

# Election and Political Law

## E-ALERT

March 12, 2009

### FEC Releases New Form 1 - Amendments Due by March 29, 2009

The FEC has released an updated version of its Statement of Organization form (FEC Form 1) as part of the new bundling disclosure rules. Federal PACs must now disclose if they are “established or controlled” by either a registered lobbyist or an organization that must register under the Lobbying Disclosure Act (LDA), such as a company that employs in-house lobbyists. The amended FEC Form 1 is due by March 29th.

Under the bundling disclosure rules, candidate committees, leadership PACs and political party committees must report contributions that are “bundled” by lobbyists, LDA registrants and PACs “established or controlled” by those persons. The definition of bundling is described in our E-Alert on February 4, 2009. The new registration form will enable candidates, leadership PACs and political parties to determine whether a PAC is “established or controlled” by a lobbyist or LDA registrant, and hence covered by the new bundling disclosure rules.

#### Is our PAC “established or controlled” by a lobbyist or LDA registrant?

The Lobbying Disclosure Act, as amended by the Honest Leadership and Open Government Act of 2007 (HLOGA), already requires that individual lobbyists and LDA registrants identify on their semi-annual reports (Form LD-203) any PAC(s) that they have established or control. The FEC’s new rule allows PACs to use the same standard. Thus, if a lobbyist or corporation is required to report on their LD-203 filing that they have established or control a PAC, the PAC is similarly required to amend its FEC Form 1.

A corporation that has established and operates a PAC (also known as a Separate Segregated Fund or SSF), and which has also registered under the LDA, meets the “established or controlled” test and both the LD-203 and FEC Form 1 should reflect the affiliation.

For individual lobbyists or organizations that participate in the activities of non-connected PACs, such as PACs created by an unincorporated association, the answer to the “establish or control” test may not be clear. The FEC’s regulations suggest PACs should first look to guidance from the Secretary of the Senate or the Clerk of the U.S. House of Representatives (who interpret reporting obligations under the LDA), which have provided an example of when lobbyists “control” a PAC.

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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 disclose applicable contributions of the PAC on their semi-annual reports.

See Lobbying Disclosure Act Guidance, Revised February 3, 2009, Section 7, Example 10. ([http://lobbyingdisclosure.house.gov/amended\\_lda\\_guide.html#footnote](http://lobbyingdisclosure.house.gov/amended_lda_guide.html#footnote)).

Alternatively, the FEC's rules provide that a PAC can consider if the lobbyist or registrant either (1) had a primary role in establishing the PAC or (2) directs the governance or operations of the PAC. In either case, a lobbyist or registrant's providing legal or compliance advice will not be considered in determining if they have established or operated the PAC.

There may be circumstances where the facts require a specific legal analysis to assess whether a PAC meets the "established or controlled" test.

#### How do I get access to the form and what must I report?

The new Form 1 is available on the FEC's *Lobbyist Bundling* webpage in the section labeled *Forms*, either as a PDF (for paper filers) or via links to the FECFile electronic filing system. <http://www.fec.gov/info/guidance/hlogabundling.shtml>. The registrant only needs to amend the form by checking a box on Question 5 to show if it is a "Lobbyist/Registrant PAC." If the registrant is not established or controlled by a lobbyist or LDA registrant, it does not need to amend its Form 1.

#### Earlier E-Alerts on the Bundling Disclosure Rules.

[FEC Finalizes Bundling Disclosure Rules, February 4, 2009.](#)

[FEC Finalizes Bundling Disclosure Rules - UPDATE, February 17, 2009.](#)

If you have any questions concerning the material discussed in this client alert, please contact the following members of our :

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