report automatically the proceeds of any fundraising event held on the premises of a lobbyist/registrant or lobbyist/registrant PAC. *Id.* (''The disclosure requirement is not triggered by general solicitation of contributions where a registered lobbyist attends an event or an event is held on the premises of a registrant.'') Therefore, the Commission believes that the focus of HLOGA Section 204 is the credit provided by the reporting committee to the lobbyist/registrant or lobbyist/registrant PAC for having raised contributions.

(D) Further, the Commission notes that Congress may have anticipated the possible discrepancy between the amount that a lobbyist/registrant or lobbyist/registrant PAC may claim to have raised for a reporting committee, and the amount that the reporting committee reports as actually credited to a lobbyist/registrant or lobbyist/registrant PAC. Earlier versions of the Senate bill that eventually became HLOGA Section 204 would have placed the reporting obligation for contributions ''collected or arranged'' by a lobbyist or registrant solely on the lobbyist or registrant. S.1, 110th Cong. § 212 (as passed by the Senate, Jan. 18, 2007). Because of concerns about the accuracy of the information that would be reported, however, a subsequent House bill, H.R. 2317, also would have required registered lobbyists to give notice to the recipients of these contributions before the lobbyists filed their reports. H.R. 2317, 110th Cong. § 2(a) (as passed by the House, July 31, 2007). The Committee Report for this bill explained the provision: ''[t]his notice enables the covered recipient to raise any questions with the lobbyist about the information, and to take any appropriate action, prior to the public filing of the information.'' H.R. Rep. 110–162, at 4 (May 21, 2007). As enacted, HLOGA addressed this concern by requiring the reporting committees themselves to disclose contributions forwarded by, or raised by and credited to, lobbyists. *See* 2 U.S.C. 434(i)(1). In short, this evolution reflects the reality that simply because a lobbyist or registrant claims to have raised a specific amount for a reporting committee does not make it so. Instead, Congress anticipated that the reporting committees themselves would be in the best position to determine whether they had received contributions and credited the contributions to a lobbyist/registrant or lobbyist/registrant PAC.

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

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

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

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

A. Records

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

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

The Commission has decided to draw from the Federal Rules of Civil Procedure to define ''records'' in new 11 CFR 104.22(a)(6)(ii)(A). ''Records'' means written evidence, which includes writings, charts, computer files, tables, spreadsheets, databases, or other data or data compilations stored in any medium from which information can be obtained. 11 CFR 104.22(a)(6)(ii)(A); *see also* Fed. R. Civ. P. 34. In sum, a ''record'' is any method that the reporting committee uses to retain information pertaining to the committee's crediting, and includes not just paper, but electronic, digital, audio, video, or any other format. The Commission notes that records include informal items such as hand-written notations on a business card.

B. Designations or Other Means of Recognizing

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

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

One comment indicated that additional examples of ''designations and other means of recognizing'' bundled contributions could include (1) being the host or co-host of a

fundraising event; (2) using a lobbyist/registrant's or lobbyist/registrant PAC's office or residence for a fundraising event; or (3) being on a steering committee in exchange for raising a certain amount of money. With respect to the first two suggested examples, the Commission notes that the Section-by-Section Analysis specifically states, ''[t]he disclosure requirement is not triggered * * * where * * * an event is held on the premises of a registrant. An event hosted by a registered lobbyist *may* trigger the disclosure requirement *if* the reporting committee credits the lobbyist with the proceeds of the fundraiser through record, designation, or other form of recognition. * * *'' 153 Cong. Rec. S10709 (daily ed. August 2, 2007) (emphasis added). Thus, the Section-by-Section Analysis indicated that the simple fact that a lobbyist/registrant or lobbyist/registrant PAC hosts a fundraiser or holds a fundraiser on its premises would not, by itself, trigger the reporting requirement.

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

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

The Section-by-Section Analysis provides ''honorary titles within the committee'' as an example of ''designations.'' 153 Cong. Rec. at S10709 (daily ed. August 2, 2007). The Commission has incorporated this concept in its regulations. Thus, designations include titles that the reporting committee gives to persons who have raised a certain amount of contributions. 11 CFR 104.22(a)(6)(ii)(A)(1). The titles that various presidential campaigns have given to their fundraisers are examples of such designations. Titles, however, are only one example of a ''designation.''

