

(8) *Option for case-by-case determination.* If the applicant does not meet the criteria under this paragraph (f), or does not wish to agree to the conditions for the streamlined 30-day visa under this paragraph (f), the applicant may elect to utilize the process described in either paragraph (a) or (b) of this section, as applicable.

* * * * *

Michael Chertoff,

Secretary.

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FEDERAL ELECTION COMMISSION

11 CFR Parts 100 and 104

[Notice 2007-23]

Reporting Contributions Bundled by Lobbyists, Registrants and the PACs of Lobbyists and Registrants

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Election Commission requests comments on proposed rules implementing new statutory provisions regarding the disclosure of information about bundled contributions provided by certain lobbyists and registrants. The proposed rules would require authorized committees, leadership PACs and political committees of political parties to disclose certain information about lobbyists and registrants and lobbyists' and registrants' political committees that provide bundled contributions. No final decisions have been made by the Commission on any of the proposed regulations in this Notice. Further information is provided in the supplementary information that follows.

DATES: Comments must be received on or before November 30, 2007. The Commission will announce the date of a hearing at a later date. Anyone seeking to testify at the hearing must file written comments by the due date and must include in the written comments a request to testify.

ADDRESSES: All comments must be in writing, must be addressed to Ms. Amy L. Rothstein, Assistant General Counsel, and must be submitted in e-mail, facsimile, or paper copy form. Commenters are strongly encouraged to submit comments by e-mail or fax to ensure timely receipt and consideration. E-mail comments must be sent to bundling07@fec.gov. If e-mail comments include an attachment, the attachment must be in Adobe Acrobat (.pdf) or

Microsoft Word (.doc) format. Faxed comments must be sent to (202) 219-3923, with paper copy follow-up. Paper comments and paper copy follow-up of faxed comments must be sent to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463. All comments must include the full name and postal service address of the commenter or they will not be considered. The Commission will post comments on its Web site after the comment period ends.

FOR FURTHER INFORMATION CONTACT: Ms. Amy L. Rothstein, Assistant General Counsel, or Ms. Cheryl A.F. Hemsley, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694-1650 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: The Commission is proposing changes to its rules to implement section 204 of Public Law 110-81, 121 Stat. 735, the "Honest Leadership and Open Government Act of 2007," signed September 14, 2007. The new law amended the Federal Election Campaign Act of 1971, as amended (2 U.S.C. 431 *et seq.*) ("the Act") by requiring certain political committees to disclose information about each lobbyist and registrant, and each political committee established or controlled by a lobbyist or registrant ("lobbyist/registrant PAC"¹), that forwards, or is credited with raising, two or more bundled contributions aggregating in excess of \$15,000 during a specific period of time.² See 2 U.S.C. 434(i) (henceforth referred to as the "new law" or "new 2 U.S.C. 434(i)"). The Commission uses the term "lobbyist/registrant" to refer to registrants and lobbyists under the Lobbying Disclosure Act of 1995 ("LDA").

The Commission proposes to implement these provisions by adding a new subparagraph to 11 CFR 100.5(e) and adding a new section to the

¹ "PAC" is an acronym often used to refer to a political action committee other than an authorized committee or a political committee of a political party.

² As discussed *infra*, the new law requires the reporting of information about certain bundled contributions that have been "provided" to certain political committees, and defines a "bundled contribution" as a contribution that is either "forwarded" to the political committee by a lobbyist/registrant or lobbyist/registrant PAC, or that is received by the political committee from the contributor but "credited" to the lobbyist/registrant or lobbyist/registrant PAC that "raised" it. 2 U.S.C. 434(i)(1), (8)(A). To clarify that the reporting requirement does not apply only to contributions that have been provided directly to a political committee by a lobbyist/registrant or lobbyist/registrant PAC, this NPRM describes the reporting requirement as applying to lobbyist/registrants or lobbyist/registrant PACs that have either forwarded, or that have been credited with raising, bundled contributions.

reporting rules at 11 CFR Part 104. The proposed reporting requirements would apply only to authorized committees of Federal candidates, political committees of political parties, and political committees directly or indirectly established, financed, maintained or controlled by a candidate or an individual holding Federal office ("leadership PACs"³).

I. Background

A. The Current Statutory and Regulatory Framework

Currently, the Act and Commission regulations impose certain reporting and recordkeeping requirements for contributions received and forwarded by any person to a political committee. Each person who receives and forwards contributions to a political committee must also forward certain information identifying the original contributor. See 2 U.S.C. 432(b); 11 CFR 102.8.

Additionally, 2 U.S.C. 441a(a)(8) and 11 CFR 110.6 impose certain reporting and recordkeeping requirements for contributions received and forwarded by persons known as "conduits" or "intermediaries" to the authorized committees of Federal candidates. The Commission is not proposing any changes to these rules.

B. Revisions to 2 U.S.C. 434(i)—Reporting Requirements

New 2 U.S.C. 434(i) requires authorized committees of Federal candidates, leadership PACs and political committees of political parties to disclose certain information about any person reasonably known by the committee to be a lobbyist/registrant or lobbyist/registrant PAC that forwards, or is credited with raising, two or more bundled contributions aggregating in excess of \$15,000 to the committee within a "covered period" of time. 2 U.S.C. 434(i)(1), (2), (3) and (8). Reporting committees must disclose the name and address of the lobbyist/registrant or lobbyist/registrant PAC, the lobbyist/registrant's employer (for individual persons), and the aggregate amount of contributions bundled to the committee within the covered period. 2 U.S.C. 434(i)(1).

³ The new law provides a definition of leadership PAC that the Commission proposed to implement as 11 CFR 100.5(e)(6) in a separate rulemaking regarding candidate travel. See 72 FR 59953 (October 23, 2007). The Commission assumes that a definition will be promulgated in the travel rulemaking before these disclosure rules are promulgated and thus, cites to 11 CFR 100.5(e)(6).

