



## **A Guide to the FEC Bundling Disclosure Rules**

**February 17, 2009**

On February 3, 2009, the Federal Election Commission (FEC) finalized its bundling disclosure regulations and its discussion of those rules (called the Explanation and Justification (E&J)). The FEC issued some useful FAQs on these rules which you can obtain at <http://www.fec.gov/law/lobbybundlingfaq.shtml>. The final rules were published in the *Federal Register* on February 17, 2009, and take effect on March 19, 2009.

The underlying bundling statute, passed as part of the Honest Leadership and Open Government Act of 2007, mandates that federal candidate committees, leadership PACs, and political party committees report the identities of those federal lobbyists, lobbyist employers, and their PACs that “bundle” two or more contributions worth more than \$16,000 in a six-month period. Some additional issues related to the statute, regulations, and the E&J are addressed below.

### **1. No reporting by lobbyists, lobbyist employers, or their PACs**

The new rules do not create any reporting obligations for lobbyists, lobbyist employers, or their PACs. The reporting obligations fall solely upon federal candidate committees, federal political party committees, and federal leadership PACs.

### **2. The PACs of lobbyist employers must amend the PAC’s FEC Form 1**

A corporation or trade association that is registered under the Lobbying Disclosure Act (LDA) and that has a federal PAC must file an amended FEC Form 1, Statement of Organization, by March 29, 2009, on a soon-to-be-revised form to indicate that the PAC is a “lobbyist/registrant PAC.” (The form is expected to be released around mid-March.) (Note that any leadership, single issue, or other nonconnected PAC established or controlled by a federal lobbyist also must file this same amendment. Such PACs also should be disclosed on the lobbyist’s individual LDA Form LD-203.)

### **3. Non-lobbyists are not bundlers**

The reporting activities do not apply to contributions bundled by non-lobbyist employees of an entity that employs federal lobbyists – such as the CEO of a corporation that employs federal lobbyists. Spouses of lobbyists also are not reportable bundlers.

#### **4. Recipient committees are responsible for deciding who gets credit for the contributions**

A candidate committee, political party committee, or leadership PAC must disclose bundling activity if, in a semiannual period, it, among other things, receives and “credits” more than \$16,000 in contributions bundled by a single lobbyist, lobbyist employer, or PAC. The crediting can take a number of forms, but ultimately the decision about what constitutes a credit and who to disclose is up to the recipient committee. The following activities are specifically described in the new rules as receiving “credit”:

- Receiving a title such as “Ranger” or “Pioneer”;
- Using a tracking identifier or number;
- Receiving access to events or activities as a result of raising a certain amount of contributions; and
- Receiving mementos, such as photographs with the candidate or autographed copies of books authored by the candidate, given by the committee to persons who have raised a certain amount of contributions.

A candidate committee, political party committee, or leadership PAC also must disclose bundling activity if, in a semiannual period, it records more than \$16,000 in contributions as being bundled by a single lobbyist, lobbyist employer, or PAC. Such recordkeeping can take a number of forms, but ultimately the decision about what records to keep and who to disclose is up to the recipient committee.

#### **5. Co-hosting fundraisers is not necessarily “bundling”**

The FEC has made clear that co-hosting a fundraiser for a candidate or committee does not necessarily mean that an individual or PAC has bundled for that candidate or committee. Contributions will not necessarily be allocated among the co-hosts, and contributions do not need to be attributed to all of the co-hosts. By the same token, a lobbyist’s name on an invitation does not automatically make the lobbyist a bundler. For some guidance in this area, below are seven examples (the last five from the E&J) of how fundraising events might operate (note how non-lobbyists are never disclosed for their bundling activity):

Example 1. Lobbyist A has an event at his home and raises \$15,000 for Senate candidate X. If Lobbyist A raises no additional funds for candidate X during the calendar six-month period, he will not be reported as a bundler because he raised less than \$16,000 in the aggregate.

Example 2. CEO Smith has an event at his home for Senate candidate X and raises \$30,000. CEO Smith will

not be reported as a bundler because he is not a federal lobbyist.

Example 3. A fundraising event is co-hosted by Lobbyists A, B, and C. The event generates \$20,000 in contributions. The reporting committee believes 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 Lobbyists B nor C has been credited with any bundled contributions.

Example 4. 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. The reporting committee may, if it chooses, include a memo entry in the space provided in FEC Form 3L to indicate that, although only a total of \$20,000 was raised at the event, that \$20,000 was credited to each of the co-hosts, or any other information that the reporting committee wishes to include.

Example 5. A fundraising dinner is co-hosted by Lobbyist A and Lobbyist B, as well as three hosts who are not lobbyists. 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 6. 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 Lobbyists 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 Lobbyist A and the \$17,000 of bundled contributions that has been credited to him because this amount is in excess of the \$16,000 reporting threshold. The reporting committee must also disclose Lobbyist B if the reporting committee also has credited Lobbyist B with the \$1,000 and 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 7. 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 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 Lobbyists B has not been credited with any bundled contributions.

## **6. Start time: around March 19, 2009**

Bundling activity undertaken before March 19, 2009 (30 days after publication of the final rules in the *Federal Register*), is not subject to disclosure.

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