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

Additionally, a candidate may credit a lobbyist by inviting the lobbyist to an event that is not exclusive to those who generate a certain level of contributions, so long as that particular invitation was extended in recognition of the lobbyist having raised a certain amount of contributions. In contrast, if, for example, an individual who happens to be a lobbyist, but who has not actually raised any money for the reporting committee, is invited to the event, then the invitation to that individual would not constitute crediting with respect to that individual (*i.e.*, a means of recognizing that a certain amount of money has been raised by that individual). On the other hand, if a lobbyist who has raised contributions in excess of the reporting threshold is invited to an event in recognition of the reporting committee's fundraisers, the committee cannot avoid disclosing that lobbyist by claiming that the lobbyist was invited for some other reason.

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

New 11 CFR 104.22(a)(6)(ii)(A) expands on the examples suggested in the Section-by-Section Analysis. Thus, ''other means of recognizing'' include tracking identifiers that the reporting committee assigns and that are included on contributions or contribution-related materials (for example, contributor response devices, cover letters, or Internet website solicitation pages) that may be used to maintain information about the amounts of contributions that a person raises. 11 CFR 104.22(a)(6)(ii)(A)(2). Other ''means of recognizing'' also include access, including offers of attendance (invitations) and/or actual attendance, at events given to a lobbyist/registrant or lobbyist/registrant PAC by the reporting committee as a result of the lobbyist/registrant or lobbyist/registrant PAC having raised a certain amount of contributions. 11 CFR 104.22(a)(6)(ii)(A)(3). Another common means of recognizing those who bundle contributions are mementos, such as photographs with the candidate or autographed copies of books authored by the candidate, given by the reporting committee to persons who have raised a certain amount of contributions. 11 CFR 104.22(a)(6)(ii)(A)(4).

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

The Commission notes that some comments suggested that mere knowledge by a reporting committee that a lobbyist/registrant or lobbyist/registrant PAC has raised funds of a certain amount is enough to constitute credit. Although Congress could have enacted a provision in HLOGA to require reporting if a reporting committee simply ''knows or has reason to know'' that a contribution was raised by a lobbyist/registrant or lobbyist/registrant PAC, without requiring that the reporting committee credit a lobbyist/registrant or lobbyist/registrant PAC for the contribution, neither

HLOGA as enacted, nor the Section-by-Section Analysis, suggested any intent to require reporting in that situation. In several instances similar to this, Congress has used a ''knows or has reason to know'' standard in sections of FECA, but did not do so here. *See, e.g.*, 2 U.S.C. 434(f)(2)(D) (requiring the reporting of names of candidates to be identified in an electioneering communication ''if known''); 2 U.S.C. 434(i)(1) (requiring the reporting of information on each person ''reasonably known'' to be a lobbyist/registrant or lobbyist/registrant PAC); 2 U.S.C. 441a(f) (prohibiting candidates or political committees from ''knowingly'' accepting contributions in violation of FECA); and 2 U.S.C. 441b(a) (prohibiting candidates or political committees from ''knowingly'' accepting or receiving contributions from national banks, corporations, or labor organizations).

Instead, HLOGA as enacted, and as confirmed by the Section-by-Section Analysis, requires credit to be given by the reporting committee to a lobbyist/registrant or lobbyist/registrant PAC before a contribution received from a contributor is considered a ''bundled contribution.'' 2 U.S.C. 434(i)(8)(A)(ii); *see also* 153 Cong. Rec. S10709 (daily ed. August 2, 2007). Therefore, mere knowledge, in and of itself, is not enough. Rather, it is necessary for a reporting committee to credit through ''records, designations, or other means of recognizing that a certain amount of money has been raised'' before reporting is required.

iii. 11 CFR 104.22(a)(6)(ii)(B)—The Candidate Involved

HLOGA requires the disclosure of information about lobbyists/registrants or lobbyist/registrant PACs that are credited by a reporting committee or the ''candidate involved'' with the reporting committee as having raised a ''certain amount'' of contributions for the reporting committee. 2 U.S.C. 434(i)(8)(A)(ii). HLOGA does not define ''candidate involved.''

