

November 30, 2007

By Electronic Mail (bundling07@fec.gov)

Ms. Amy L. Rothstein
Assistant General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Re: Comments on Notice 2007-23: Lobbyist Bundling

Dear Ms. Rothstein:

These comments are submitted jointly by Democracy 21, the Campaign Legal Center, Common Cause, the League of Women Voters of the United States and U.S. PIRG in response to the Notice of Proposed Rulemaking (NPRM) on “Reporting Contributions Bundled by Lobbyists, Registrants and the PACs of Lobbyists and Registrants.” *See* NPRM 2007-23, 72 Fed. Reg. 62600 (November 6, 2007).

Democracy 21 and the Campaign Legal Center each request the opportunity to testify at the hearing to be held on this matter.

Introduction

The bundling disclosure requirements in section 204 of the Honest Leadership and Open Government Act of 2007, Pub. L. 110–81, 121 Stat. 735 (HLOGA), are key provisions in this important new ethics and lobbying reform law.

The principle behind these reform provisions is simple: to shed light on a growing campaign finance practice whereby lobbyists organize and provide large sums of money to federal candidates in an effort to gain access and influence over decisions made by federal officeholders. Through the practice of bundling, lobbyists get recognized for delivering total contributions far in excess of the limits imposed on the contributions they can make in their own name. And with that recognition comes the opportunity for the lobbyist to influence government decisions on behalf of their clients.

There has never been systematic disclosure of this practice, although it is widespread, growing, and of acknowledged importance among the professional lobbyists who are in the business of influencing Congress. For the first time, because of this reform, the public will

receive information about which lobbyists engage in bundling, which federal candidates they provide money to, and how much they provide to each federal candidate in “bundled” contributions.

Since 1974, the requirement for federal candidates to disclose the contributions made to them has been a bedrock principle of federal campaign finance law, and has provided essential information to the public about the contributors who are funding federal campaigns and the influences brought to bear on federal government decisions. The Supreme Court in *Buckley v. Valeo*, 424 U.S. 1 (1976), enumerated the important government interests underlying this disclosure of contributions:

First, disclosure provides the electorate with information “as to where political campaign money comes from and how it is spent by the candidate” in order to aid the voters in evaluating those who seek federal office. ... The sources of a candidate’s financial support also alert the voter to the interests to which a candidate is most likely to be responsive and thus facilitate predictions of future performance in office.

Second, disclosure requirements deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity. This exposure may discourage those who would use money for improper purposes either before or after the election. A public armed with information about a candidate’s most generous supporters is better able to detect any post-election special favors that may be given in return. ...

Third, and not least significant, recordkeeping, reporting, and disclosure requirements are an essential means of gathering the data necessary to detect violations of the contribution limitations described above.

The disclosure requirements, as a general matter, directly serve substantial governmental interests.

Id. at 66-68 (footnotes omitted) (emphasis added).

All of these same interests are served, as well, by the disclosure of contributions bundled by lobbyists – indeed, more so, since the amounts of money funneled to candidates by lobbyist bundlers are typically many orders of magnitude larger than the contributions directly given by such bundlers. Certainly, disclosure of the identities of those lobbyists who are bundling contributions to a federal candidate, and how much they are providing, gives important information to the electorate as to “where political campaign money comes from....” So too, disclosure of bundling serves to deter corruption and the appearance of corruption “by exposing large contributions ... to the light of publicity” and in so doing, “discourage[s] those who would use money for improper purposes....”

It is important that the Commission construe and implement the new law to give greatest effect to the disclosure mandated by the provision. In order to underscore this point – and to

leave no doubt as to how the Commission should tilt in the event of a close call between an interpretation that would enhance bundling disclosure and a contrary interpretation that would restrict it – Congress included in the legislation itself a direction to the Commission as to how it should proceed in writing regulations:

Under such regulations, the Commission ... shall provide for the broadest possible disclosure of activities described in this subsection by persons described in paragraph (7) that is consistent with this subsection.

2 U.S.C. 434(i)(5)(D) (emphasis added). This unusual statutory directive to the Commission is not simply legislative history – it is the law itself, and it mandates that the Commission’s job in writing regulations is to provide “for the broadest possible disclosure” of bundling. This directive must be the Commission’s guide star in this rulemaking.

