



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

FEDERAL ELECTION  
COMMISSION  
SECRETARIAT

2014 OCT -8 PM 12:09

October 8, 2014

**AGENDA ITEM**

**MEMORANDUM**

**To:** The Commission

**From:** Lisa J. Stevenson *LJS by AN*  
Deputy General Counsel

Adav Noti *AN*  
Acting Associate General Counsel

Amy L. Rothstein *ARR*  
Assistant General Counsel

Theodore M. Lutz *TML*  
Attorney

**For Meeting of 10-9-14**

**SUBMITTED LATE**

**Subject:** Draft Interim Final Rule in Response to *McCutcheon v. FEC*

Attached is a draft Interim Final Rule that implements the Supreme Court's decision in *McCutcheon v. FEC* by removing regulatory limits on the aggregate amounts that an individual may contribute to federal candidates and political committees in each two-year election cycle.

We request that this draft be placed on the agenda for October 9, 2014.

Attachment

1 **FEDERAL ELECTION COMMISSION**

2 **11 CFR Part 110**

3 **[NOTICE 2014-xx]**

4 **Aggregate Biennial Contribution Limits**

5 **AGENCY:** Federal Election Commission.

6 **ACTION:** Interim Final Rule.

7 **SUMMARY:** The Commission is removing regulatory limits on the aggregate amounts that an  
8 individual may contribute to federal candidates and political committees in each two-year  
9 election cycle. The Commission is taking this action in light of the Supreme Court's recent  
10 decision in McCutcheon v. FEC, which held that the aggregate contribution limits are  
11 unconstitutional. The Commission is accepting comments on these revisions to its regulations.

12 **DATES:** Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].  
13 Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF  
14 PUBLICATION IN THE FEDERAL REGISTER].

15 **FOR FURTHER INFORMATION CONTACT:** Ms. Amy L. Rothstein, Assistant General  
16 Counsel, or Mr. Theodore M. Lutz, Attorney, 999 E Street, NW., Washington, DC 20463,  
17 (202) 694-1650 or (800) 424-9530.

18 **ADDRESSES:** All comments must be in writing. Comments may be submitted electronically  
19 via the Commission's website at [sers.fec.gov](http://sers.fec.gov), reference REG 2014-01. Commenters are  
20 encouraged to submit comments electronically to ensure timely receipt and consideration.

21 Alternatively, comments may be submitted in paper form. Paper comments must be sent to the  
22 Federal Election Commission, Attn.: Amy L. Rothstein, Assistant General Counsel, 999 E  
23 Street, NW., Washington, DC 20463. All comments must include the full name and postal

1 service address of a commenter, and of each commenter if filed jointly, or they will not be  
2 considered. The Commission will post comments on its website at the conclusion of the  
3 comment period.

#### 4 **SUPPLEMENTARY INFORMATION:**

##### 5 **Background**

6 The Federal Election Campaign Act, 52 U.S.C. 30101-46 (formerly 2 U.S.C. 431-57)  
7 (“FECA”), imposes limits on the aggregate amounts that an individual may contribute to federal  
8 candidates, political parties, and other political committees during a two-year election cycle. 52  
9 U.S.C. 30116(a)(3) (formerly 2 U.S.C. 441a(a)(3)). The Commission has implemented FECA’s  
10 aggregate limits in its regulations at 11 CFR 110.5.

11 On April 2, 2014, the United States Supreme Court held that the aggregate contribution  
12 limits are unconstitutional. McCutcheon v. FEC, 572 U.S. \_\_\_, 134 S. Ct. 1434 (2014) (plurality  
13 op.). To conform its regulations to the McCutcheon decision, the Commission is delcting 11  
14 CFR 110.5 and is making technical and conforming changes to 11 CFR 110.1(c), 110.14(d) and  
15 (g), 110.17(b), and 110.19. In an Advance Notice of Proposed Rulemaking published in today’s  
16 Federal Register, the Commission is separately seeking comment on whether to begin a  
17 rulemaking to revise other regulations in light of certain language from the McCutcheon  
18 decision.

