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FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: The Commission

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

Attached is a draft Final Rule implementing section 204 of Public Law 110-81, the Honest Leadership and Open Government Act of 2007, regarding the disclosure of contributions bundled by lobbyist/registrants and lobbyist/registrant PACs. See 2 U.S.C. 434(i). The Explanation and Justification for this rule will be considered separately by the Commission at a later date.

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

Attachment

AGENDA ITEM
For Meeting of: 12-18-08
SUBMITTED LATE

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

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

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

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

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

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

10 * * * * *

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

12 * * *

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

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

20 * * * * *

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

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

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

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

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

7 (a) Definitions

8 (1) Reporting Committee. Reporting committee means:

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

10 CFR 100.5(f)(1);

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

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

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

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

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

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

23 (4) Established or Controls.

24 (i) For purposes of this section only, a lobbyist/registrant established or
25 controls any political committee that the lobbyist/registrant is required to

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

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

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

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

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

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

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

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

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

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

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- (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;

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

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

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

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

21 (b) Reporting requirement for reporting committees.

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

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

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

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

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

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

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

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

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

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

1 (iii) A reporting committee shall be subject to the reporting
2 requirement under paragraph (b)(1) if it had actual knowledge that,
3 at the time a contribution was forwarded or received, the person
4 whose name is sought was required to be listed on any registration
5 or report described in paragraph (a)(2) or (3).

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

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

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

16 (f) Recordkeeping. In addition to any requirements to maintain records and accounts
17 under 11 CFR 102.8, 102.9 and 110.6, each reporting committee must maintain for
18 three years after the filing of the report to which the information relates a record of
19 any bundled contributions (see 11 CFR 104.22(a)(4)) provided by a
20 lobbyist/registrant or lobbyist/registrant PAC that aggregate in excess of \$15,000 for
21 any covered period. The information required to be maintained is:

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

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

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

19 **PROHIBITIONS**

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

1 § 110.17 Price index increase.

2 * * * * *

3 (e) Publication of price index increases.

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

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

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

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18 On behalf of the Commission,

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Donald F. McGahn II
Chairman
Federal Election Commission

25 DATED _____
26 BILLING CODE: 6715-01-P