II. Proposed Revisions to 11 CFR 100.5. Political Committee (2 U.S.C. 432(4), (5), (6); 2 U.S.C. 434(i)(7)(C) and (8)(B))

Currently, 11 CFR 100.5(e) provides examples of types of political committees. Proposed 11 CFR 100.5(e)(7) would add the term “lobbyist/registrant PAC” as an example, and would define the term as “any political committee established or controlled” by a lobbyist/registrant, as defined in proposed 11 CFR 104.22(a)(3). This definition is consistent with the new law. *See* 2 U.S.C. 434(i)(7)(C). Political committees that meet this definition would have to identify themselves as such on their Statements of Organization. *See* 11 CFR 102.2(a)(1) (requiring each political committee to disclose its name, address and type on its Statement of Organization). Further, the Commission anticipates that any political committee that is already registered with the Commission and that fits this proposed definition would be required to amend its Statement of Organization to reflect its status as a lobbyist/registrant PAC.⁴

The Commission requests comments on this approach. When would a nonconnected committee be considered to be “controlled” by a lobbyist/registrant? Is a committee whose treasurer is a lobbyist/registrant *per se* “controlled” by the lobbyist/registrant? What if that treasurer serves only in a ministerial or custodial function?

As discussed further in Part III, the law requires disclosure of bundling by either an individual who registers as a lobbyist under the LDA or a “registrant” under that Act, which includes any organization that employs in-house lobbyists. Thus, the Commission proposes to define “lobbyist/registrant” to include both lobbyists and registrants under the LDA. Moreover, since the SSF of a corporation, labor organization or other connected organization (*see* 11 CFR 100.6) that employs in-house lobbyists would be, by definition, controlled by a registrant, the Commission proposes to include such SSFs within the ambit of “lobbyist/registrant PACs.” The Commission requests comment on this approach.

The Commission currently requires committees to identify themselves as only one type of committee. *See* FEC Form 1 Statement of Organization,

Question 5 (“Type of Committee (Check One)”). How should an organization that is both an SSF and a “lobbyist/registrant PAC” identify itself on FEC reports? Should one type of registration control? Alternatively, should the Commission allow committees to identify themselves as more than one type of committee? Of note, allowing multiple registrations could affect the Commission’s current disclosure processes.

The Commission also requests comments on the placement of the definition of “lobbyist/registrant PAC” in 11 CFR 100.5(e), “examples of political committees,” as opposed to placing this definition in proposed 11 CFR 104.22.

III. Proposed New 104.22. Disclosure of Bundling by Lobbyist/Registrants (2 U.S.C. 434(i))

To implement the new disclosure requirements, the Commission is proposing to add new 11 CFR 104.22 to its reporting regulations.

A. Definitions

1. Reporting Committee

New 2 U.S.C. 434(i) adds reporting requirements for three types of political committees: authorized committees of a candidate, leadership PACs, and political party committees. 2 U.S.C. 434(i)(6). Proposed 11 CFR 104.22(a)(1) would define the term “reporting committee” to encompass these three types of political committees, which are defined in 11 CFR 100.5. The Commission requests comments on this new term, “reporting committee.”

2. Covered Period

New 2 U.S.C. 434(i) requires that reporting committees disclose information about any lobbyist/registrant or lobbyist/registrant PAC that forwards, or is credited with raising for the committee, two or more bundled contributions aggregating in excess of \$15,000 during any “covered period.” 2 U.S.C. 434(i)(1), (2), (3) and (8). It defines “covered period” as January 1 through June 30, July 1 through December 31 “and * * * any reporting period applicable to the committee under [2 U.S.C. 434] during which any [lobbyist/registrant or lobbyist/registrant PAC] provided two or more bundled contributions to the committee in an aggregate amount greater than [\$15,000].” 2 U.S.C. 434(i)(2).

The new law also provides the Commission with the authority to require reporting committees filing their campaign finance reports more

frequently than on a quarterly basis⁵ to disclose information about lobbyist/registrants who provide bundled contributions in excess of \$15,000 on a quarterly basis, rather than monthly. *See* 2 U.S.C. 434(i)(5)(A).

The Commission presents both a proposed and an alternative definition of “covered period.” Each definition would exercise the Commission’s statutory authority to place monthly filers on the same schedule as committees that file quarterly campaign finance reports. 2 U.S.C. 434(i)(5)(D). For ease of public consumption of disclosed bundled contributions, consistent disclosure periods would provide the public with semi-annual aggregate snapshots for all categories of filers. Does the language in 2 U.S.C. 434(i)(5)(A) permit the Commission also to require aggregate semi-annual disclosure from these monthly filers? Should the Commission, instead, not exercise its statutory authority, and require monthly filers to disclose information about bundled contributions on a monthly and semi-annual basis? *See* 2 U.S.C. 434(i)(2).

a. Proposed Definition of “Covered Period”

Under proposed 11 CFR 104.22(a)(2)(i), the term “covered period” would be the semi-annual periods of January 1 through June 30 and July 1 through December 31. Additionally, proposed 11 CFR 104.22(a)(2)(ii) provides that in any calendar year in which a reporting committee is required to file or files monthly or quarterly campaign finance reports, the covered period would also include the quarterly periods of January 1 through March 31 and July 1 through September 30 if, during those periods, a lobbyist/registrant or a lobbyist/registrant PAC provided two or more bundled contributions to the reporting committee which aggregate in excess of \$15,000.

Thus, under the proposed rule, any committee that receives more than \$15,000 in bundled contributions from a lobbyist/registrant or lobbyist/registrant PAC during the first or third calendar quarter would have to disclose information about the bundler twice:

⁵ National committees of political parties (including the national congressional campaign committees) must report monthly in all calendar years. *See* 2 U.S.C. 434(a)(4)(B); 11 CFR 104.5(c)(4). State, district and local committees of political parties are required to file monthly if they exceed certain levels of Federal election activity. *See* 2 U.S.C. 434(e)(4); 11 CFR 300.36(c). Further, some authorized committees of presidential candidates are required to file monthly during presidential election years. *See* 2 U.S.C. 434(a)(3); 11 CFR 104.5(b).

