

Election and Political Law

E-ALERT

February 4, 2009

FEC Finalizes Bundling Disclosure Rules

The Federal Election Commission finalized its bundling disclosure rules yesterday. The rules will go into effect 30 days after the agency's Explanation and Justification ("E&J") of those rules is published in the Federal Register. As a result, beginning in May, candidates, leadership PACs and political party committees will begin disclosing some of the fundraising activities by lobbyists and registrants (i.e., companies, trade associations, unions, and lobbying firms that have registered under the Lobbying Disclosure Act or "LDA"). This new disclosure will alter some of the fundraising practices in Washington.

Highlights of yesterday's vote include the following:

- Candidates, leadership PACs and political party committees will begin keeping records of bundling activity in March. Bundling prior to that will not be reportable.
- The bundling threshold has been increased to \$16,000. HLOGA indexed the threshold for inflation and the FEC has recalculated the threshold from \$15,000 when HLOGA passed to \$16,000 when the disclosure rules go into effect.
- Generally, only the activities of lobbyists, registrants, PACs controlled by either of those persons and individuals acting on behalf of one of those three entities will be reported. The activities of individuals who work for a lobbyist or lobbying firm, but who are not themselves a registered lobbyist will not be reported unless the candidate, leadership PAC or political party knows that the individual is acting on behalf of a registered lobbyist. Similarly, activities of senior officers or employees of a corporation or trade association that has registered, but who are not themselves lobbyists, need not be reported unless the candidate, leadership PAC or political party knows that the individual is acting on behalf of the registrant or a registered lobbyist. Corporate and trade association employees who perform volunteer fundraising in support of candidates, leadership PACs or political parties will need to be clear with these political committees when they are working in their individual capacity.
- Entities that are prohibited by law from making contributions or serving as a conduit for contributions, such as corporations, can be reported as bundlers under these rules. This may result in some embarrassment for entities that are barred by law from contributing to a candidate, but nonetheless are reported as bundling contributions for them.
- PACs that are controlled by a lobbyist or registrant must amend their FEC Form 1 within 40 days of the effective date of the regulation (i.e., in early April) to identify themselves as a "controlled" PAC. Those who operate such PACs will need to ensure that their filings with the FEC and the Secretary of the Senate and Clerk of the House of Representatives are consistent on this point. The obligation to amend their FEC Form 1 will apply to many corporate PACs.

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In 2007, Congress passed the Honest Leadership and Open Government Act ("HLOGA"). One of the provisions of that broad ranging ethics law requires authorized candidate campaign committees, leadership PACs and political party committees to report when a lobbyist, an organization that must register under the LDA, or a PAC controlled by these persons "bundles" in excess of \$15,000 in contributions during a reporting period. "Bundling" was defined as both (a) forwarding contributions from other people to the campaign, and (b) being "credited" in records, designations or other means of recognition by the campaign, leadership PAC or political party as having raised contributions in excess of \$15,000. A lobbyist's own contributions (and those of their spouse) are not counted in calculating whether the \$15,000 threshold has been met. The \$15,000 threshold was indexed for inflation and the FEC approved an increase to \$16,000 yesterday.

In December, the FEC issued regulations to help interpret these rules. These included several important provisions.

- Being credited in "records, designations and other means of recognition" means written records and not the mental impressions of the candidate or her staff. Designations include benefits such as titles, tracking identifiers, access to special events or activities, or mementos such as photographs or an autographed book.
- Leadership PACs are defined as political committees established, financed, maintained or controlled by a federal candidate or federal officeholder, but that are not the candidate's authorized committee.
- PACs are "controlled" by a lobbyist or a registrant if they must be listed on the Secretary of the U.S. Senate's or Clerk of the U.S. House of Representatives' LD 203 website. PACs that cannot discern if they should be listed on the LD-203 can look to whether the lobbyist had a primary role in establishing or directing the governance or operations of the PAC, excluding providing legal or compliance services.
- Reports are due at least quarterly. Monthly filers could file their bundling disclosure forms either monthly or quarterly, at their discretion. Bundlers, including lobbyists and LDA registrants, have no obligation to file bundling reports. Only authorized candidate campaign committees, leadership PACs and political party committees are obligated to file.

The FEC's Explanation and Justification of its regulations helped interpret some of these provisions. <http://www.fec.gov/agenda/2009/mtgdoc0907.pdf>. The FEC also issued a very helpful FAQ document. <http://www.fec.gov/law/lobbybundlingfaq.shtml>. Key information includes:

- Reporting deadlines. Committees that file monthly reports must disclose on their report due May 20th if they received bundled contributions from a lobbyist, registrant or their PAC in excess of \$16,000 between early-April and the end of April. Committees that file quarterly must report bundling that occurred in early-April to the end of June on their reports due July 15. Bundling activity of all candidate committees, leadership PACs or party committees between mid-March and June 30th must be reported on a semi-annual report that is due July 31, 2009. Thus, the mid-year report will capture somewhat more activity than the monthly and quarterly reports.
- Covered activity. The reports will not include bundling activity that occurs prior to the first or second week of March 2009. The exact date will be set thirty days after the E & J is published in the Federal Register, which should be within the next week. Bundling by lobbyist/registrant PACs need not be reported if it occurs prior to April 2009.
- The simple fact that a lobbyist or registrant or their PAC hosts a fundraiser or holds a fundraiser on its premises does not alone constitute a reportable act of bundling. The campaign must also credit the covered entity through records, designations or other means of recognition that a certain amount of money has been raised by the person.

These new disclosure rules are sure to produce some headaches as candidate committees, leadership PACs and political party committees sort through the recordkeeping and reporting issues. The press reports that follow the public release of the disclosure reports - especially in July when most of the data will go public - will provide a number of summer scandal stories about influence peddling and the secret world of bundling in Washington. Some will flock to the spotlight while others will want to think through their activities this spring to avoid being caught in the glare.

If you have any questions concerning the material discussed in this client alert, please contact the following members of our election and political law practice group:

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