The Section-by-Section Analysis defines the ''candidate involved'' for each of the three types of reporting committee (*i.e.*, authorized committees of Federal candidates, leadership PACs and political party committees). First, the Section-by-Section Analysis defines the ''candidate involved'' in an authorized committee as ''the candidate for whom the committee is the principal campaign committee.'' 153 Cong. Rec. S10709 (daily ed. August 2, 2007). This definition follows the definition of ''authorized committee'' in FECA, which states that an authorized committee is a political committee authorized by a candidate to receive contributions or make expenditures on behalf of the candidate. 2 U.S.C. 431(6); *see also* 11 CFR 100.5(f)(1). Second, the Section-by-Section Analysis indicates that the ''candidate involved'' in a leadership PAC is ''the candidate who directly or indirectly establishes, finances, maintains or controls the Leadership PAC,'' which tracks the definition of leadership PAC in HLOGA. *See* 2 U.S.C. 434(i)(8)(B); 153 Cong. Rec. S10709 (daily ed. August 2, 2007). Last, the Section-by-Section Analysis also indicates that the ''candidate involved'' in a party committee is the chairman of the party committee. *See* 153 Cong. Rec. S10709 (daily ed. August 2, 2007).

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

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

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

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).

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

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

Other comments supported the Section-by-Section Analysis. They asserted that the amount of funds a reporting committee actually credits of the funds raised at a fundraiser hosted by multiple lobbyists/registrants and/or lobbyist/registrant PACs is the amount that should be disclosed. One comment noted that the reporting committees know best who they credited for raising bundled contributions at a co-hosted fundraiser, and how much, and that there should not be a regulatory mandate requiring committees to give and report credit in a contrary manner. Moreover, the comment pointed out that an individual may be listed as a ''co-host'' of a fundraiser for many different

reasons unrelated to actual amounts raised from a particular event. Another comment noted that in many cases, to be on a hosting committee, a lobbyist/registrant or lobbyist/registrant PAC is required to raise a certain amount of contributions. The comment stated that if a co-host fails to raise the requisite amount, the reporting committee would not credit that co-host with having raised more than the co-host actually raised. The comment also pointed out that in other situations, where, for example, 25 members of a host committee each raise $3,000, the reporting committee would not credit each co-host with having raised the full $75,000.

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

Requiring a reporting committee to credit the entire amount raised at a fundraiser to each lobbyist/registrant and lobbyist/registrant PAC co-host could be confusing and could lead to the compelled disclosure of potentially misleading information. The requirement could be confusing, because it would involve the creation of two separate and potentially inconsistent definitions of crediting: One to apply in every situation other than co-hosted fundraising events, and the other to apply only in situations involving co-hosted fundraising events. Under the non-co-host definition, a reporting committee would disclose information about a lobbyist/registrant only if the reporting committee actually credits the lobbyist/registrant with having raised contributions exceeding the threshold amount during the covered period. Under the co-host definition, by contrast, a reporting committee would disclose information about a lobbyist/registrant or lobbyist/registrant PAC co-host regardless of whether or how much the reporting committee actually credits the co-host for having raised. Such a result could lead to further confusion as to who is raising contributions, and how much, for reporting committees.

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

Finally, as discussed below, requiring a reporting committee to credit the entire amount raised at a fundraiser to each lobbyist/registrant and lobbyist/registrant PAC co-host could be potentially misleading. It would require reporting committees to report not only that they credited lobbyist/registrant and lobbyist/registrant PAC co-hosts for raising more money than the co-hosts might actually have raised, but also that they gave the co-hosts credit when, in fact, credit was not given. For example, if a group of individuals consisting of lobbyists and non-lobbyists co-host a fundraiser for a candidate, the candidate's committee would have to report that each of the lobbyists raised the entire amount, without regard to how much the reporting committee credited them for having raised, without regard to how much they might actually have raised, and without regard to the non-lobbyist co-hosts. This could result in committees reporting information that they know to be untrue. One comment stated that treasurers would be reluctant to sign such reports.

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

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

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

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

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

[13] 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).

Example 2. A fundraising event is co-hosted by Lobbyist A and Lobbyist B, as well as three non-lobbyist hosts. The event generates $20,000 in contributions. The reporting committee gives each host credit for raising $20,000. The reporting committee must disclose the $20,000 of bundled contributions that has been credited to Lobbyist A and also report the $20,000 of bundled contributions that has been credited to Lobbyist B because the reporting committee has credited the full amount to each lobbyist.[14] The reporting committee may, if it chooses, include a memo entry in the space provided on FEC Form 3L to indicate that, although only a total of $20,000 was raised at the event, that full $20,000 was credited to each of the co-hosts, or any other information that the reporting committee wishes to include.