To be sure, the legislative history points to the same result. The discussion of the bundling disclosure provision by its drafters and principal sponsors emphasizes its importance. Representative Chris Van Hollen (D-MD), the principal House sponsor and author of the bundling disclosure proposal, explained its importance during floor debate:

This bill also contains a provision that creates greater transparency at the intersection of campaign contributions and public policy. While existing campaign finance laws place limits on campaign contribution amounts, individuals that want to exceed the limits may do so by pulling together the contributions of third parties. This practice is known as “bundling”. In and of itself, there is nothing wrong with this practice of aggregating the contributions of others. However, when the bundling of contributions is done by someone who lobbies on behalf of a particular interest, this practice enables the lobbyist to enhance his or her stature with an official. This enhancement increases their opportunity to advance the cause of a special interest.

In order to guard against the use of this practice to exert an undue influence over public policy, I believe that we need to inject transparency into this process.

153 Cong. Rec. H9209 (daily ed. July 31, 2007). Representative Van Hollen described the history of the House bundling disclosure bill, and noted that as originally drafted, it required disclosure to be made by the lobbyist, on his or her reports filed with the Clerk of the House or the Secretary of the Senate under the Lobbying Disclosure Act (LDA), 2 U.S.C. § 1601 *et seq.* The Senate bill, however, required the disclosure to be made to the Federal Election Commission by the recipient political committee. Representative Van Hollen said the House acceded to the Senate approach of directing the disclosure to the Commission, but on one “condition”:

[t]hat the reporting shift, from the Lobbying Disclosure Act to the Federal Election Campaign Act, would not compromise or diminish the transparency of the bundled contributions provided by a lobbyist and hence, not reduce the availability of the information to the American public.

Id. Rep. Van Hollen also stressed that this provision “is not designed to prohibit any action by a lobbyist. The purpose of the provision is to require disclosure.” *Id.* He said:

Therefore, I trust that the Commission, in its regulations, will strive to maximize the disclosure of contributions that have been bundled by lobbyists. This will bring much needed sunlight to the intersection of bundling and public policy and hopefully, will serve as a “disinfectant” to clean up any undue influence brought to bear by the use of third party contributions by lobbyists.

Id. (emphasis added).¹

The final legislation passed the House by an overwhelming bipartisan vote of 411-8. *Id.* at H9210.

On the Senate side, Senator Barack Obama (D-IL) and Senator Russell Feingold (D-WI) were the principal sponsors of the bundling provision and equally stressed its importance. Senator Obama said in the Congressional Record:

Over the objections of powerful voices in both parties, we will ensure that our laws shine a bright light on how lobbyists help fill the campaign coffers of Members of Congress by bundling contributions from others. Because an era in which soft money is prohibited, the real measure of a lobbyist’s influence is not how much money he has contributed, it is how much money he is raising from others.

For too long, this practice has been hidden from public view. But today we can change that. ... As the Washington Post described the bundling provision earlier this year:

No single change would add more public understanding of how money really operates in Washington.

¹ Specifically, Rep. Van Hollen cautioned the Commission against creating the kinds of exemptions that have undermined the effectiveness of the Commission’s existing earmarking and conduit regulations, 11 C.F.R. § 110.6. He said:

Subsection (5) requires the FEC to promulgate regulations implementing this disclosure requirement but prohibits the Commission from exempting from the disclosure requirement any lobbyist on the grounds that the lobbyist is authorized by the committee to engage in fundraising “or any other similar grounds.” Moreover, this subsection explicitly prohibits the Commission from issuing a regulation to make this, or any similar grounds, the basis for an exception for the fundraising activities of certain lobbyists from the bundling disclosure requirement.

153 Cong. Rec. H9209 (emphasis added).

153 Cong. Rec. S10692 (daily ed. Aug. 2, 2007). Senator Feingold, in a lengthy colloquy with Senator Obama, added:

[T]he purpose of the bundling reporting provision is to get as much disclosure as possible of bundling by lobbyists. In the provision, we have specifically asked the FEC to keep that purpose in mind as it promulgates regulations.

Id. at S10699 (emphasis added). Senator Obama reiterated this stricture to the Commission as it writes implementing regulations:

The provision in the bill is aimed at requiring the disclosure of bundling, not prohibiting bundling. It must be broadly interpreted by the Federal Election Commission, consistent with its purpose. Indeed, section 204 specifically directs the FEC “to provide for the broadest possible disclosure” of bundling activities.