⁴ The Commission notes that this same identification requirement would apply to political committees that meet the definition of leadership PAC. *See* 11 CFR 100.5(e)(6). In conjunction with this rulemaking, the Commission anticipates amending FEC Form 1, the Statement of Organization, to include both “lobbyist/registrant PAC” and “leadership PAC” as types of political committees.

once for the report covering the quarter during which the committee received the bundled contributions from a lobbyist/registrant or lobbyist/registrant PAC, and again at the end of the six-month period.

For example, if lobbyist/registrant PAC Z is credited with having raised \$20,000 for a reporting committee in the first quarter, then the reporting committee would disclose lobbyist/registrant PAC Z in its report covering the first quarter as having provided \$20,000 in bundled contributions to the committee. If, in the second quarter, the reporting committee credits lobbyist/registrant PAC Z with having raised another \$5,000, the reporting committee would disclose on its semi-annual report the entire \$25,000 in bundled contributions provided by lobbyist/registrant PAC Z in the first two calendar quarters. The Commission requests comments on whether this is the correct reading of the statutory requirements, and whether this duplicative reporting could lead to the mistaken impression that lobbyist/registrant PAC Z provided \$45,000 rather than \$25,000 to the committee during the first two calendar quarters.

The Commission further requests comments on whether there is a statutory basis on which the Commission might consider some means of eliminating this duplicative reporting. For example, is there a statutory basis for the Commission to consider exempting reporting committees from having to disclose semi-annually information about lobbyist/registrants or lobbyist/registrant PACs providing bundled contributions if the information was already fully disclosed in a prior report filed with the Commission? Would this approach be confusing or result in the appearance of over-or under-reporting the contributions bundled by lobbyist/registrants or lobbyist/registrant PACs?

Is the Commission's interpretation consistent with the requirement in the new law that the Commission "provide for the broadest possible disclosure of activities described in this subsection?"

b. Alternative Definition of Covered Period

In the alternative, the Commission requests comments on the following definition of "covered period." Alternative 11 CFR 104.22(a)(2)(i) would provide that in any calendar year in which a reporting committee is required to file or files reports on a quarterly or monthly basis under 11 CFR 104.5, the covered period would be defined as quarterly periods of January 1 through March 31, April 1 through

June 30, July 1 through September 30, and October 1 through December 31.

Under alternative 11 CFR 104.22(a)(2)(ii), in any calendar year in which a reporting committee files semi-annual reports, the covered period would also include the semi-annual periods of January 1 through June 30 and July 1 through December 31.

For example, if lobbyist/registrant PAC Z is credited with having raised \$20,000 in the first quarter for a reporting committee that files on a monthly or quarterly basis, then the reporting committee would disclose lobbyist/registrant PAC Z in its report covering the first quarter as having provided \$20,000 in bundled contributions to the committee. If, in the second quarter, the reporting committee credits lobbyist/registrant PAC Z with having raised another \$5,000, the reporting committee would not disclose on its second quarter reports any bundled contributions provided by lobbyist/registrant PAC Z because the second quarter bundled contributions fell below the \$15,000 threshold for the second quarter reporting period. No aggregate semi-annual reporting would be required. The Commission requests comments on whether this is a permissible reading of the statutory requirements, and whether this alternative could lead to the under reporting of contributions that take place across quarterly reporting periods, but within the semi-annual period. For example, under this alternative, a lobbyist/registrant or lobbyist/registrant PAC could provide \$15,000 in bundled contributions to a reporting committee during each calendar quarter and the reporting committee would not have triggered the disclosure requirement under the new law.

Additionally, in lieu of either the proposed rule or the alternative, the Commission seeks comment on whether reporting committees should report both semi-annual and quarterly information at the end of each semi-annual period. If, in the example above, in the second quarter lobbyist/registrant PAC Z provides the reporting committee with \$25,000 (having also provided \$20,000 in bundled contributions in the first quarter), should the reporting committee disclose that it received \$45,000 for the semi-annual period, and also disclose that it received \$25,000 for the second quarter period?

3. Lobbyist/Registrant and Lobbyist/Registrant PAC

The new law applies only to contributions bundled by "a current registrant under section 4(a) of the

[LDA] [2 U.S.C. 1603(a)];⁶ an individual who is listed on a current registration filed under section 4(b)(6) of such Act [2 U.S.C. 1603(b)(6)] or a current report under section 5(b)(2)(C) of such Act [2 U.S.C. 1604(b)(2)(C)]; or a political committee established or controlled by such a registrant or individual." 2 U.S.C. 434(i)(7).

Proposed 11 CFR 104.22(a)(3) would create a new term, "lobbyist/registrant," to encompass both current registrants and individuals listed on a current registration or report filed under the LDA. As discussed above, the Commission is proposing to add a definition of "lobbyist/registrant PAC" at 11 CFR 100.5(e)(7).

4. Bundled Contributions

Proposed 11 CFR 104.22(a)(4)(i) and (ii) would implement new 2 U.S.C. 434(i)(8)(A) by defining the term "bundled contribution" as any contribution that a lobbyist/registrant or lobbyist/registrant PAC forwards to the reporting committee from the contributor, or that the reporting committee receives from the contributor but credits to the lobbyist/registrant or lobbyist/registrant PAC through records, designations, or other means of recognizing that a certain amount of money has been raised by the lobbyist/registrant or lobbyist/registrant PAC.

Under proposed 11 CFR 104.22(a)(4)(i), forwarded contributions would satisfy the proposed definition of "bundled contributions" regardless of whether the bundler receives credit from the reporting committee. Would it be helpful to the regulated community for the Commission to define the term "forwarded" in the rule as, for instance, "arranging or causing the physical or electronic delivery or transmission of a contribution"?