Example 3. A fundraising dinner is co-hosted by Lobbyist A and Lobbyist B, as well as three non-lobbyist hosts. Each host takes responsibility for filling eight seats at $500 a seat. The fundraiser generates $20,000 in contributions from non-hosts, and the reporting committee credits each host with generating $4,000 in contributions. The reporting committee must disclose the $4,000 of bundled contributions that has been credited to Lobbyist A, if the reporting committee also has credited Lobbyist A with more than $12,000 of other bundled contributions during the relevant covered period, thereby causing Lobbyist A to surpass the $16,000 reporting threshold. This same analysis would apply for Lobbyist B.

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

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

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

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

If the reporting committee also credits Lobbyist A, a co-host of the fundraiser, $20,000 for having raised the contributions forwarded by Lobbyist B (because the contributions were received during the fundraising event), the reporting committee must then also disclose that $20,000 of bundled contributions has been credited to Lobbyist A. Similar to ''Example 2'' above, even though the reporting committee must disclose the entire $20,000 as having been forwarded by Lobbyist B, the reporting committee must also report that same $20,000 of bundled contributions has been credited to Lobbyist A (again, assuming it has credited Lobbyist A for that amount).

v. Crediting a Prohibited Source

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

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

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

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

The Commission emphasizes that the prohibitions in FECA and Commission regulations are not affected by this

[14] 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.

rulemaking and continue to apply. The Commission cautions reporting committees against confusing the giving of credit to a registrant that is a prohibited source, which is permissible and may be reportable, with actually accepting contributions from, or that have been forwarded by, a prohibited source, which is not permissible.

c. 11 CFR 104.22(a)(6)(iii)—Bundled Contributions Do Not Include Contributions From Personal Funds of Lobbyists/Registrants or Their Spouses

New 11 CFR 104.22(a)(6)(iii) provides that bundled contributions do not include contributions made by a lobbyist/registrant or lobbyist/registrant PAC from three sources: (1) The personal funds of the lobbyist/registrant who forwards or is credited with raising contributions; (2) the personal funds of that person's spouse; and (3) contributions made by lobbyist/registrant PACs. This provision is consistent with HLOGA, which excludes contributions made to the reporting committee by the lobbyist/registrant or lobbyist/registrant's spouse from counting towards the reporting threshold. *See* 2 U.S.C. 434(i)(3)(A).

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

Unlike contributions made by a lobbyist/registrant PAC, or from the personal funds of a lobbyist/registrant or spouse, bundled contributions forwarded by a lobbyist/registrant or lobbyist/registrant PAC will not affect the lobbyist/registrant's or lobbyist/registrant PAC's contribution limits, so long as the lobbyist/registrant or lobbyist/registrant PAC does not exercise any direction or control over the bundled contributions. This result is consistent with the Commission's rule governing earmarked contributions to candidate committees through conduits and intermediaries. *See* 11 CFR 110.6(d).

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

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

1. 11 CFR 104.22(b)(1)—FEC Form 3L

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

Accordingly, for each covered period, a reporting committee must disclose information about each lobbyist/registrant or lobbyist/registrant PAC that provided the committee with ''[two] or more bundled contributions'' aggregating in excess of the reporting threshold during the covered period, regardless of whether those contributions consist of (1) only ''forwarded'' contributions, (2) only ''received and credited'' contributions, or (3) some combination of the two types of bundled contributions, and regardless of whether those contributions were forwarded or received either (1) one-by-one during the covered period or (2) all at once.

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

2. Bundled Contributions That are Returned or Refunded

i. Returned Contributions

If a bundled contribution is not deposited and is, instead, returned pursuant to 11 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 aggregate toward the reporting threshold for disclosure of bundled contributions and it does not have to be reported on the reporting committee's Form 3L.

ii. Refunded Contributions

If a bundled contribution is received, deposited, and later refunded pursuant to 11 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 the bundled contribution does aggregate toward the reporting threshold for the covered period in which it was received. Accordingly, it must be reported on the reporting committee's Form 3L if the reporting threshold is exceeded for that covered period. *See* 2 U.S.C. 434(i)(1); 11 CFR 104.22(b)(1). If the receipt of the bundled contribution is reported on Form 3L, then the refund of the bundled contribution should also be reported on Form 3L for the covered period in which the refund occurred.

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

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

The Commission proposed 11 CFR 104.22(b)(2) to provide guidance with respect to how reporting committees

would comply with these requirements. Specifically, under the proposed rule, reporting committees would have had to consult the websites maintained by the Clerk of the House of Representatives, the Secretary of the Senate, and the Federal Election Commission in order to determine whether a person is identified on a filing under the LDA or FECA as a registrant, a lobbyist, or a political committee established or controlled by a registrant or lobbyist. The NPRM requested suggestions as to other sources that reporting committees might be required to check to determine whether a contributor is a lobbyist/registrant or a lobbyist/registrant PAC.