Id. (emphasis added). Senator Feingold responded:

I agree. The Commission should not allow evasion or game playing of any kind, by campaign, candidates, or lobbyists, to avoid reporting the activities of lobbyists. Section 204, the bundled contributions reporting section, along with section 203, which requires reports of campaign contributions and other payments by lobbyists themselves, is about giving information to the American people about how lobbyists provide financial assistance to Members of Congress and candidates. This information will allow the public to understand much better how Washington works.

Id. (emphasis added). In addition and to the same effect, Senator Dianne Feinstein (D-CA), the chair of the Rules Committee and a Senate sponsor of HLOGA, said on the floor:

One of the most critical provisions of this bill will now shine new light on the role lobbyists play in political campaigns by requiring the disclosure of funds they bundle on behalf of Members, PACs, and party committees.

Id. at S10688.

The final legislation passed the Senate also by a strong bipartisan vote of 83-14. *Id.* at S10723.

With this background in mind – and particularly the admonition to the Commission in the statutory language (and in the floor statements of its key sponsors) to write regulations that provide “for the broadest possible disclosure,” 2 U.S.C. 434(i)(5)(D) – we turn to the specific issues raised by the NPRM.

1. Definition of “covered period.” Under the statutory scheme, a reporting committee must file a separate schedule after each “covered period” in which the committee received two or

more “bundled contributions” in excess of a threshold amount from a lobbying registrant within that “covered period.” 2 U.S.C. § 434(i)(1).

One of the thornier issues presented by the NPRM is how to construe when the threshold amount of bundling within a “covered period” triggers a reporting obligation.

The NPRM sets forth a proposed rule and alternative definition of “covered period” in section 104.22(a)(3), and in the text also seeks comment on a third proposal “in lieu of either the proposed rule or the alternative....” 72 Fed. Reg. 62602. For reasons explained below, we support the third proposal described in text, with one important modification.

The statutory definition of “covered period” has three separate elements: the six month period January 1 through June 30, the six month period from July 1 through December 31, and any “reporting period” applicable to the reporting committee during which a lobbying registrant provides it with two or more bundled contributions in excess of the threshold amount of \$15,000. 2 U.S.C. § 434(i)(2).

The statute provides the Commission with discretion to require reporting of bundling on a quarterly basis for those committees that otherwise file campaign finance reports on a monthly basis. 2 U.S.C. § 434(i)(5)(A). We do not oppose the Commission’s invocation of this authority, as proposed in the NPRM. 72 Fed. Reg. 62601. Thus, we agree with the Commission’s proposal to “place monthly filers on the same schedule as committees that file quarterly campaign finance reports.” *Id.*

The principle embodied in the Commission’s primary proposed definition of “covered period” is that bundling that amounts to an aggregate of \$15,000 within a calendar quarter will be reported for that quarter, along with an aggregate amount for the semi-annual period. Thus, as explained in the NPRM:

If PAC Z bundles \$20,000 in the first quarter, the recipient committee reports \$20,000 in its first quarter report.

If PAC Z bundles an additional \$5,000 in the second quarter, the recipient committee report would disclose an aggregate of \$25,000 for the semi-annual period.

The Commission raises the question of whether this regime “could lead to the mistaken impression” that PAC Z “provided \$45,000 rather than \$25,000 to the committee during the first two calendar quarters.” *Id.* at 62602.

In order to address this issue, we support the third alternative in the NPRM, which would most clearly present the information by requiring committees to report “both semi-annual and quarterly information at the end of each semi-annual period.” 72 Fed. Reg. 62602.