Under proposed 11 CFR 104.22(a)(4)(ii), a contribution must be both received by the reporting committee and credited to a lobbyist/registrant or lobbyist/registrant PAC to satisfy proposed 11 CFR 104.22(a)(4)(ii). The mere crediting of a contribution to a lobbyist/registrant or lobbyist/registrant PAC would not satisfy proposed 11 CFR 104.22(a)(4)(ii) if the contribution is not received. In the alternative, should the amount credited control? With respect to these

⁶ The Web sites of the Secretary of the Senate and the Clerk of the House of Representatives provide the following guidance regarding who is a "registrant": A lobbying firm or an organization employing in-house lobbyists that files a registration pursuant to Section 4 of the Lobbying Disclosure Act of 1995. See http://www.senate.gov/legislative/common/briefing/lobby_disc_briefing.htm#3; http://lobbyingdisclosure.house.gov/lda_guide.html.

contributions, should the rule apply to in-kind contributions as well?

Proposed 11 CFR 104.22(a)(4)(iii) states that bundled contributions do not include contributions from the personal funds of the bundling person or that person's spouse. This provision would be consistent with the new law, which excludes contributions made to the reporting committee by the lobbyist/registrant or lobbyist/registrant's spouse from counting towards the \$15,000 reporting threshold. See 2 U.S.C. 434(i)(3)(A).

Proposed 11 CFR 104.22(a)(5) provides that the term "candidate involved" means, for authorized committees, the candidate for whom the committee is authorized; and for leadership PACs, the candidate or individual holding Federal office who directly or indirectly establishes, maintains, finances or controls the leadership PAC. This is consistent with the language of the new law in describing who would credit, designate or otherwise recognize a lobbyist/registrant or lobbyist/registrant PAC with having raised contributions in excess of \$15,000 during the covered period. See 2 U.S.C. 434(i)(8)(A)(ii). The Commission requests comments on whether the proposed provision would be helpful in providing guidance to the regulated community.

As noted above, the proposed definition of "lobbyist/registrant" includes current registrants under section 4(a) of the LDA (2 U.S.C. 1603(a)). Such registrants are primarily organizations that employ one or more lobbyists.

Does the new law cover bundled contributions provided by employees and agents of organizations that are registrants, when those individuals are not themselves lobbyist/registrants? Can an organization that is prohibited from making contributions, such as a corporation or a labor organization, but nonetheless is a registrant, be credited with having raised contributions?

There is seemingly some incongruity in statements made by some of the new law's supporters and the section-by-section analysis of the legislation provided by the three principal Senate authors of the bill (the "section-by-section analysis"). See 153 CONG. REC. S10709 (daily ed. August 2, 2007). For example, in a colloquy on the Senate floor, Senator Feingold and Senator Obama indicated that the disclosure requirement would be triggered by contributions bundled by an employee of a lobbyist, if that employee is acting as an agent of the lobbyist, even if the employee is not listed on a current registration or report filed under the

LDA. 153 CONG. REC. S10699 (daily ed. Aug. 2, 2007) (statements of Sen. Feingold and Sen. Obama). On the other hand, the section-by-section analysis states that the statute "covers only contributions credited to registered lobbyists." 153 CONG. REC. S10709 (daily ed. Aug. 2, 2007). The Commission requests comments on whether the new requirements should cover employees who are agents of lobbyist/registrants or lobbyist/registrant PACs, even if such individuals are not listed as registered lobbyists under the LDA. How should the Commission give content to the statutory requirement that bundling by registrant organizations be disclosed?

In addition, how should the new law be applied with regard to crediting multiple lobbyist/registrants or lobbyist/registrant PACs involved in a single fundraiser? In a statement on the Senate floor, Senator Feingold stated that "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 reporting purposes. 153 CONG. REC. S10699 (daily ed. August, 2, 2007) (statement of Sen. Feingold). Thus, the Commission requests comments on how multiple hosts of a fundraiser should be credited by the reporting committee. For example, if three lobbyist/registrants jointly co-host a fundraiser that raises \$20,000 in contributions for Senator X, should each of the three co-hosts be deemed to have raised the entire \$20,000 for reporting purposes? Would this approach be misleading or inaccurate from a disclosure perspective? Should the sum total instead be prorated among the three co-hosts?

Proposed 11 CFR 104.22(a)(6) would explain the meaning of "designations or other means of recognizing." The proposed rule provides that "designations or other means of recognizing" a lobbyist/registrant or lobbyist/registrant PAC's fundraising would include "titles based on levels of fundraising, access to events reserved exclusively for those who generate a certain level of contributions, or similar benefits provided as a reward for successful fundraising." The Commission requests comments on this approach and also requests other examples of records, designations or other means of recognizing a lobbyist/registrant or lobbyist/registrant PAC's

fundraising. Should service by an individual on a host committee of a fundraising event serve as "designation or other means of recognizing that a certain amount of money has been raised by the person"? Should honorary titles within the reporting committee be deemed a "designation or other means of recognizing that a certain amount of money has been raised by the person"? See 153 CONG. REC. S10699 (daily ed. Aug. 2, 2007) (statement of Sen. Obama); *id.* at S10709. Would such an approach encompass individuals who have no actual role in fundraising? Further, would any "other means of recognizing" have to be designated in writing?

The legislative history provides other guidance that the Commission has not proposed as a part of new 11 CFR 104.22(a)(4). In a statement on the Senate floor, Senator Feingold noted that a reporting committee must know that a lobbyist/registrant or lobbyist/registrant PAC has raised a certain amount, not just be generally aware that the lobbyist/registrant or lobbyist/registrant PAC has been fundraising. Should the Commission include a similar interpretation in the concept of credited?