19 The Commission is taking this action without advance notice and comment because it  
20 falls under the “good cause” exception of the Administrative Procedure Act (“APA”),  
21 5 U.S.C. 553(b)(B). The revisions set forth herein are necessary to conform the Commission’s  
22 regulations to the Supreme Court’s holding that the statutory aggregate limits are  
23 unconstitutional. See McCutcheon, 134 S. Ct. at 1442. Because this action does not involve any

1 Commission discretion or policy judgments, notice and comment are unnecessary.  
2 5 U.S.C 553(b)(B), (d)(3). A pre-publication notice and comment period would also be contrary  
3 to the public interest because the 2014 election campaigns for federal office are ongoing, and so  
4 the delay that would result from such a period might cause confusion among the public as to the  
5 enforceability of the regulations addressed below.

6 For the same reasons, these revisions fall within the “good cause” exception to the APA’s  
7 delayed effective date provision and the requirements of the Congressional Review Act.  
8 5 U.S.C. 553(d)(3), 808(2). Moreover, because this interim final rule is exempt from the APA’s  
9 notice and comment procedure under 5 U.S.C. 553(b), the Commission is not required to conduct  
10 a regulatory flexibility analysis under 5 U.S.C. 603 or 604. See 5 U.S.C. 601(2), 604(a). Nor is  
11 the Commission required to submit these revisions for congressional review under FECA. See  
12 52 U.S.C. 30111(d)(1), (4) (formerly 2 U.S.C. 438(d)(1), (4)) (providing for congressional  
13 review when Commission “prescribe[s]” a “rule of law”). Accordingly, these revisions are  
14 effective upon publication in the Federal Register.

### 15 **Explanation and Justification**

16 FECA imposes two types of limits on the amount that individuals may contribute in  
17 connection with federal elections. The “base limits” restrict how much an individual may  
18 contribute to a particular candidate or political committee per election or calendar year. See  
19 52 U.S.C. 30116(a)(1) (formerly 2 U.S.C. 441a(a)(1)). The “aggregate limits” restrict the  
20 amounts that an individual may contribute to all candidate committees, political party  
21 committees, and other political committees in each two-year election cycle. See  
22 52 U.S.C. 30116(a)(3) (formerly 2 U.S.C. 441a(a)(3)). Under the aggregate limits, as indexed  
23 for inflation in the 2013-14 election cycle, an individual could contribute up to \$48,600 to

1 candidates and their authorized committees, and up to \$74,600 to other political committees, of  
2 which no more than \$48,600 could be contributed to political committees other than national  
3 party committees. See Price Index Adjustments for Contribution and Expenditure Limitations  
4 and Lobbyist Bundling Disclosure Threshold, 78 FR 8530, 8532 (Feb. 6, 2013).

5 On April 2, 2014, the Supreme Court held that the aggregate contribution limits at  
6 52 U.S.C. 30116(a)(3) (formerly 2 U.S.C. 441a(a)(3)) are unconstitutional. See McCutcheon,  
7 134 S. Ct. at 1442, 1450-59. Accordingly, the Commission is removing the regulation at  
8 11 CFR 110.5 that implements that statutory provision and is making technical and conforming  
9 amendments at 11 CFR 110.1(c)(3), 110.14(d)(1), 110.14(g)(2), 110.17(b), and 110.19, as  
10 explained further below. The Court's decision did not affect the base limits. See McCutcheon,  
11 134 S. Ct. at 1442.

#### 12 11 CFR 110.1

13 Section 110.1(c) implements FECA's base and aggregate limits on contributions to  
14 political party committees. Current 11 CFR 110.1(c)(3) states that each national political party  
15 committee may receive up to the base limit from an individual contributor, but "the limits of 11  
16 CFR 110.5 shall . . . apply to contributions made by an individual" to such committees. The  
17 Commission is deleting this reference to the aggregate limits.

#### 18 11 CFR 110.5

19 Section 110.5 directly implements FECA's aggregate limits, 52 U.S.C. 30116(a)(3)  
20 (formerly 2 U.S.C. 441a(a)(3)). The Commission is deleting 11 CFR 110.5 in its entirety and  
21 reserving that section.

1           11 CFR 110.14

2           Section 110.14(d)(1) provides, among other things, that “contributions made to a delegate  
3 for the purpose of furthering his or her selection . . . count against the limitation . . . under  
4 11 CFR 110.5.” The Commission is deleting this reference to the aggregate limits.