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

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

The House and Senate Web sites identify registered lobbyists and registrants. The websites also list political committees disclosed as being established or controlled by lobbyists/registrants on their semi-annual reports of contributions to candidates and Federal officeholders and donations to related entities. These political committees are ''lobbyist/registrant PACs'' under new 11 CFR 104.22(a)(4)(i). To ensure that reporting committees have the most up-to-date information available about lobbyist/registrant PACs, and to provide information about lobbyist/registrant PACs that are unable to ascertain from the Secretary of the Senate or Clerk of the House of Representatives whether they are established or controlled by a lobbyist/registrant, but which meet the Commission's additional ''established or controlled'' criteria under 11 CFR 104.22(a)(4)(ii), these final rules require reporting committees to check the Commission's Web site as well. Any political committee that is ''established or controlled'' by a lobbyist/registrant must identify itself as such on its Statement of Organization (FEC Form 1), which will be posted on the Commission's website. *See* 11 CFR 104.22(c), discussed below.

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

New 11 CFR 104.22(b)(2)(ii) provides that a computer printout or screen capture showing the absence of the person's name on the House, Senate, or Commission Web sites on the date in question, may be used to demonstrate that the reporting committee consulted the required Web sites in a manner reasonably calculated to find the name of each person who is a lobbyist/registrant or lobbyist/registrant PAC, and did not find the name of the person in question. This provision allows reporting committees to rely on the results of website searches, provided that the printout shows that the search history utilized by the reporting committee to verify that the search was performed in a manner reasonably calculated to find the name of the person in question, as discussed above. Such a computer printout or screen capture constitutes conclusive evidence that the reporting committee has consulted the websites and not found the name of the person sought. Accordingly, except as described below, such evidence demonstrates that a person was not reasonably known by the reporting committee to be a lobbyist/registrant or lobbyist/registrant PAC for the purposes of 11 CFR 104.22(b)(1). A reporting committee also may provide other credible evidence to show that it has consulted the websites in compliance with 11 CFR 104.22(b)(2)(i).

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

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

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

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

To promote the greatest disclosure and to accommodate entities that qualify as more than one type of political committee, the Commission is revising FEC Form 1 to make it possible for committees to identify themselves as more than one type of political committee. Under new 11 CFR 104.22(c), all new leadership PACs and lobbyist/registrant PACs that register with the Commission after the effective date of this rule (30 days after publication in the **Federal Register**) must check all appropriate boxes on FEC Form 1, in accordance with 11 CFR 102.2(a)(1). *See* 11 CFR 100.5(e)(6) (definition of leadership PAC) and 11 CFR 104.22(a)(3) (definition of lobbyist/registrant PAC). Leadership PACs and lobbyist/registrant PACs already

registered with the Commission must amend their FEC Form 1 in accordance with 11 CFR 102.2(a)(2) no later than ten days after the effective date of this rule (ten days after the thirty-day period from the date of publication of these rules in the **Federal Register**).

D. 11 CFR 104.22(d)—Where to File

New section 104.22(d) requires reporting committees to file FEC Form 3L in accordance with 11 CFR Part 105. Under 11 CFR Part 105, authorized committees of candidates for the House of Representatives, the principal campaign committees of presidential candidates, and any other political committees that support such candidates must file reports with the Commission. *See* 11 CFR 105.1, 105.3 and 105.4. Authorized committees of candidates for the Senate and any other political committees that support *only* Senate candidates must file their reports with the Secretary of the Senate. *See* 11 CFR 105.2. The Commission requested but received no comments on this provision in the NPRM.

E. 11 CFR 104.22(e)—When to File

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

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

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

As discussed above, new 11 CFR 104.22(a)(5) defines the term ''covered period'' as the semi-annual periods of January 1 through June 30 and July 1 through December 31, and as the periods that coincide with a reporting committee's monthly or quarterly campaign finance reporting periods under 11 CFR 104.5. Accordingly, reporting committees must file Form 3L to disclose information about any lobbyist/registrant or lobbyist/registrant PAC that forwards, or is credited by the reporting committee for having raised, bundled contributions that aggregate in excess of the reporting threshold semi-annually and at the end of each reporting period under 2 U.S.C. 434 and 11 CFR 104.5.