Thus, for sake of clarity, in the example given above, the Commission should design the reporting form to show \$5,000 bundled in the second quarter, and then also show an aggregate

semi-annual amount of \$25,000. This will most clearly present the information to the public, and obviate any potential problem of apparent over-reporting that may result from reporting \$20,000 in the first quarter, and then simply reporting \$25,000 as a semi-annual amount. By separately delineating the \$5,000 amount bundled in the second quarter, it would be clear that the \$20,000 reported in the first quarter is to be aggregated with the \$5,000 reported in the second quarter to constitute the \$25,000 reported for the semi-annual period.²

So too, in an additional example discussed in the NPRM, if \$20,000 is bundled in the first quarter, and \$25,000 in the second quarter, the result would be that the first quarter report shows \$20,000, and the second quarter report shows \$25,000 for the second quarter and \$45,000 for the semi-annual period. This reporting regime would most clearly and comprehensively present the information to the public, which should be the Commission's principal objective.³

This contrasts with the alternative definition in the NPRM, which would define each quarter as a separate reporting period, and eliminate the semi-annual umbrella. Under the above scenario of \$20,000 bundled in the first quarter and \$5,000 in the second, the committee would report the receipt of \$20,000 in the first quarter, and nothing in the second quarter (because the second quarter amount is less than the \$15,000 threshold), and also nothing for the semi-annual period.

This alternative is in direct conflict with the statute and is wholly unacceptable because, as the NPRM notes, it “could lead to the under reporting of contributions that take place across quarterly reporting periods, but within the semi-annual period.” *Id.* at 62602. Thus, under this alternative, a bundler could provide a committee with \$15,000 in each of the four quarters of the year, and none of it would be reported because the threshold \$15,000 amount would not be exceeded in any one quarter, even though the \$15,000 threshold would be exceeded for the semi-annual period.

This proposed alternative flatly contradicts the statutory language in section 434(i)(2), which plainly defines each semi-annual period as a separate “covered period.” Thus, it is clear that bundling which exceeds \$15,000 in any semi-annual period must be reported for the semi-annual period. The interpretation proposed in the alternative impermissibly negates reporting of bundling of more than \$15,000 in a semi-annual period if the amount is spread across two quarters in an amount of \$15,000 or less in each quarter. This violates the statutory definition of

² If the quarters were reversed in the above scenario, with \$5,000 bundled in the first quarter and \$20,000 in the second quarter, the committee would report nothing in the first quarter, and then report \$20,000 as bundled in the second quarter and also report an aggregate amount of \$25,000 bundled for the semi-annual period.

³ In response to a question posed in the NPRM, there is no statutory basis on which the Commission can eliminate semi-annual reporting, or exempt semi-annual reporting if the information had been previously reported. 72 Fed. Reg. 62602. The one thing the statutory language most clearly requires is that every reporting committee file a semi-annual report on all bundled contributions it receives in that semi-annual period, if the amount received in the semi-annual period is in excess of the \$15,000 threshold amount. While there may be questions about how much more, and how much more often, a committee should be required to report, the Commission has no statutory authority to require less than this statutory floor for reporting.

“covered period,” and it certainly violates the Commission’s mandate to “provide for the broadest possible disclosure....” 2 U.S.C. § 434(i)(5)(D).

We propose a further refinement of the reporting requirements discussed above. In addition to reporting the aggregate amount bundled within a semi-annual period, the Commission should also require a committee to report an aggregate amount bundled within a calendar year by any given bundler, where a report on that bundler is otherwise required to be filed. Thus, under the example discussed above, if PAC Z bundles \$20,000 in the first quarter, \$5,000 in the second quarter, and \$25,000 in the third quarter, the committee’s third quarter report should show not only the \$25,000 bundled in the third quarter, but also a \$50,000 year-to-date aggregate amount. If PAC Z did not provide these bundled contributions in the third quarter, but instead provided the \$25,000 in bundled contributions in the fourth quarter, the recipient committee would not be required to file any report in the third quarter, but would be required to file a report in the fourth quarter, showing the \$25,000 bundled in that quarter (and in this example, in the second semi-annual period) and the aggregate amount bundled for the calendar year, *i.e.*, \$50,000.

In principle, this is similar to the existing reporting of contributions received by a committee, which are reported not only in the amount received in the particular reporting period, but also on an aggregate year-to-date basis. We believe that this would provide important aggregate information to the public and would not significantly increase the burden on reporting committees, which are required to keep track of this information in any event. It would be consistent with the statutory language that the Commission provide “for the broadest possible disclosure” of information about bundled contributions.

2. Definition of “bundled contribution.” The NPRM raises three important issues regarding the definition of “bundled contribution.” We wish to comment on all three.