5           Similarly, section 110.14(g)(2) provides that an individual’s “[c]ontributions to a delegate  
6 committee count against the limitation . . . under 11 CFR 110.5.” The Commission is deleting  
7 paragraph (g)(2) and redesignating current paragraph (g)(3) as new paragraph (g)(2).

8           11 CFR 110.17

9           Section 110.17(b) implements FECA’s price index increases for certain contribution  
10 limits, including the aggregate limits. The Commission is deleting both the reference to the “bi-  
11 annual aggregate contribution limitation” in the title of section 110.17(b) and the citation in the  
12 text to section 110.5. Additionally, at 11 CFR 110.17(b)(1), the Commission is deleting the  
13 citation to section 110.5(b)(3).

14           11 CFR 110.19

15           Section 110.19 provides that, so long as certain conditions are satisfied, minors may  
16 make contributions “that in the aggregate do not exceed the limitations on contributions of 11  
17 CFR 110.1 and 110.5.” The Commission is deleting the citation to 110.5.

- 1 **List of Subjects in**
- 2 11 CFR Part 110
- 3 Campaign funds, Political committees and parties.

1 For the reasons set out in the preamble, the Federal Election Commission amends 11  
2 CFR chapter I, as follows:

3 **PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND**  
4 **PROHIBITIONS**

5 1. Revise the authority citation for part 110 to read as follows:

6 Authority: 52 U.S.C. 30101(8), 30101(9), 30102(c)(2), 30104(i)(3), 30111(a)(8), 30116, 30118,  
7 30120, 30121, 30122, 30123, 30124, and 36 U.S.C. 510.

8 2. Revise the section heading and paragraph (c)(3) of § 110.1 to read as follows:

9 **§ 110.1 Contributions by persons other than multicandidate political committees (52 U.S.C.**  
10 **30116(a)(1)).**

11 \* \* \* \* \*

12 (c) \* \* \*

13 (3) Each recipient committee referred to in 11 CFR 110.1(c)(2) may receive up to the  
14 \$25,000 limitation from a contributor.

15 \* \* \* \* \*

16 3. Remove and reserve § 110.5.

17 4. Revise paragraphs (d)(1) and (g) of § 110.14 to read as follows:

18 **§ 110.14 Contributions to and expenditures by delegates and delegate committees.**

19 \* \* \* \* \*

20 (d) \* \* \*

21 (1) The limitations on contributions to candidates and political committees under 11  
22 CFR 110.1 and 110.2 do not apply to contributions made to a delegate for the  
23 purpose of furthering his or her selection.



1 \* \* \* \* \*

2 (g) Contributions made to and by a delegate committee.

3 (1) The limitations on contributions to political committees under 11 CFR 110.1 and  
4 110.2 apply to contributions made to and by a delegate committee.

5 (2) A delegate committee shall report contributions it makes and receives pursuant to  
6 11 CFR part 104.

7 \* \* \* \* \*

8 5. Revise paragraph (b) introductory text and paragraph (b)(1) of § 110.17 to read as  
9 follows:

10 **§ 110.17 Price index increase.**

11 \* \* \* \* \*

12 (b) Price index increases for contributions by persons and political party committees to  
13 Senatorial candidates. The limitations on contributions established by 11 CFR 110.1(b)  
14 and (c) and 110.2(e) shall be increased only in odd-numbered years by the percent  
15 difference between the price index, as certified to the Commission by the Secretary of  
16 Labor, for the 12 months preceding the beginning of the calendar year and the price index  
17 for the base period.

18 (1) The increased contribution limitations shall be in effect as provided in 11 CFR  
19 110.1(b)(1)(ii), 110.1(c)(1)(ii), and 110.2(e)(2).

20 \* \* \* \* \*

1 6. Revise § 110.19 introductory text to remove “and 110.5”.

2

3

On behalf of the Commission,

4

5

Lee E. Goodman,  
Chairman,  
Federal Election Commission.

6

7

8

9

10 DATED: \_\_\_\_\_

11 BILLING CODE 6715-01-P

12