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

F. 11 CFR 104.22(f)—Recordkeeping

Commission regulations implement certain statutory recordkeeping requirements that also apply to certain bundled contributions. For example, political committees must keep a record and account of each contribution exceeding $50 for three years after filing the report to which the record or account relates. *See* 2 U.S.C. 432(c)(2) and (d); 11 CFR 102.9(a) and (c). In addition, any person who receives and forwards contributions to any political committee must also forward certain information about the original contributor. *See* 2 U.S.C. 432(c) and 441a(a)(8); 11 CFR 102.8(c). Any authorized committee that receives contributions forwarded by a ''conduit'' or ''intermediary'' must also maintain records regarding the information forwarded with the contributions by the conduit or intermediary. *See* 11 CFR 110.6(c) and 102.9(c).

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

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

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

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

1. 11 CFR 104.22(g)—Price Index Increase

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

and expenditure limits covered under 11 CFR Part 110.

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

The NPRM also requested but received no comments on the timing of the application of the indexing for inflation requirement. HLOGA Section 204 provides that the indexing requirement ''shall apply'' to the reporting threshold ''[i]n any calendar year after 2007.'' 2 U.S.C. 434(i)(3)(B). HLOGA also provides, however, that 2 U.S.C. 434(i) will go into effect ''with respect to reports filed * * * after the expiration of the 3-month period which begins on the date that the regulations required to be promulgated by the Commission [under new 2 U.S.C. 434(i)] become final.'' Pub. L. No. 110–81, sec. 204(b), 121 Stat. 735 at 746 (2007). Given that these rules are expected to go into effect in March 2009, the initial $15,000 reporting threshold provided for in HLOGA Section 204 will be indexed for 2009. The Commission will publish a notice of the 2009 reporting threshold in the **Federal Register** and on the Commission's Web site in accordance with new 11 CFR 110.17(e)(2), discussed below.

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

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

H. Application of Rule to In-Kind Contributions

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

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

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

The Commission certifies that the attached final rules do not have a significant economic impact on a substantial number of small entities. The basis for this certification is that few, if any, small entities will be affected by these rules, which apply only to Federal candidates and their campaign committees, political committees established, financed, maintained or controlled by Federal candidates or individuals holding Federal office, political committees of political parties, and political committees established or controlled by lobbyist/registrants. Authorized committees of Federal candidates are not considered small entities under the definition at 5 U.S.C. 601(6). Leadership PACs established, financed, maintained or controlled by Federal candidates or individuals holding Federal office also do not qualify as small entities. Such committees, while established by an individual, are not independently owned and operated because they are not financed and controlled by a small identifiable group of individuals; rather, they rely on contributions from a variety of persons to fund the committees' activities. Political committees representing the Democratic and Republican parties have a major controlling influence within the political arena and are thus dominant in their field. However, to the extent that any party committees representing major or minor political parties or any other political committees might be considered ''small organizations,'' the number that would be affected by this rule is not substantial.

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

Furthermore, any small entities affected should not feel a significant economic impact from the final rule. The activity being regulated (receiving bundled contributions that have been forwarded by, or that have been raised by and credited to, lobbyists/registrants or lobbyist/registrant PACs) is entirely voluntary. Any reporting obligations for reporting committees are triggered only if entities choose to engage in this activity above *the reporting threshold* for any given covered period. The reporting obligations for reporting committees are also limited to contributions either forwarded by or raised by and credited to lobbyists/registrants or lobbyist/registrant PACs. The reporting requirement for lobbyist/registrant PACs is limited to the political committee disclosing itself as a lobbyist/registrant PAC on the political committee's initial Form 1 (Statement of Organization) filed with the Commission, or to filing a single amendment to the political committee's Form 1. Therefore, the final rules do not have a significant economic impact on a substantial number of small entities.

List of Subjects

11 CFR Part 100

Elections.

11 CFR Part 104

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

11 CFR Part 110

Campaign funds, political committees and parties.

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

PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

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

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

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

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

* * * * *

(e) * * *

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

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

* * * * *

PART 104—REPORTS BY POLITICAL COMMITEES AND OTHER PERSONS (2 U.S.C. 434)

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

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

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

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

(a) *Definitions.*

(1) *Reporting Committee. Reporting committee* means:

(i) An authorized committee of a Federal candidate as defined at 11 CFR 100.5(f)(1);

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

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

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

(i) A current registrant under Section 4(a) of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1603(a)); or

(ii) An individual who is named on a current registration or current report filed under Section 4(b)(6) or 5(b)(2)(C) of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1603(b)(6) or 1604(b)(2)(C)).