A. Employees of lobbying organizations. Lobbying registrants covered by the bundling provision include lobbying organizations. Such organizations, of course, operate through individuals who are employed by the organization. Accordingly, the lobbying organizations engage in bundling when their employees bundle money in the name of, or on behalf of, or in their capacity as an agent for, a lobbying organization. Thus, even if an individual employee of a lobbying organization is not a lobbying registrant in his own right (*i.e.*, a registered lobbyist or an employee listed as a lobbyist on a registration report), the bundling by that employee is reportable if it is done by the employee for or on behalf of the lobbying organization, or if the organization (and not the employee) gets credit for providing the contributions.

The statutory touchstone is whether the contributions are “credited by the committee or candidate” to the registrant organization. 2 U.S.C. § 434(i)(8)(A)(ii). If so, the registrant organization is providing “bundled contributions” and the committee’s reporting obligation is triggered. Conversely, an individual employee of a lobbying organization who is not himself a registrant or a listed lobbyist can engage in bundling on his own behalf and in his own name, without that activity being reportable by the recipient committee under section 434(i) if it is the employee (and not the organizational registrant) who is getting the “credit” from the recipient committee.

Statements by the provision’s principal sponsors affirm this interpretation. For instance, Senator Obama stated with regard to the “persons whose bundling has to be reported”:

These persons also include any agent acting on behalf of a registered lobbyist, lobbying firm, or lobbying organization. Thus, if the CEO of a lobbying organization is raising money as an agent of the organization, his activities are covered by the legislation and must be reported. But employees of a lobbying organization, including a CEO, who are not lobbyists listed on the organization’s lobbying disclosure reports are not covered, unless they are acting as agents for the organization.

153 Cong. Rec. S10698.⁴

B. Treatment of fundraising events. The NPRM raises the question of how the reporting requirement should be applied where there are multiple lobbyists who co-host a fundraising event.

First, we wish to stress that fundraising events are covered within the definition of “bundled contribution.” The NPRM – correctly – does not suggest the Commission intends to do otherwise. There is no doubt that this is required under both the language and purpose of the law, as is clear from the statements made by the key sponsors of the provision.

Campaign contributions raised at a fundraising event are perhaps the classic example of bundling, *i.e.*, funds that are “credited” by a candidate to the host of the fundraising event as having been “raised by the person” who is the host of the event. 2 U.S.C. § 434(i)(8)(A)(ii). Thus, when the host or hosts of a fundraising event are registrants (or acting as agents of registrants), the money raised at the event is subject to reporting by the recipient committee as “bundled contributions” provided by the event’s host or co-hosts. This is the explicit intent of the provision as is made clear by its principal Senate sponsors. In their Senate colloquy, Senators Feingold and Obama made clear that the bundling provision applies to fundraising events:

Mr. Feingold. ... With respect specifically to fundraisers hosted or cohosted by lobbyists, my view is that virtually all such events would be covered by this provision. Is that how the Senator from Illinois sees it as well?

Mr. Obama. Yes, I agree with that view. At many fundraisers, the host of the event collects the checks and gives them to a representative of the campaign. So that would be covered because the contributions have been "forwarded" to the campaign. But at some events, a representative of the campaign, or even the candidate, physically receives the checks directly from contributors as they arrive

⁴ Even pre-dating BCRA, the Commission long applied a concept of “agency” to obligations imposed by FECA. *E.g.* 11 C.F.R. § 109.1(5) (2002) (defining “agent”); *id.* at § 109.1(4) (defining coordination to include communications made in consultation or at the request or suggestion of “a candidate or any agent ... of such candidate”).

or leave, and of course, some checks may be sent in afterward. In that case, the campaign knows the total amount raised, and knows the lobbyist who hosted the fundraiser is responsible for those contributions. Even if no formal records are kept about the money raised at the event, although most campaigns do keep such records, the campaign has credited the lobbyist with that fundraising and it must be reported, as long as the threshold amount is met.

Mr. Feingold. That is my understanding as well of section 204. ... [E]ven if a lobbyist does not make a solicitation for a contribution, as the term “solicit” has been defined in FEC regulations, the lobbyist will still have “raised” a contribution if the lobbyist facilitated the contribution by hosting or cohosting a fundraising event that brought in the contribution.

Id. at 10698-9 (emphasis added).