B. Reporting Requirement

1. Required Disclosure

Proposed 11 CFR 104.22(b), consistent with the new law, requires reporting committees to disclose on a new form certain information about any person reasonably known to be a lobbyist/registrant or lobbyist/registrant PAC that forwards, or is credited with raising, two or more bundled contributions in excess of \$15,000 to the reporting committee during the covered period. 2 U.S.C. 434(i)(1). Specifically, the reporting committee must disclose the name of the lobbyist/registrant or lobbyist/registrant PAC, the address of the lobbyist/registrant or lobbyist/registrant PAC, the employer of the lobbyist/registrant who provided the bundled contributions (for individual lobbyist/registrants), and the amount of bundled contributions provided during the covered period. *Id.*

In conjunction with this rulemaking, the Commission intends to create a new form for disclosing information about lobbyists and lobbyist PACs that provide bundled contributions. The form would be filed with the Form 3 (House and Senate authorized committees), Form 3P (Presidential authorized committees) and Form 3X (leadership PACs and political party committees) following the appropriate covered period.

2. Reasonably Known To Be

The new law requires the disclosure of information about a person who forwards, or who is credited with having raised, two or more bundled contributions aggregating in excess of \$15,000 during the covered period if the person is “reasonably known by the [reporting] committee to be” a lobbyist/registrant or a lobbyist/registrant PAC. 2 U.S.C. 434(i)(1). The new law requires the Commission to “provide guidance to [reporting] committees with respect to whether a person is reasonably known by a committee to be” a lobbyist/registrant or lobbyist/registrant PAC. 2 U.S.C. 434(i)(5)(B). In so doing, the Commission is to include a “requirement that [reporting] committees consult the Web sites maintained by the Secretary of the Senate and the Clerk of the House of Representatives containing information filed pursuant to the Lobbying Disclosure Act of 1995.” 2 U.S.C. 434(i)(5)(B).

Proposed 11 CFR 104.22(b)(2) would provide guidance with respect to how a reporting committee is to comply with these requirements. This paragraph directs the committee to consult the Web sites maintained by the Clerk of the House of Representatives, the Secretary of the Senate, and the Federal Election Commission in order to determine whether a person is identified on a filing under the LDA or the Act as a registrant, a lobbyist, or a political committee established or controlled by a registrant or lobbyist.

The Commission seeks comment on these proposed regulations. Does the regulatory text adequately implement the statutory requirements? May the Commission require committees to consult the Commission’s Web site for information regarding registration of lobbyist/registrant PACs, since that information is not currently available on the Web sites of the Secretary of the Senate or the Clerk of the House of Representatives?

The Commission requests comments on what other guidance the Commission might issue as to how a reporting committee can reasonably know that a bundler of contributions is a lobbyist/registrant or lobbyist/registrant PAC. What other steps could the Commission take to make information regarding lobbyist/registrant PACs more easily accessible?

C. Where To File

Under current 11 CFR Part 105, authorized committees of candidates for the House of Representatives, the principal campaign committees of

Presidential candidates, and any other political committees that support such candidates must file their regular campaign finance reports with the Commission. *See* 11 CFR 105.1, 105.3 and 105.4. Authorized committees of candidates for the Senate and any other political committees that support only Senate candidates must file their reports with the Secretary of the Senate. *See* 11 CFR 105.2. Proposed 11 CFR 104.22(c) would require the form required by the new law to be filed in accordance with 11 CFR Part 105. The Commission requests comments on this proposal.

D. When To File

New 2 U.S.C. 434(i)(1) requires reporting committees to file a form listing information about each lobbyist/registrant or lobbyist/registrant PAC with “the first report required to be filed under this section after each covered period” in which a lobbyist/registrant or lobbyist/registrant PAC provided bundled contributions exceeding \$15,000. 2 U.S.C. 434(i)(a)(1). As noted above, the proposed rule defines “covered period” as the semi-annual periods of January 1 through June 30 and July 1 through December 31. Additionally, proposed 11 CFR 104.22(a)(2)(ii) provides that in any calendar year in which a reporting committee is required to file or files monthly or quarterly campaign finance reports under 11 CFR 104.5, the covered period would also include the quarterly periods of January 1 through March 31 and July 1 through September 30 if, during those periods, a lobbyist/registrant or a lobbyist/registrant PAC provided two or more bundled contributions to the reporting committee which aggregate in excess of \$15,000. Thus, proposed 11 CFR 104.22(d) would require a reporting committee to file a form semi-annually in every calendar year, and in the calendar quarters of January 1 through March 31 and July 1 through September 30 if any lobbyist/registrant or lobbyist/registrant PAC forwarded, or was credited with having raised, two or more bundled contributions aggregating in excess of \$15,000 during those calendar quarters.

The Commission requests comments on proposed 11 CFR 104.22(d).

As discussed above, the alternative definition of “covered period” would require reporting committees to disclose information about lobbyist/registrants or lobbyist/registrant PACs that provide bundled contributions on a slightly different schedule than that under the proposed rule. Under alternative 11 CFR 104.22(a)(2)(i), monthly and quarterly filers would be required to file, concurrently with their campaign

finance reports filed in April, July, October and January, a form listing any lobbyist/registrant or lobbyist/registrant PAC that provided bundled contributions aggregating in excess of \$15,000 during the previous calendar quarter. Further, in any calendar year in which a reporting committee files its campaign finance reports on a semi-annual basis, the committee would concurrently file its form disclosing information about any lobbyist/registrant or lobbyist/registrant PAC that provided bundled contributions in excess of \$15,000 during the semi-annual covered period. The Commission requests comments on the effect of the alternative “covered period” on report timing.

Reporting Hypotheticals

The following examples illustrate how proposed 11 CFR 104.22 would interact with the Commission’s existing reporting requirements for forwarded contributions.

The first hypothetical involves the authorized committee of a candidate as the reporting committee and thus, also invokes 11 CFR 110.6 regarding earmarking contributions to authorized committees, if the person earmarking the contributions qualifies as a “conduit” under that section.

The second hypothetical involves either a leadership PAC or a political party committee as the reporting committee. This hypothetical would not invoke 11 CFR 110.6 because that section applies only to contributions earmarked for an authorized committee.

Hypothetical Example 1

Facts.

Candidate A’s authorized committee files campaign finance reports on a quarterly basis.