(3) *Lobbyist/Registrant PAC. Lobbyist/registrant PAC* means any political committee that a lobbyist/registrant ''established or controls,'' as defined in paragraph (a)(4) of this section.

(4) *Established or Controls.*

(i) For purposes of this section only, a lobbyist/registrant established or controls any political committee that the lobbyist/registrant is required to disclose to the Secretary of the U. S. Senate or Clerk of the U.S. House of Representatives as being established or controlled by that lobbyist/registrant under Section 203 of the Honest Leadership and Open Government Act of 2007, amending the Lobbying Disclosure Act of 1995 (2 U.S.C. 1604(d)(1)(C)).

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

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

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

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

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

(5) *Covered Period. Covered period* means:

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

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

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

(iv) *Alternative for monthly filers.* Any reporting committee that files monthly campaign finance reports under 11 CFR 104.5 may choose to file reports pursuant to the quarterly covered period in paragraph (a)(5)(ii) of this section instead of the monthly covered period in paragraph (a)(5)(iii) of this section. It shall do so by notifying the Commission in writing of its intention to do so at the time the reporting committee files a monthly report under paragraph (a)(5)(iii) of this section. The reporting committee will be required to file its next report under the new filing frequency. The reporting committee may change its filing frequency no more than once per calendar year.

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

(6) *Bundled Contribution. Bundled contribution* means any contribution that meets the definition set forth in either paragraph (i) or (ii) below:

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

(ii) *Received and credited contribution* means a contribution received by the reporting committee from the contributor or contributors, and credited by the reporting committee or candidate involved to a lobbyist/registrant or lobbyist/registrant PAC through records, designations, or other means of recognizing that a certain

amount of money has been raised by the lobbyist/registrant or lobbyist/registrant PAC.

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

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

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

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

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

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

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

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

(b) *Reporting requirement for reporting committees.*

(1) *FEC Form 3L.* Each reporting committee must file FEC Form 3L (Report of Contributions Bundled by Lobbyist/Registrants and Lobbyist/Registrant PACs) if it has received two or more bundled contributions (*see* paragraph (a)(6)) forwarded by or received and credited to a person reasonably known by the reporting committee to be a lobbyist/registrant or lobbyist/registrant PAC aggregating in excess of $15,000 during the covered period. The form shall set forth:

(i) The name of each lobbyist/registrant or lobbyist/registrant PAC;

(ii) The address of each lobbyist/registrant or lobbyist/registrant PAC;

(iii) The employer of each lobbyist/registrant; and

(iv) The aggregate amount of bundled contributions forwarded by or received and credited to each lobbyist/registrant or lobbyist/registrant PAC by the reporting committee during the covered period.

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

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

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

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

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

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

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

(iii) A reporting committee shall be subject to the reporting requirement under paragraph (b)(1) of this section if it had actual knowledge that, at the time a contribution was forwarded or received, the person whose name is sought was required to be listed on any registration or report described in paragraph (b)(2)(i) of this section.

(c) *Lobbyist/Registrant PAC reporting requirements.* Any political committee that is a lobbyist/registrant PAC as defined in paragraph (a)(3) of this section must identify itself as such on FEC Form 1 either upon registration with the Commission if it is a new political committee, or by amendment in accordance with 11 CFR 102.2(a)(2) if it is a political committee registered with the Commission.

(d) *Where to file.* Reporting committees shall file either with the Secretary of the Senate or with the Federal Election Commission in accordance with 11 CFR Part 105.

(e) *When to file.* Reporting committees must file the forms required under this section with the first report that they file under 11 CFR 104.5 following the end of each covered period.

(f) *Recordkeeping.* In addition to any requirements to maintain records and accounts under 11 CFR 102.8, 102.9 and 110.6, each reporting committee must maintain for three years after the filing of the report to which the information relates a record of any bundled contributions (*see* 11 CFR 104.22(a)(6)) provided by a lobbyist/registrant or lobbyist/registrant PAC that aggregate in excess of $15,000 for any covered period. The information required to be maintained is:

(1) The name and address of the lobbyist/registrant or lobbyist/registrant PAC;

(2) The employer of the lobbyist/registrant; and

(3) The aggregate amount of bundled contributions forwarded by or received and credited to each lobbyist/registrant or lobbyist/registrant PAC by the reporting committee during the covered period.