The NPRM raises the question about how the proceeds of a fundraising event should be treated where there are multiple co-hosts. Again, Senators Obama and Feingold directly addressed this issue:

Mr. Obama. ... In a situation where a fundraising event is cohosted by a number of different lobbyists, I am concerned that some might want to avoid reporting bundled contributions by dividing up the total receipts of a fundraising event among many sponsors or cohosts of the event. Certainly, that was not our intention. Does my friend from Wisconsin agree with me?

Mr. Feingold. Yes, the purpose of the bundling reporting provision is to get as much disclosure as possible of bundling by lobbyists. ... When two or more lobbyists are jointly involved in providing the same bundled contributions – as, for instance, in the case of a fundraising event co-hosted by two or more lobbyists – then each lobbyist is responsible for and should be treated as providing the total amount raised at the event, for purposes of applying the applicable threshold to the funds raised by that lobbyist, and for purposes of reporting by the committee of the “aggregate amount” of bundling contributions “provided by each” registered lobbyist “during the covered period.”

It would be acceptable, of course, to report that certain funds were raised jointly in a single event so that by crediting each of the lobbyists involved with the total amount and reporting each lobbyist on the new schedule, the campaign does not suggest that the total amount of contributions bundled is far greater than the amount actually raised. But a campaign should not be able to avoid disclosing, for example, that three lobbyists raised \$30,000 in a single fundraiser by claiming that each lobbyist has been credited with only one-third of the total amount. If this evasion were allowed, reporting for any fundraising event could be avoided simply by adding enough lobbyist cohosts for the event so that all of the lobbyists fall below the threshold. We certainly did not intend that result.

Id. at S10699 (emphasis added).

Thus, where two or more registrants co-host the same fundraising event, the recipient committee should report the entire amount raised at the event as having been raised by each of the registrant co-hosts. Accordingly, in response to the question posed in the NPRM, if three lobbyists jointly co-host a fundraiser that raises \$20,000 in contributions for Senator X, the authorized committee of Senator X should report that each lobbyist provided “bundled contributions” of \$20,000 to Senator X. 72 Fed. Reg. 62603.

The alternative of dividing the total proceeds of the event by the number of co-hosts, and attributing only that amount to each registrant – in this example, that each of the three lobbyists provided under \$7,000 – would mark an easy path to evasion of the reporting requirements by allowing multiple registrants to co-host an event so that no one of them would be attributed a sufficient amount of funds to trigger the reporting requirement.

As Senators Feingold and Obama indicated, they did not draft and sponsor a law that could so easily be frustrated in its primary goal.

It would be appropriate, as Senator Feingold suggested, for the Commission to design the reporting forms to allow the committee to report not only the total amount raised at the fundraising event and which is attributed to each co-host registrant, but also the total number of co-hosts involved in the event, and to list the other registrant co-hosts that it will report for the same event. This would serve twin purposes: on the one hand, it would make clear that the disclosure requirement cannot be evaded or circumvented by a proliferation of co-hosts for an event (which would allow the proceeds of the event to be sub-divided to the point where the amount allocated to any one co-host falls beneath the reporting threshold and thus defeats the bundling disclosure requirement altogether), while at the same time it would provide the necessary information to the public to show that multiple co-hosts were involved in the same event (so that the disclosure report will not be erroneously read to over-report or double count the same amount of bundled contributions raised at the event).

The Commission’s job is both to provide for the “broadest possible disclosure” of bundled contributions, 2 U.S.C. § 434(i)(5)(D), and to ensure the most accurate and useful information is made available to the public. With regard to the disclosure of bundled contributions raised at fundraising events, the reporting requirements discussed by Senators Feingold and Obama would achieve this result. The Commission should adopt them.

C. “Designations or other means of recognizing.” A “bundled contribution” is one, *inter alia*, where the recipient candidate or committee “credits” the funds to the registrant “through records, designations, or other means of recognizing” that a certain amount of money has been raised by the registrant. 2 U.S.C. § 434(i)(8)(A)(ii).

With regard to construction of the phrase “designation or other means of recognizing,” the proposed rule correctly notes that this term “includes” benefits conferred on a fundraiser, such as a title (*e.g.* “Ranger,” “Pioneer,” “Hillraiser”), access to events “reserved exclusively for

those who generate a certain level of contributions,” or to events provided “as a reward for successful fundraising.” 11 C.F.R. 104.22(a)(6) (proposed).