On February 20, Lobbyist/Registrant Z delivers a \$30,000 check to Candidate A’s treasurer, representing fifteen \$2,000 contributions that Lobbyist/Registrant Z collected on February 15 on behalf of Candidate A. Lobbyist/Registrant Z also provides a list of each contributor’s name, mailing address, employer and occupation, and the date received by Lobbyist/Registrant Z as required under 11 CFR 110.6(c)(1)(iii) and (iv).

On March 21, Lobbyist/Registrant Z, although he does not occupy a significant position in Candidate A’s campaign,⁷ hosts a fundraiser on Candidate A’s behalf, at which Candidate A makes a speech. At the fundraiser, five contributors hand checks totaling \$10,000 directly to Candidate A.

On June 5, Lobbyist/Registrant Z delivers to the authorized committee five checks

⁷ An individual who occupies a significant position within a campaign may be exempt from the earmarking regulations. *See* 11 CFR 110.6(b)(2)(i)(E).

totaling \$6,000 that he collected on Candidate A's behalf during the preceding week.

Reporting Requirements.

1. On the committee's first quarterly campaign finance report, it must:

a. Pursuant to 11 CFR 110.6, report:

- i. The name, mailing address, occupation and employer of Lobbyist/Registrant Z.

- ii. As a memo entry, the total amount of contributions forwarded by Lobbyist/Registrant Z (\$30,000), the date received by the committee (February 20) and a notation of whether the Lobbyist/Registrant's contribution limit was affected or not pursuant to 11 CFR 110.6(d).

- iii. The name, mailing address, employer, occupation of each contributor, as well as the date that Lobbyist/Registrant Z received the contributions (February 15) and a notation that it was earmarked through him.

This reporting requirement is triggered by Lobbyist/Registrant Z's having acted as a conduit under 11 CFR 110.6 for the contributions that he received on February 15 and delivered on February 20, because he physically forwarded the contributions to the authorized committee.

b. Pursuant to 11 CFR 104.3, report for each of the five contributors who made contributions at the March 21 fundraiser: The person's name, mailing address, occupation, and employer, date received (March 21) and amounts, itemizing the contributions as necessary under 11 CFR 104.3.

c. Pursuant to proposed 11 CFR 104.22, report the name, address and employer of Lobbyist/Registrant Z, as well as the total amount bundled by Lobbyist/Registrant Z, \$40,000, during the covered period. This reporting requirement is triggered because Lobbyist/Registrant Z forwarded, or was credited with raising, more than \$15,000 in contributions during the committee's reporting period (the calendar quarter).

2. On the authorized committee's second quarterly campaign finance report, it must:

a. Pursuant to 11 CFR 110.6, report:

- i. The name, mailing address, occupation and employer of Lobbyist/Registrant Z.

- ii. As a memo entry, the total amount of contributions forwarded to the committee by Lobbyist/Registrant Z (\$6,000) and the date received by the authorized committee (June 5).

- iii. The name, mailing address, employer and occupation of each contributor, the date each contribution was received by Lobbyist/Registrant Z and whether the contributions affected Lobbyist/Registrant Z's contribution limits pursuant to 11 CFR 110.6(d).

Lobbyist/Registrant Z is a conduit under 11 CFR 110.6, because he collected and forwarded the contributions to the authorized committee. Thus, the authorized committee disclosed his contributions in a manner similar to hypothetical 1.a., above.

b. Pursuant to proposed 11 CFR 104.22, file a form disclosing the lobbyist/registrant's name, address and employer, as well as the aggregate amount of bundled contributions that the committee received from or credited to Lobbyist/Registrant Z during the six-month covered period (\$46,000). While the aggregate amount of contributions forwarded or raised by and credited to Lobbyist/

Registrant Z did not exceed \$15,000 during the committee's second quarterly reporting period, the aggregate amount of bundled contributions provided by Lobbyist/Registrant Z during the January 1 through June 30 semi-annual covered period, \$46,000, does exceed the \$15,000 reporting threshold for that covered period.

Hypothetical Example 2

Facts.

A leadership PAC files campaign finance reports on a monthly basis.⁸

On February 20, lobbyist/registrant PAC X delivers a check to the leadership PAC for \$30,000, representing contributions to the leadership PAC from fifteen individual contributors, along with information about each contributor as required under 11 CFR 110.6(c)(1)(iii) and (iv).

On March 12, lobbyist/registrant PAC X hosts a fundraiser at which the "candidate involved" with the leadership PAC makes a speech. Between March 13 and March 31, the leadership PAC receives 6 checks aggregating to \$12,000. Each check notes that the contributor is helping the leadership PAC because of the speech given at the March 12 fundraiser. The leadership PAC thanks the contributors and also sends a note to lobbyist/registrant PAC X recognizing it for having raised the \$12,000.

Reporting Requirements

1. On the leadership PAC's campaign finance report covering February, it must:

a. Pursuant to 11 CFR 104.3 and 104.8, report for each of the fifteen contributors who made the contributions delivered by lobbyist/registrant PAC X on March 20: The person's name, mailing address, occupation, employer, and date of receipt by lobbyist/registrant PAC X, itemizing the contributions as necessary under 104.8.

2. On the leadership PAC's campaign finance report covering March, it must:

a. Pursuant to 11 CFR 104.3 and 104.8, report for each of the six contributions that make up the \$12,000 that the leadership PAC received directly from contributors and credited to lobbyist/registrant PAC X: The person's name, mailing address, occupation, employer, and the date of receipt by lobbyist/registrant PAC X itemizing the contributions as necessary under 11 CFR 104.8.

b. Pursuant to proposed 11 CFR 104.22, include a separate form disclosing lobbyist/registrant PAC X's name and address, and the total amount of bundled contributions that lobbyist/registrant PAC X provided to the leadership PAC during the first calendar quarter. This form would be required because the aggregate amount of bundled contributions provided by lobbyist/registrant PAC X exceeds \$15,000 during the unauthorized committee's covered period of January 1 through March 31.