(g) *Price index increase.*

(1) The threshold for reporting bundled contributions established in

paragraph (b)(1) of this section shall be increased by the percent difference between the price index as defined at 11 CFR 110.17(d), as certified to the Commission by the Secretary of Labor, for the 12 months preceding the beginning of the calendar year and the price index for the base period.

(2) Each contribution bundling threshold so increased shall be the threshold in effect for that calendar year.

(3) For purposes of this paragraph (g), the term base period means calendar year 2006.

(4) If any amount after the increases under this paragraph (g) is not a multiple of $100, such amount shall be rounded to the nearest multiple of $100.

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

■ 3. The authority citation for part 110 is revised to read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 434(i)(3), 438(a)(8), 441a, 441b, 441d, 441e, 441f, 441g, 441h and 36 U.S.C. 510.

■ 4. In section 110.17, paragraph (e) is revised and paragraph (f) is added to read as follows:

§ 110.17 Price index increase.

* * * * *

(e) *Publication of price index increases.*

(1) *Expenditure and Contribution Limitations.* In every odd-numbered year, the Commission will publish in the **Federal Register** the amount of the expenditure and contribution limitations in effect and place such information on the Commission's Web site.

(2) *Lobbyist/registrant and lobbyist/registrant PAC contribution bundling disclosure threshold.* In every calendar year, the Commission will publish in the **Federal Register** the amount of the lobbyist/registrant and lobbyist/registrant PAC contribution bundling disclosure threshold in effect and place such information on the Commission's Web site.

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

Dated: February 5, 2009.

On behalf of the Commission,

Steven T. Walther,

Chairman, Federal Election Commission.

[FR Doc. E9–2838 Filed 2–13–09; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1250

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

12 CFR Part 1773

RIN 2590–AA09

Flood Insurance

AGENCIES: Federal Housing Finance Agency; Office of Federal Housing Enterprise Oversight.

ACTION: Final Regulation; correction.

SUMMARY: The Federal Housing Finance Agency (FHFA) is correcting the final Flood Insurance Regulation, published in the **Federal Register** on January 15, 2009 (74 FR 2347), by deleting the addition of a subchapter.

DATES: Effective February 17, 2009.

FOR FURTHER INFORMATION CONTACT: Andra Grossman, Counsel, telephone (202) 343–1313 (not a toll-free number); Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION: The FHFA is correcting the final Flood Insurance Regulation that was published in the **Federal Register** on January 15, 2009 (74 FR 2347). The final Flood Insurance Regulation (effective on February 17, 2009) amends Chapter XII of Title 12, of the Code of Federal Regulations and when effective would establish a new ''Subchapter C—Enterprises''. On January 30, 2009, before the effective date of the final Flood Insurance Regulation, FHFA issued another regulation which established Subchapter C (74 FR 5609). This correction to the final Flood Insurance Regulation deletes the addition of Subchapter C because it has already been added.

In FR Doc. E9–809, appearing on page 2350 in the **Federal Register** of Thursday, January 15, 2009, the following correction is made:

CHAPTER XII—FEDERAL HOUSING FINANCE AGENCY [Corrected]

■ 1. On page 2350, in the first column, in **CHAPTER XII—FEDERAL HOUSING FINANCE AGENCY**, in amendment 1, the instruction ''Add Subchapter C, consisting of part 1250 to read as follows:'' is corrected to read ''Add part 1250 to read as follows:''.

Dated: February 10, 2009.

James B. Lockhart III,

Director, Federal Housing Finance Agency.

[FR Doc. E9–3243 Filed 2–13–09; 8:45 am]

BILLING CODE 8070–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–29110; Directorate Identifier 2007–NE–35–AD; Amendment 39–15808; AD 2009–04–02]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney PW4090 and PW4090–3 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Pratt & Whitney (PW) PW4090 and PW4090–3 turbofan engines with front turbine hub, part number (P/N) 53L601, installed. This AD reduces the published life limit of those front turbine hubs, from 12,000 cycles-since-new (CSN) to 9,370 CSN. This AD also removes from service those front turbine hubs using a drawdown schedule. This AD results from PW updating the low-cycle-fatigue (LCF) life analysis for front turbine hubs, P/N 53L601. We are issuing this AD to prevent an uncontained failure of the front turbine hub, resulting in an in-flight engine shutdown and possible damage to the airplane.

DATES: This AD becomes effective March 24, 2009.

ADDRESSES: The Docket Operations office is located at Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Mark Riley, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803;