Importantly, the proposed rule is drafted so that the enumerated “means of recognizing” are illustrative, not exclusive. There are a wide variety of ways in which a candidate or recipient committee can give “credit” to a bundler as having raised a certain amount of money, and those means of recognition may be informal as well as formal, unwritten as well as written.

Rep. Van Hollen, the principal House sponsor and author of the bundling disclosure provision, and Senators Feingold and Obama, the principal sponsors of the Senate bundling disclosure provision, made clear in their floor statements that the determination of whether a candidate or committee “credits” a lobbyist for raising contributions is not based on any requirement that the recipient memorialize or record the credit, or that the recipient inform the lobbyist that he has been given credit for the contributions.

The three principal sponsors of this provision pointed out that “crediting” the lobbyist simply means that the recipient candidate or committee knows that the contributions have been raised by the lobbyist. Rep. Van Hollen explained during House consideration of the final legislation:

The “credit” that the lobbyist receives can be recorded through designations or other means of recognizing that a “certain amount of money” has been “raised” by the lobbyist. However, the credit that is attributed to the lobbyist does not need to be memorialized in writing or captured within a database or any other contribution tracking system to trigger the reporting requirement. Moreover, the recognition that a bundled contribution is attributed to a lobbyist does not need to be communicated back to the lobbyist; it merely means that a covered entity attributes the contribution to the lobbyist.

153 Cong. Rec. H9209 (emphasis added).⁵

Senator Obama, in a colloquy with Senator Feingold, stated a similar explanation:

Mr. Obama. ... The “credit” doesn't have to be written or recorded because the definition includes “other means of recognizing that a certain amount of money

⁵ Rep. Van Hollen also noted that the language requires the “recognition” given by the recipient committee relates to the fact “that a certain amount of money has been raised by” the lobbyist. 2 U.S.C. § 434(i)(8)(A)(ii). But, he said, 153 Cong. Rec. H9209:

The term “a certain amount of money” means that the covered entity has information that a dollar amount has been raised by the lobbyist who is credited with raising the money. The term does not require that the candidate or other covered entity knows the total amount raised by the lobbyist or that the lobbyist has reached the threshold amount for reporting.

has been raised.” So if a lobbyist tells a candidate that he has raised a certain amount of money for a campaign, the lobbyist should be credited with that amount of fundraising, and the bundling must be reported, assuming, of course, that the threshold amount of contributions is met within the 6-month period.

Cong. Rec. S.10698 (emphasis added). Senator Obama also made clear that the bundling language covers “contributions that were physically collected by a lobbyist and transferred to a campaign, contributions that were formally recorded by a campaign as having been raised by a lobbyist, and contributions that a candidate or a campaign was aware had been raised by a lobbyist.” *Id.* (emphasis added). Senator Feingold stated his agreement with this description. *Id.*

Thus, the principal congressional sponsors of the bundling disclosure provision, in both the House and the Senate, made clear during the House and Senate consideration of the final legislation that if a candidate or committee knows that a lobbyist has raised contributions received by the candidate or committee, this knowledge, in and of itself, triggers the reporting requirement for the candidate or committee. This is the case regardless of whether any formal records or written designations were made of the bundled contributions.

Once a candidate knows that a lobbyist has raised contributions for the candidate, it would make absolutely no sense to impose an additional requirement that a formal written record of this information be kept by the candidate, or that an acknowledgment be sent to the lobbyist, before the information is required to be disclosed. The statute does not impose any such additional requirement, and the legislative history affirms that it is not required. The Commission should make clear in the text of the regulation that no such additional requirement is necessary to trigger the bundling reporting obligation.⁶

⁶ The Feinstein-Reid-Lieberman section-by-section explanation of HLOGA, which states that the subsection (ii) definition of bundling is satisfied where the recipient committee credits the lobbyist for generating contributions “and where such credit is reflected in some form of record, designation or recognition,” 153 Cong. Rec. S10709, is fully consistent with the explanation provided by the principal sponsors of the bundling provision in the House and Senate. This section-by-section statement does not say that a “written” record, designation or recognition is required – just that “some form” of record, designation or recognition is required. That form can be unwritten, as well as written, as is made clear by the detailed discussion of this point by Rep. Van Hollen in the House, and by Senators Obama and Feingold in the Senate. As the principal sponsors of the bundling disclosure provision, these explicit statements in the legislative history are the most relevant source for interpreting and implementing the bundling disclosure requirement. Importantly, these statements also reflect a consistent legislative history by the principal sponsors of the provision in both the House and the Senate.