The Commission requests comments on these hypotheticals.

E. Recordkeeping

Current Commission regulations implement certain statutory

recordkeeping requirements that also apply to certain bundled contributions. For example, committees must keep a record and account of each contribution exceeding \$50 for three years after filing the report to which the record or account relates. *See* 2 U.S.C. 432(c)(2) and (d); 11 CFR 102.9(a) and (c). In addition, any person who receives and forwards contributions to any political committee must also forward certain information about the original contributor. *See* 2 U.S.C. 432(c) and 434a(a)(8); 11 CFR 102.8(c). Any authorized committee that receives contributions forwarded by a "conduit" is subject to additional recordkeeping and reporting requirements. *See* 2 U.S.C. 434a(a)(8); 11 CFR 110.6(c).

Therefore, the Commission proposes new 11 CFR 104.22(e), which refers to the existing recordkeeping requirements in Commission regulations and also requires reporting committees to maintain for three years records of information about any lobbyist/registrant or lobbyist/registrant PAC that forwards, or is credited with raising, two or more bundled contributions aggregating in excess of \$15,000 during any covered period. These records would include the name and address of the lobbyist/registrant or lobbyist/registrant PAC, the employer of the lobbyist/registrant (if an individual), the dates contributions are received and forwarded, and the aggregate amount of contributions bundled for each covered period.

The Commission would urge reporting committees to begin keeping records of lobbyist/registrants or lobbyist/registrant PACs who forward, or are credited with raising, bundled contributions as of January 1, 2008. Any rules promulgated by the Commission will likely become effective in early 2008, making the first semi-annual reporting period cover January 1 through June 30, 2008.

The Commission requests comments on this approach.

F. Price Index Increase

New 2 U.S.C. 434(i)(3)(b) requires that the \$15,000 disclosure threshold be indexed for inflation annually, using the Consumer Price Index as verified by the Secretary of Labor. The proposed rule at 11 CFR 104.22(f) would require that the \$15,000 disclosure threshold be indexed in the same manner as certain contribution limits under the Act and Commission regulations. *See* 2 U.S.C. 441a(c) and 11 CFR 110.17. The Commission proposes regulatory language that is identical to that already in portions of 11 CFR 110.17, but proposes placing the new requirement

⁸ The same hypothetical applies to a political party committee.

in new 11 CFR 104.22 rather than in 11 CFR 110.17 because the dollar amount in this instance is merely a threshold for disclosure rather than a contribution limit covered under 11 CFR Part 110. The Commission requests comments on this approach.

The Commission also requests comments on the timing of the application of the indexing for inflation requirement. New 2 U.S.C. 434(i) provides that the indexing requirement "shall apply" to the reporting threshold "[i]n any calendar year after 2007." 2 U.S.C. 434i(3)(B). The new law also provides, however, that 2 U.S.C. 434(i) will go into effect "with respect to reports filed * * * after the expiration of the 3-month period which begins on the date that the regulations required to be promulgated [under new 2 U.S.C. 434(i)] become final." The Commission expects that these proposed rules will become final in early 2008, and that the new disclosure requirements will apply to reports filed three months later. Thus, the first semi-annual reporting period would be January 1 through June 30, 2008, and the first quarterly reporting period would be April through June, 2008.

Given that 2008 is a "calendar year after 2007," should the reporting threshold be indexed in 2008? If so, then the effective reporting threshold would never be \$15,000; rather, it would be \$15,000 in 2006 (the base period) dollars, as indexed for inflation in 2008. The Commission requests comments on this interpretation of the new law, which is not included in the proposed rule.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The attached proposed rules, if promulgated, would not have a significant economic impact on a substantial number of small entities. The basis for this certification is that few, if any, small entities would be affected by these proposals, which apply only to Federal candidates and their campaign committees, political committees established, financed, maintained or controlled by Federal candidates or individuals holding Federal office, and political committees of political parties. Authorized committees of Federal candidates would not be considered small entities under the definition at 5 U.S.C. 601(6). Leadership PACs established, financed, maintained or controlled by Federal candidates or individuals holding Federal office also would not qualify as small entities. Such committees, while established by an individual, are not

independently owned and operated because they are not financed and controlled by a small identifiable group of individuals; rather, they rely on contributions from a variety of persons to fund the committee's activities. Political committees representing the Democratic and Republican parties have a major controlling influence within the political arena and are thus dominant in their field. However, to the extent that any party committees representing major or minor political parties or any other political committees might be considered "small organizations," the number that would be affected by this rule is not substantial.

The proposed rules also would not impose any additional restrictions. Instead, the proposed rules would only require disclosure of further information already held by the political committees affected. Therefore, the proposed rules would not have a significant economic impact on a substantial number of small entities.

List of Subjects

11 CFR Part 100

Elections.

11 CFR Part 104

Campaign funds, political committees and parties, reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Federal Election Commission proposes to amend Subchapter A of Chapter 1 of Title 11 of the *Code of Federal Regulations* as follows:

PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

1. The authority citation for part 100 is revised to read as follows:

Authority: 2 U.S.C. 431, 434, and 438(a)(8), and 439a(c).

2. Section 100.5 is amended by adding a new paragraph (e)(7) to read as follows:

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

* * * * *

(e) * * *

(7) *Lobbyist/Registrant PAC* means any political committee established or controlled by a "lobbyist/registrant," as that term is defined at 11 CFR 104.22(a)(3).

PART 104—REPORTS BY POLITICAL COMMITTEES AND OTHER PERSONS (2 U.S.C. 434)

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

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

4. Section 104.22 is added to read as follows:

§ 104.22 Disclosure of bundling by Lobbyist/Registrants (2 U.S.C. 434(i)).

(a) *Definitions—Reporting committee* means:

- (i) An authorized committee of a Federal candidate as defined at 11 CFR 100.5(f)(1);
- (ii) A leadership PAC as defined at 11 CFR 100.5(e)(6); or
- (iii) A party committee as defined at 11 CFR 100.5(e)(4).

[Proposed Definition of Covered Period]

(2) *Covered period* means:

- (i) In any calendar year the semi-annual periods of January 1 through June 30 and July 1 through December 31; and
- (ii) In any calendar year in which a reporting committee is required to file or files monthly or quarterly reports pursuant to 11 CFR 104.5, the quarterly periods of January 1 through March 31 and July 1 through September 30 if, during those periods a lobbyist/registrant or lobbyist/registrant PAC provided two or more bundled contributions to the reporting committee which aggregate in excess of \$15,000.

[Alternative Definition of Covered Period]

(2) *Covered period* means:

- (i) In any calendar year in which a reporting committee is required to file or files on a quarterly basis pursuant to 11 CFR 104.5, the quarterly periods of January 1 through March 31, April 1 through June 30, July 1 through September 30 and October 1 through December 31; and
- (ii) In any calendar year in which a reporting committee files semi-annual reports pursuant to 11 CFR 104.5, the semi-annual periods of January 1 through June 30 and July 1 through December 31.

(3) *Lobbyist/Registrant*. For purposes of this section, lobbyist/registrant means a person who, at the time a contribution is forwarded to, or is received by, a reporting committee, is:

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

(4) *Bundled contribution* means any contribution:

- (i) Forwarded from the contributor or contributors to the reporting committee

by a lobbyist/registrant or lobbyist/registrant PAC ; or

(ii) Received by the reporting committee from the contributor or contributors, and that is credited by the committee, individual holding a Federal office or candidate involved to a lobbyist/registrant or lobbyist/registrant PAC through records, designations, or other means of recognizing that a certain amount of money has been raised by the lobbyist/registrant or lobbyist/registrant PAC , except that

(iii) Bundled contributions do not include contributions from the personal funds of the lobbyist/registrant who forwards or is credited with raising the contributions or that person's spouse.

(5) *The committee or candidate involved* means: The reporting committee; the candidate by whom the authorized committee is authorized; or the candidate or individual holding Federal office who directly or indirectly established, finances, maintains or controls the leadership PAC.

(6) A designation or other means of recognizing bundled contributions includes titles based on levels of fundraising, access to reporting committee events reserved exclusively for those who generate a certain level of contributions, and events provided by a reporting committee as a reward for successful fundraising.

(b) Reporting requirement.

(1) Each reporting committee must file a form listing each person reasonably known by the committee to be a lobbyist/registrant or lobbyist/registrant PAC that provides two or more bundled contributions (*see* 11 CFR 104.22(a)(4)) to the reporting committee aggregating in excess of \$15,000 during the covered period. Each form shall set forth:

(i) The name of the lobbyist/registrant or lobbyist/registrant PAC;

(ii) The address of the lobbyist/registrant or lobbyist/registrant PAC;

(iii) The employer of the lobbyist/registrant; and

(iv) The aggregate amount of bundled contributions provided by the lobbyist/registrant or lobbyist/registrant PAC to the reporting committee during the covered period.

(2) In order to comply with paragraph (b)(1) of this section, a reporting committee must consult the Web sites maintained by the Clerk of the House of Representatives, the Secretary of the Senate, and the Federal Election Commission to determine whether, at the time a contribution was forwarded to, or received by, the reporting committee:

(i) The person was listed as a current registrant under Section 4(a) of the

Lobbying Disclosure Act of 1995 (2 U.S.C. 1603(a)), or

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

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

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

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

(d) *When to file.* Reporting committees must file the forms required under this section with the first report required under 11 CFR 104.5 following the end of each covered period.

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

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

(2) The employer of the lobbyist/registrant; and

(3) The amount of bundled contributions provided by the lobbyist/registrant or lobbyist/registrant PAC for each covered period.

(f) Price index increase.

(1) The threshold for reporting bundled contributions established in paragraph (d)(1) of this section shall be increased by the percent difference between the price index as defined at 11 CFR 110.17(d), as certified to the Commission by the Secretary of Labor, for the 12 months preceding the beginning of the calendar year and the price index base period.

(2) Each bundling threshold so increased shall be the threshold in effect for that calendar year.

(3) For purposes of this paragraph (e), the term base period means calendar year 2006.

(4) Rounding of price index increases. If any amount after the increases under this paragraph (e) is not a multiple of \$100, such amount shall be rounded to the nearest multiple of \$100.

Dated: October 30, 2007.

Robert D. Lenhard,

Chairman, Federal Election Commission.

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SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404, 405, and 416

[Docket No. SSA-2007-0053]

Compassionate Allowances for Rare Diseases; Office of the Commissioner, Hearing

AGENCY: Social Security Administration (SSA).

ACTION: Advance Notice of Proposed Rulemaking; Announcement of Public Hearing and Limited Reopening of Comment Period.

SUMMARY: We are considering ways to quickly identify diseases and other serious medical conditions that obviously meet the definition of disability under the Social Security Act (the Act) and can be identified with minimal objective medical information. At present, we are calling this method "Compassionate Allowances." We plan to hold four public hearings over the next year. The purpose of this first hearing is to obtain your views about the advisability and possible methods of identifying and implementing compassionate allowances for children and adults with rare diseases. We will address other kinds of medical conditions in later hearings.

DATES: Dates and location: We must receive written comments by December 21, 2007. Comments made at the hearings will be considered in preparation of a final rule. The first hearing will be held on December 4 and December 5, 2007, between 8:45 a.m. and 5:30 p.m. Eastern Standard Time (EST), in Washington, DC. The hearings will be held at 500 E Street, SW., Washington, DC 20436, in the main hearing room of the International Trade Commission. Space limitations and time constraints require hearing attendance to be by invitation only. However, you may listen to the proceedings by calling 1-888-456-0278, at 9 a.m., EST, the mornings of December 4 and 5. If you plan to listen in, please send an e-mail to Compassionate.Allowances@ssa.gov by November 21, 2007. Your e-mail will help ensure that we have enough