Any contrary construction of this provision would allow recipient committees to engage in easy and widespread circumvention of the disclosure requirement, by the simple expedient of accepting contributions with full knowledge that a lobbyist had raised the funds, but then just not memorializing or writing that down. This would directly contradict the language and purpose of the statute, as well as the legislative history provided by the principal sponsors of the provision. It would also be in direct conflict with the direction to the Commission found in the statute itself – that the Commission is required to write regulations that “provide for the broadest possible disclosure” of bundling, consistent with the statute. 2 U.S.C. § 434(i)(5)(D).

3. Reporting requirements. We agree with section 104.22(b)(1), as proposed, which sets forth the information that a recipient candidate or committee is required to disclose about the bundled contributions it receives.

We also agree with proposed section 104.22(b)(2), which sets forth guidance to reporting committees with respect to identifying whether a person is “reasonably known” to the recipient committee to be a lobbying registrant. The proposed regulation directs the committee to consult web sites maintained by the Clerk of the House and the Secretary of the Senate in order to identify whether a person is a registrant under the LDA. Further, the committee must consult the Commission’s own web site to determine if a non-connected PAC has identified itself as a “lobbyist/registrant PAC” on its statement of organization filed with the Commission. We think these requirements are reasonable and permissibly implement the statutory directive for the Commission to “provide guidance to committees with respect to whether a person is reasonably known” to be a LDA registrant, and specifically directs the Commission to “include a requirement that committees consult the websites maintained by” the House Clerk and the Secretary of the Senate. 2 U.S.C. § 434(i)(5)(B).

As to the two “reporting hypotheticals” set forth in the NPRM, 72 Fed. Reg. 62604-05, we have the following comments:

In Hypothetical Example 1, we agree that in the first quarter report filed by Candidate A’s authorized committee, it must report that Lobbyist Z bundled a total of 40,000 during the first quarter, consisting of \$30,000 which Lobbyist Z delivered to the committee in the form of 15 checks for \$2,000 each, plus an additional \$10,000 contributed by five other persons directly to Candidate A at a fundraising event hosted by Lobbyist Z.

In the second quarter, Lobbyist Z delivers five checks totaling \$6,000 to Candidate A’s committee. We agree that after the second quarter the Committee must report that Lobbyist Z bundled a total of \$46,000 during the semi-annual period. For the reasons stated above, however, the Commission should design the reporting form to show that \$6,000 was bundled during the second quarter, and \$46,000 during the semi-annual period. This would most clearly set forth the information, and best guard against a misinterpretation of the reported information that might result in a member of the public aggregating the amount reported in the first quarter report (\$40,000) with the amount reported in the second quarter (\$46,000), and erroneously concluding that Lobbyist Z bundled \$86,000 in the semi-annual period, instead of \$46,000. Even though the \$6,000 bundled in the second quarter does not reach that threshold amount to trigger a reporting obligation for that quarter alone, the recipient committee has already triggered the threshold reporting requirement for the semi-annual period, and has already reported the amount of bundled contributions received in the first quarter. It thus must file a report after the second quarter that shows bundling for the semi-annual period as a whole, and so should also report the amount of bundled contributions received in the second quarter, as well as the total amount for the semi-annual period.

In Hypothetical Example 2, we agree that the leadership PAC, as a monthly filer, must file along with its March monthly report (at the end of the first quarter) a quarterly statement disclosing the bundled contributions it received in the first quarter. Since PAC X delivered a

check for \$30,000 to the leadership PAC in February, representing contributions from 15 individuals, and then hosted a fundraising event in March which resulted in the leadership PAC receiving an additional \$12,000 in contributions, the leadership PAC must report that PAC X provided a total of \$42,000 in bundled contributions to the leadership PAC during the first quarter. This amount exceeds the threshold amount of \$15,000 for the “covered period” of the first quarter, and thus triggers the leadership PAC’s reporting obligation.

We appreciate the opportunity to submit these comments.

Respectfully,

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